

# Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT  
REGULATORY  
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
Department of Public Welfare  
Office of Long-Term Living

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(2) Agency Number: 14  
Identification Number: 535

IRRC Number: ~~3109~~ 3019

(3) PA Code Cite:  
55 Pa.Code Chapter 1187  
55 Pa.Code Chapter 1189

(4) Short Title:  
Supplemental Ventilator Care and Tracheostomy Care Payment for Medical Assistance Nursing Facilities

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final-form regulation changes the Department's methods and standards for payment of Medical Assistance (MA) nursing facility services by providing two new categories of supplemental payment to qualified MA nursing facilities. A supplemental ventilator care payment is effective July 1, 2012 through June 30, 2014 and a supplemental ventilator care and tracheostomy care payment is effective July 1, 2014.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Department has the authority under the Public Welfare Code (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This final-form regulation is not mandated by any federal or state law, regulation or court order.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This final-form regulation is needed to address the financial impact that the implementation of the current Resource Utilization Group III (RUG-III) version 5.12 (RUG v. 5.12) resident classification system and the phase-out of the older RUG v. 5.01 has on nursing facilities that care for a significant number of MA ventilator care and tracheostomy care residents.

Nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population will benefit by receiving additional reimbursement for providing these medically necessary services. Making these additional funds available to promote the growth of ventilator care and tracheostomy care is part of the Department's ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services and that those services result in quality care that improves the lives of those who receive them.

There are approximately 618 nursing facilities (589 nonpublic and 29 county) in Pennsylvania enrolled in the MA Program; approximately 178 are caring for at least one MA-recipient resident who receives medically necessary ventilator care or tracheostomy care. Ten nursing facilities met the criteria in at least one quarter of Fiscal Year 2012-2013 to qualify for supplemental ventilator care payments. The Department estimates that 18 nursing facilities will qualify for the supplemental ventilator care and tracheostomy care payment. There are approximately 48,596 MA-recipients of which approximately 707 are receiving ventilator care or tracheostomy care currently residing in those nursing facilities and an average of 79,216 MA recipients who receive nursing facility services in a typical year.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations?

There are no provisions that are more stringent than Federal law.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

A number of states such as Illinois, Indiana, Maryland, New Hampshire and North Carolina provide an add-on to the rates for nursing facilities that provide care to their ventilator dependent residents. Also, Illinois and Maryland provide an add-on to the rates for nursing facilities that provide tracheostomy care to their MA residents and New Hampshire provides an add-on to the rates for tracheostomy care on a case by case basis. Pennsylvania will not be competing with other states, as this final-form regulation relates to supplemental payment to qualified MA nursing facilities located in this Commonwealth. This regulation is consistent with the Department's ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect existing or proposed regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

This regulation benefits all MA nursing facilities that care for a significant number of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care. As a result of the discussions with Special Rehabilitation nursing facilities, the Department published a notice in the *Pennsylvania Bulletin* at 42 Pa.B. 3824 (June 30, 2012), proposing to change its methods and standards for payment of MA nursing facility services to offer a new category of supplemental payment to qualified MA nursing facilities that provide medically necessary ventilator care for a significant portion of their MA-recipient resident population, effective July 1, 2012. The proposed methodology for the new category of supplemental ventilator care payment was also shared with the Long-Term Care Delivery System Subcommittee of the Medical Assistance Advisory Committee members on July 20, 2012.

The Department received seven letters in response to the proposed rulemaking through the 30-day public comment process, including written comments from nursing facility providers, hospitals, a consulting group and the Independent Regulatory Review Commission (IRRC). Three commentators expressed gratitude for the Department recognizing the additional costs incurred by providers who care for ventilator patients. Most of the commentators requested that the Department include MA residents who require tracheostomy care in the formula used to calculate the supplemental payment since there is little to no cost difference between residents on a ventilator and those receiving tracheostomy care because both require the same level of care and monitoring. After considering the public comments, the Department decided to offer the supplemental payment to qualified MA nonpublic and county nursing facilities that provide medically necessary ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population. A supplemental ventilator care payment is effective July 1, 2012 through June 30, 2014 and a supplemental ventilator care and tracheostomy care payment is effective July 1, 2014 and thereafter.

The payment formula provides higher supplemental ventilator care and tracheostomy care payments to facilities with the highest percent of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care by providing payment based on the proportion of MA recipients who receive medically necessary ventilator care or tracheostomy care to total MA-recipient residents. The basis for the maximum supplemental ventilator care and tracheostomy care per diem of \$69 is addressed in #28. The qualifying criteria provides additional funds to nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

No one will be adversely affected by the regulation. This final-form regulation affects MA nonpublic and county nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population by receiving additional reimbursement for providing these medically necessary services. MA recipients benefit by having access to medically necessary nursing facility services and that those services result in quality care that improves the lives of those who receive them.

There are approximately 618 nursing facilities (589 nonpublic and 29 county) in Pennsylvania enrolled in the MA Program; approximately 178 are caring for at least one MA-recipient resident who receives medically necessary ventilator care or tracheostomy care. There are approximately 48,596 MA-recipients of which approximately 707 are receiving ventilator care or tracheostomy care currently residing in those nursing facilities and an average of 79,216 MA recipients who receive nursing facility services in a typical year.

Using full year MA-11s (cost reports) available as of July 30, 2012 and grouping the nursing facilities by common ownership, 150 nonpublic nursing facilities had annual receipts of less than \$25.5 million and thus were identified as small businesses. See 13 CFR §§ 121.201 (relating to small business size standards) and 121.104 (relating to Small Business Administration calculation of annual receipts). A county nursing facility is not considered a small business by the Small Business Administration since a county nursing facility is controlled by a government entity. Revenue data from cost reports was substituted for revenue data from Federal tax returns in the determination of annual receipts. All nursing facilities enrolled in the MA Program are required to submit an MA-11 form as directed in Chapter 1187, Subchapter F (relating to cost reporting and audit requirements) and Chapter 1189, Subchapter C (relating to cost reporting and audit requirements). Cost reports are typically submitted on an annual basis and cover a 12-month period. They contain financial and statistical report schedules which are used, among other things, in setting per diem rates; Schedule D of the cost report specifically addresses revenues.

Ten nursing facilities met the criteria in at least one quarter of Fiscal Year 2012-2013 to qualify for supplemental ventilator care payments; none were identified as a small business. The Department estimates that 18 nursing facilities will qualify for the supplemental ventilator care and tracheostomy care payment; one of the 18 nursing facilities has been identified as a small business.

Also, there are no additional reporting requirements under this final-form regulation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

This final-form regulation affects MA nonpublic and county nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population by receiving additional reimbursement for providing these medically necessary services. There are approximately 618 nursing facilities that currently participate in the MA Program. Of the 618 nursing facilities, 150 were identified as small businesses. Ten nursing facilities met the criteria in at least one quarter of Fiscal Year 2012-2013 to qualify for supplemental ventilator care payments; none were identified as a small business. The Department estimates that 18 nursing facilities will qualify for the supplemental ventilator care and tracheostomy care payment; one of the 18 nursing facilities has been identified as a small business. (See #15 for more details).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This final-form regulation affects all MA nonpublic and county nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population by receiving additional reimbursement for providing these medically necessary services. MA recipients benefit by having assured access to medically necessary nursing facility services and that those services result in quality care that improves the lives of those who receive them.

Ten nursing facilities met the criteria in at least one quarter of Fiscal Year 2012-2013 to qualify for supplemental ventilator care payments; none were identified as a small business. The Department estimates that 18 nursing facilities will qualify for the supplemental ventilator care and tracheostomy care payment; one of the 18 nursing facilities has been identified as a small business.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This final-form regulation benefits the Commonwealth's MA nursing facility residents by ensuring continued access to medically necessary nursing facility services while addressing the financial impact on nonpublic and county nursing facilities that care for a significant number of MA ventilator care or tracheostomy care residents.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This final-form regulation will not have any cost or savings impact on the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This final-form regulation will not have any cost or savings impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This change resulted in an annual supplemental ventilator care payment of \$1.825 million in total funds (\$0.848 million in State funds) in Fiscal Year (FY) 2012-2013. The estimated annual supplemental ventilator care payment is \$1.825 million in total funds (\$0.848 million in State funds) for FY 2013-2014. The estimated supplemental ventilator care and tracheostomy care payments are \$3.965 million in total funds (\$1.911 million in State funds) for FY 2014-2015. The supplemental ventilator care payment is effective July 1, 2012 through June 30, 2014 and the supplemental ventilator care and tracheostomy care payment is effective July 1, 2014.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No new reports, forms, recordkeeping or paperwork are required by this regulation. The CMI Report used to determine the number of MA-recipient residents who receive ventilator care or tracheostomy care is a report that is already required.

David J. ... 1-29-14

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$848	\$848	\$1,911	\$1,911	\$1,911	\$1,911
Total Costs	\$848	\$848	\$1,911	\$1,911	\$1,911	\$1,911
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Long-Term Care	540,266	728,907	737,356	765,923



(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) The regulation will not have an adverse impact on small businesses. Of the 618 nursing facilities enrolled in the MA Program, 150 were identified as small businesses. (See #15 for more details). This final-form regulation offers additional funding to all MA nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population; there is no adverse impact on any of the 618 MA nursing facilities. Ten nursing facilities met the criteria in at least one quarter of Fiscal Year 2012-2013 to qualify for supplemental ventilator care payments; none were identified as a small business. The Department estimates that approximately 18 nursing facilities will qualify for the supplemental ventilator care and tracheostomy care payment; one of the 18 nursing facilities has been identified as a small business.

(b) No new reports, forms, recordkeeping or paperwork by nursing facilities is required under this final-form regulation. The CMI Report used to determine the number of MA-recipient residents who receive ventilator care or tracheostomy care is an existing report. The Department will use this existing report to determine the eligibility of a nursing facility for this additional payment. There are no new requirements for a nursing facility under this regulation.

(c) A small business that has a minimum of 10 MA-recipient residents who receive medically necessary ventilator care or tracheostomy care, with at least 10% of the facility's MA-recipient resident population receiving medically necessary ventilator care or tracheostomy care, is eligible for this additional payment. There is no adverse impact on small businesses.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. There are no new reports, forms, recordkeeping or paperwork under this final-form regulation. The regulation, instead, benefits nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

This final-form regulation offers additional funding to any MA nursing facility that provides ventilator care or tracheostomy care for a significant portion of its MA-recipient resident population.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

This regulation conforms with applicable State and Federal law as well as the Department's obligations to administer the MA Program in the best interests of MA recipients. The provisions effectively provide access to quality care for MA recipients. Since these regulatory amendments promote the growth of ventilator care and tracheostomy care the Department did not consider other regulatory provisions. The Department submitted State Plan Amendment (SPA) 12-030 to the Centers for Medicare and Medicaid Services (CMS) on September 27, 2012 regarding supplemental ventilator care payments to nonpublic and county nursing facilities; CMS approved the SPA on December 13, 2012. The Department intends to submit a SPA to CMS end dating the supplemental ventilator care payment and adding a supplemental ventilator care and tracheostomy care payment. Since there are no new reports, forms, paperwork or other new requirements under this regulation, it is the least burdensome alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation will not have an adverse impact on small businesses. This final-form regulation offers additional funding to all MA nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population. There are no new requirements for a nursing facility under this regulation.

Specifically, no new reports, forms, recordkeeping or paperwork by nursing facilities is required under this final-form regulation. The CMI Report used to determine the number of MA-recipient residents who receive ventilator care or tracheostomy care is an existing report. The Department will use this existing report to determine the eligibility of a nursing facility for this additional payment. Further, there are no new schedules or deadlines of nursing facilities under this regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

For purposes of considering providing a supplemental ventilator care payment to both nonpublic and county nursing facilities that provide ventilator care for a significant portion of their MA resident population as first described in a notice published at 42 Pa.B. 3824 (June 30, 2012), the Department compared rates calculated using the April 1, 2012 rate data. One rate was calculated as if RUG v. 5.12 was fully implemented and the other rate was calculated using the adjusted base rate which is a resident care rate based on the older RUG v. 5.01 grouper. The Department then compared the four nursing facilities with the highest percentage of MA-recipient residents who receive medically necessary ventilator care in the Commonwealth after the rate data was published on the Department's website. As this data is in the public domain, the calculated rates are replicable and testable under the rate setting formula in § 1187.96 (relating to price- and rate-setting computations). The detailed data elements necessary to calculate each of the rates in the study are located at <http://www.dpw.state.pa.us/provider/doingbusinesswithdpw/longtermcarecasemixinformation/index.htm> except that, the budget adjustment factor (BAF) was recalculated to be .88909 to account for expected differences in rate payments in future periods due to the costs of county nursing facilities being excluded from the rate database and full implementation of the RUG v. 5.12 and a BAF of .89295 to account for the differences in rate payments if county costs were excluded and the adjusted base rate was used for all facilities.

Observed, empirical results of the comparison of the two rates for each of the four ventilator care nursing facilities are displayed below. These results show the impact made to the rates with the implementation of the current RUG v. 5.12.

PROVNAME	%MA Vents	04/01/12 Rate At 100% RUG v. 5.12	04/01/12 Rate At 100% Adjusted Base Rate	Difference
ARISTACARE AT MEADOW SPRINGS	37%	\$408.51	\$441.43	\$32.92
FOX SUBACUTE AT CLARA BURKE	78%	\$449.95	\$508.69	\$58.74
FOX SUBACUTE AT MECHANICSBURG	83%	\$433.33	\$590.08	\$156.75
FOX SUBACUTE CENTER	85%	\$436.64	\$515.87	\$79.23
			<b>Median Difference</b>	<b>\$68.99</b>

No other data was used in the determination of the impact on rates on nursing facilities with a high percentage of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: September 23, 2013
- B. The date or dates on which public meetings or hearings will be held: Not applicable
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: June 21, 2014
- D. The expected effective date of the final-form regulation: \*\* July 1, 2012 through June 30, 2014; July 1, 2014
- E. The date by which compliance with the final-form regulation will be required: July 1, 2012
- F. The date by which required permits, licenses or other approvals must be obtained: Not applicable

**\*\* Supplemental ventilator care payment effective July 1, 2012 through June 30, 2014. Supplemental ventilator care and tracheostomy care payment effective July 1, 2014 and thereafter.**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will review the regulation on an ongoing basis to ensure compliance with Federal and State law and to assess the appropriateness and effectiveness of the regulation. In addition, specific regulatory issues raised by members of the Medical Assistance Advisory Committee (MAAC) and the Long-Term Care Delivery System Subcommittee of the MAAC are researched and addressed as needed. The Department will also monitor the impact of this regulation through regular audits and utilization management reviews to determine the effectiveness of the regulations on consumers of long-term care services and the industry.

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WITH THE LEGISLATIVE REFERENCE BUREAU**  
  
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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><b>DEPARTMENT OF PUBLIC WELFARE</b> (Agency)</p> <p>LEGAL COUNSEL: <u>Edward H. Cherry</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-535</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Beverly Mackereth</u></p> <p>TITLE: <u>SECRETARY OF PUBLIC WELFARE</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><i>[Signature]</i></p> <p><u>MAR 27 2014</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency; (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**NOTICE OF FINAL-FORM RULEMAKING**

**DEPARTMENT OF PUBLIC WELFARE**

**OFFICE OF LONG-TERM LIVING**

[55 Pa.Code Chapter 1187 Nursing Facility Services]  
[55 Pa.Code Chapter 1189 County Nursing Facility Services]

Supplemental Ventilator Care and Tracheostomy Care Payment for Medical Assistance Nursing Facilities

### *Statutory Authority*

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1), adds § 1187.117 (relating to supplemental ventilator care and tracheostomy care payments) and amends § 1189.105 (relating to incentive payments) to read as set forth in Annex A. Notice of proposed rulemaking was published at 43 Pa.B. 4855 on August 24, 2013.

### *Purpose of Regulation*

The purpose of this final-form rulemaking is to change the Department's methods and standards for payment of Medical Assistance (MA) nursing facility services to offer two new categories of supplemental payment to qualified MA nursing facilities.

This final-form rulemaking is needed to address the financial impact that the implementation of the current Resource Utilization Group III (RUG-III) version 5.12 (RUG v. 5.12) resident classification system and the phase-out of the older RUG v. 5.01 has on nursing facilities that care for a significant number of MA ventilator care and tracheostomy care residents.

### *Background*

On June 30, 2012, the Department published a public notice at 42 Pa.B. 3824 announcing its intention to implement a new category of supplemental ventilator care payment to qualified MA nonpublic and county nursing facilities that provide medically

necessary ventilator care for a significant portion of their MA-recipient resident population. The Department submitted State Plan Amendment (SPA) 12-030 on September 27, 2012 regarding supplemental ventilator care payments to nonpublic and county nursing facilities to the Centers for Medicare and Medicaid Services (CMS). CMS approved the SPA on December 13, 2012 with an effective date of July 1, 2012. On August 24, 2013, the Department published proposed regulations at 43 Pa.B. 4855 relating to the supplemental ventilator care payment for MA nursing facilities.

After soliciting and considering public comments, the Department decided to offer the supplemental payment to qualified MA nonpublic and county nursing facilities that provide medically necessary ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population. Making these additional funds available to promote the growth of ventilator care and tracheostomy care is part of the Department's ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services and that those services result in quality care that improves the lives of those who receive them.

The Department intends to submit a SPA to CMS end-dating the supplemental ventilator care payment and adding a supplemental ventilator care and tracheostomy care payment.

#### *Affected Individuals and Organizations*

This final-form regulation affects nonpublic and county nursing facilities enrolled in the MA Program.

### *Accomplishments and Benefits*

This final-form regulation benefits MA nursing facility residents in this Commonwealth by ensuring they continue to have access to medically necessary nursing facility services and that those services result in quality care that improves the lives of those who receive them.

### *Fiscal Impact*

This change resulted in an annual supplemental ventilator care payment of \$1.825 million in total funds (\$0.848 million in State funds) in Fiscal Year (FY) 2012-2013. The estimated annual supplemental ventilator care payment is \$1.825 million in total funds (\$0.848 million in State funds) for FY 2013-2014. The estimated supplemental ventilator care and tracheostomy care payments are \$3.965 million in total funds (\$1.911 million in State funds) for FY 2014-2015.

### *Paperwork Requirements*

There are no new or additional paperwork requirements. The CMI Report used to determine the number of MA-recipient residents who receive ventilator care or tracheostomy care is an existing report.

### *Public Comment*

The Department received seven letters through the public comment process, which included written comments from nursing facility providers, hospitals and a



consulting group. The Independent Regulatory Review Commission (IRRC) also commented on the proposed rulemaking.

### *Discussion of Comments and Major Changes*

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's response to those comments.

#### *General – Ventilator exception program and peer group 13*

One commentator requested further details and a summary of the changes the regulation will have on those currently in the ventilator exception program or peer group 13.

#### *Response*

The Department contacted the commentator and advised the commentator that the information requested can be found in the Regulatory Analysis Form (RAF) posted on the IRRC website at <http://www.irrc.state.pa.us/>.

No one will be adversely affected by the regulation. In addition, this regulation positively affects MA nonpublic and county nursing facilities that provide ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population by receiving additional reimbursement for providing these medically necessary services.

*§§ 1187.117 and 1189.105(c) – Ventilator care and tracheostomy care patients*

Three commentators expressed gratitude for the Department recognizing the additional costs incurred by providers who care for ventilator patients. However, six commentators requested that the Department also consider including MA residents who require tracheostomy care in the formula used to calculate the supplemental payment. Several of the commentators stated that there is little to no cost difference between residents on a ventilator and those receiving tracheostomy care because both require the same level of care and monitoring. Some commentators expressed concerns about the unintended negative financial consequences of not including tracheostomy care residents in the formula. These commentators are concerned with the facilities' ability to remain financially viable with the increase of MA recipients resulting in increasing dependency on the level of MA reimbursement. Two commentators stated facilities that can accommodate ventilator and tracheostomy care residents are very limited and should be supported to maintain placement options.

IRRC also requested that the Department consider including trach collar patients at the same reimbursement level as ventilator patients.

*Response*

After careful consideration, the Department decided to offer the supplemental payment to qualified MA nonpublic and county nursing facilities that provide medically necessary ventilator care or tracheostomy care for a significant portion of their MA-recipient resident population. The supplemental ventilator care payment is effective

July 1, 2012 through June 30, 2014 and the supplemental ventilator care and tracheostomy care payment will be effective July 1, 2014 and thereafter. The Department amended §§ 1187.117 and 1189.105(c) by end dating the supplemental ventilator care payments effective June 30, 2014. Sections 1187.117 and 1189.105(c) were also amended to include provisions for a supplemental ventilator care and tracheostomy care payment effective July 1, 2014. In addition, these sections were renumbered accordingly. The supplemental ventilator care and tracheostomy care payment will be calculated on a quarterly basis and paid to nursing facilities caring for a minimum of ten MA-recipient residents who receive medically necessary ventilator care or tracheostomy care, with at least 10% of the facility's MA-recipient resident population receiving medically necessary ventilator care or tracheostomy care. For those nursing facilities meeting both of the threshold criteria on the appropriate picture date, the total supplemental ventilator care and tracheostomy care payment is the nursing facility's supplemental ventilator care and tracheostomy care per diem multiplied by the number of paid MA facility days and therapeutic leave days. If the Department grants a nursing facility a waiver to the 180-day billing requirement, the MA-paid days billed under the waiver and after the authorization date of the waiver will not be included in the calculation of the supplemental ventilator care and tracheostomy care payment and the payment amount will not be retroactively revised. Since this payment is a supplemental payment and not part of the case-mix per diem rates, it is not subject to the budget adjustment factor under § 1187.96.

A nursing facility's supplemental ventilator care and tracheostomy care per diem is calculated as follows: ((number of MA-recipient residents who receive medically

necessary ventilator care or tracheostomy care/total MA-recipient residents) × \$69) × (the number of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care/total MA-recipient residents).

The maximum supplemental ventilator care and tracheostomy care per diem is \$69 for nursing facilities whose percent of MA-recipient residents who received medically necessary ventilator care or tracheostomy care to total MA-recipient residents equals 100%.

In addition, the Department added language to §§ 1187.117(a)(1)(iv) (formerly designated as § 1187.117(a)(4), (b)(1)(iv)) and 1189.105(c)(1)(i)(D) (formerly designated as § 1189.105(c)(1)(iv)), to clarify the total MA-recipient residents listed on the nursing facility's CMI report does not include MA-pending individuals or those individuals found to be eligible after the nursing facility submits a valid CMI report as provided under § 1187.33(a)(5) (relating to resident data and picture date reporting requirements). Further examples were added to §§ 1187.117(a)(1)(ii) (formerly designated as § 1187.117(a)(2)), 1187.117(b)(1)(ii), 1189.105(c)(1)(i)(B) (formerly designated as 1189.105(c)(1)(ii)) and 1189.105(c)(2)(i)(B) to clarify the term "two percentage decimal points."

### *Regulatory Review Act*

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on **MAR 28 2013** the Department submitted a copy of this regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Public Health and Welfare. In

compliance with the Regulatory Review Act the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received from the Committees, the IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was approved by the Committees on \_\_\_\_\_  
The IRRC met on \_\_\_\_\_ and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

*Order*

The Department finds:

- (a) The public notice of intention to adopt § 1187.117 and amend § 1189.105 by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting pursuant to sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1) orders:

(a) The regulation of the Department is amended to read as set forth in Annex A of this Order.

(b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order relating to §§ 1187.117(a) and 1189.105(c)(1) shall take effect upon publication and apply retroactively from July 1, 2012 through June 30, 2014;

§§ 1187.117(c) – (e) and 1189.105(c)(3) – (5) shall take effect upon publication and apply retroactively from July 1, 2012. The remaining amendments, §§ 1187.117(b) and 1189.105(c)(2) take effect July 1, 2014.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART III. MEDICAL ASSISTANCE MANUAL**

**CHAPTER 1187. NURSING FACILITY SERVICES**

**Subchapter H. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS**

**§ 1187.117. Supplemental ventilator care and tracheostomy care payments.**

**(a) Supplemental ventilator care payments.**

**(1)** A supplemental ventilator care payment will be made each calendar quarter, effective July 1, 2012[,] through June 30, 2014, to nursing facilities subject to the following:

**[(1)] (i)** To qualify for the supplemental ventilator care payment, the nursing facility shall satisfy both of the following threshold criteria on the applicable picture date:

**[(i)] (A)** The nursing facility shall have a minimum of ten MA-recipient residents who receive medically necessary ventilator care.

**[(ii)] (B)** The nursing facility shall have a minimum of 10% of their MA-recipient resident population receiving medically necessary ventilator care.

**[(2)] (ii)** Under [paragraph (1)] subparagraph (i), the percentage of the nursing facility's MA-recipient residents who require medically necessary ventilator care will be calculated by dividing the total number of MA-recipient residents who receive medically

necessary ventilator care by the total number of MA-recipient residents as described in paragraph (2)(i). The result of this calculation will be rounded to two percentage decimal points. (For example, .0945 will be rounded to .09 (or 9%); .1262 will be rounded to .13 (or 13%)).

[(3)] (iii) To qualify as an MA-recipient resident who receives medically necessary ventilator care, the resident shall be listed as an MA resident and have a positive response for the MDS item for ventilator use on the Federally-approved PA-specific MDS assessment listed on the nursing facility's CMI report for the applicable picture date.

[(4)] (iv) The number of total MA-recipient residents is the number of MA-recipient residents listed on the nursing facility's CMI report for the applicable picture date. MA-pending individuals or those individuals found to be MA eligible after the nursing facility submits a valid CMI report for the picture date as provided under § 1187.33(a)(5) (relating to resident data and picture date reporting requirements) shall not be included in the count and shall not result in an adjustment of the percent of ventilator dependent MA residents.

[(5)] (v) The applicable picture dates and the authorization of a quarterly supplemental ventilator care payment are as follows:



<b>Picture Dates</b>	<b>Authorization Schedule</b>
February 1	September
May 1	December
August 1	March
November 1	June

[(6)] (vi) If a nursing facility fails to submit a valid CMI report for the picture date as provided under § 1187.33(a)(5) [(relating to resident data and picture date reporting requirements)], the facility cannot qualify for a supplemental ventilator care payment.

[(b)] (2) A nursing facility's supplemental ventilator care payment is calculated as follows:

[(1)] (i) The supplemental ventilator care per diem is ((number of MA-recipient residents who receive medically necessary ventilator care/total MA-recipient residents ) × \$69) × (the number of MA-recipient residents who receive medically necessary ventilator care/total MA-recipient residents).

[(2)] (ii) The amount of the total supplemental ventilator care payment is the supplemental ventilator care per diem multiplied by the number of paid MA facility and therapeutic leave days.

(b) Supplemental ventilator care and tracheostomy care payment.

(1) A supplemental ventilator care and tracheostomy care payment will be made each calendar quarter, effective July 1, 2014, to nursing facilities subject to the following:

(i) To qualify for the supplemental ventilator care and tracheostomy care payment, the nursing facility shall satisfy both of the following threshold criteria on the applicable picture date:

(A) The nursing facility shall have a minimum of ten MA-recipient residents who receive medically necessary ventilator care or tracheostomy care.

(B) The nursing facility shall have a minimum of 10% of their MA-recipient resident population receiving medically necessary ventilator care or tracheostomy care.

(ii) Under subparagraph (i), the percentage of the nursing facility's MA-recipient residents who require medically necessary ventilator care or tracheostomy care will be calculated by dividing the total number of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care by the total number of MA-recipient residents as described in paragraph (2)(i). The result of this calculation will be rounded to two percentage decimal points. (For example, .0945 will be rounded to .09 (or 9%); .1262 will be rounded to .13 (or 13%)).

(iii) To qualify as an MA-recipient resident who receives medically necessary ventilator care or tracheostomy care, the resident shall be listed as an MA resident and have a positive response for the MDS item for ventilator use or tracheostomy care on

the Federally-approved PA-specific MDS assessment listed on the nursing facility's CMI report for the applicable picture date.

(iv) The number of total MA-recipient residents is the number of MA-recipient residents listed on the nursing facility's CMI report for the applicable picture date. MA-pending individuals or those individuals found to be MA eligible after the nursing facility submits a valid CMI report for the picture date as provided under § 1187.33(a)(5) shall not be included in the count and shall not result in an adjustment of the percent of ventilator dependent or tracheostomy care MA residents.

(v) The applicable picture dates and the authorization of a quarterly supplemental ventilator care and tracheostomy care payment are as follows:

<u>Picture Dates</u>	<u>Authorization Schedule</u>
<u>February 1</u>	<u>September</u>
<u>May 1</u>	<u>December</u>
<u>August 1</u>	<u>March</u>
<u>November 1</u>	<u>June</u>

(vi) If a nursing facility fails to submit a valid CMI report for the picture date as provided under § 1187.33(a)(5), the facility cannot qualify for a supplemental ventilator care and tracheostomy care payment.

(2) A nursing facility's supplemental ventilator care and tracheostomy care payment is calculated as follows:

(i) The supplemental ventilator care and tracheostomy care per diem is ((number of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care/total MA-recipient residents) × \$69) × (the number of MA-recipient residents who receive medically necessary ventilator care or tracheostomy care/total MA-recipient residents).

(ii) The amount of the total supplemental ventilator care and tracheostomy care payment is the supplemental ventilator care and tracheostomy care per diem multiplied by the number of paid MA facility and therapeutic leave days.

(c) If the Department grants a nursing facility a waiver to the 180-day billing requirement, then the MA-paid days that may be billed under the waiver and after the authorization date of the waiver will not be included in the calculation of the supplemental ventilator care payment under subsection (a) or the supplemental ventilator care and tracheostomy care payment under subsection (b). The Department will not retroactively revise the supplemental [ventilator care] payment amount under subsections (a) and (b).

(d) The paid MA facility and therapeutic leave days used to calculate a qualifying facility's supplemental ventilator care or supplemental ventilator care and tracheostomy care [payment] payments under [subsection (b)(2)] subsections (a)(2)(ii) and (b)(2)(ii) will be obtained from the calendar quarter that contains the picture date used in the qualifying criteria as described in [subsection] subsections (a) and (b).

(e) The supplemental ventilator care or supplemental ventilator care and tracheostomy care payments will be made quarterly in each month listed in [subsection] subsections (a) and (b).

## **CHAPTER 1189. COUNTY NURSING FACILITY SERVICES**

### **Subchapter E. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS**

#### **§ 1189.105. Incentive payments.**

\* \* \* \* \*

(b) *Pay for performance incentive payment.* The Department will establish pay for performance measures that will qualify a county nursing facility for additional incentive payments in accordance with the formula and qualifying criteria in the Commonwealth's approved State Plan. For pay for performance payment periods beginning on or after July 1, 2010, in determining whether a county nursing facility qualifies for a quarterly pay for performance incentive, the facility's MA CMI for a picture date will equal the arithmetic mean of the individual CMIs for MA residents identified in the facility's CMI report for the picture date. An MA resident's CMI will be calculated using the RUG-III version 5.12 44 group values in Chapter 1187, Appendix A (relating to resource utilization group index scores for case-mix adjustment in the nursing facility reimbursement system) and the most recent classifiable assessment of any type for the resident.

(c) *SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENTS.*

(1) Supplemental ventilator care payments.

(4) (i) A supplemental ventilator care payment will be made each calendar quarter, effective July 1, 2012, THROUGH JUNE 30, 2014, to county nursing facilities subject to the following:

(i) (A) To qualify for the supplemental ventilator care payment, the county nursing facility shall satisfy both of the following threshold criteria on the applicable picture date:

(A) (I) The county nursing facility shall have a minimum of ten MA-recipient residents who receive medically necessary ventilator care.

(B) (II) The county nursing facility shall have a minimum of 10% of its MA-recipient resident population receiving medically necessary ventilator care.

(ii) (B) For purposes of paragraph (1) SUBPARAGRAPH (i), the percentage of the county nursing facility's MA-recipient residents who require medically necessary ventilator care will be calculated by dividing the total number of MA-recipient residents who receive medically necessary ventilator care by the total number of MA-recipient residents AS DESCRIBED IN SUBPARAGRAPH (ii)(A). The result of this calculation will be rounded to two percentage decimal points. (FOR EXAMPLE, 9% NOT 9.45%; 13% NOT 12.62%).

(iii) (C) To qualify as an MA-recipient resident who receives medically necessary ventilator care, the resident shall be listed as an MA resident and have a positive response for the MDS item for ventilator use on the Federally-approved PA-specific

MDS assessment listed on the county nursing facility's CMI report for the applicable picture date.

(iv) (D) The number of total MA-recipient residents is the number of MA-recipient residents listed on the county nursing facility's CMI report for the applicable picture date.  
MA-PENDING INDIVIDUALS OR THOSE INDIVIDUALS FOUND TO BE MA ELIGIBLE AFTER THE COUNTY NURSING FACILITY SUBMITS A VALID CMI REPORT FOR THE PICTURE DATE AS PROVIDED UNDER § 1187.33(a)(5) (RELATING TO RESIDENT DATA AND PICTURE DATE REPORTING REQUIREMENTS) SHALL NOT BE INCLUDED IN THE COUNT AND SHALL NOT RESULT IN AN ADJUSTMENT OF THE PERCENT OF VENTILATOR DEPENDENT MA RESIDENTS.

(v) (E) The applicable picture dates and the authorization of a quarterly supplemental ventilator care payment are as follows:

<u>Picture Dates</u>	<u>Authorization Schedule</u>
<u>February 1</u>	<u>September</u>
<u>May 1</u>	<u>December</u>
<u>August 1</u>	<u>March</u>
<u>November 1</u>	<u>June</u>

(vi) (F) If a county nursing facility fails to submit a valid CMI report for the picture date as provided under § 1187.33(a)(5) ~~(relating to resident data and picture date~~

reporting requirements), the facility cannot qualify for a supplemental ventilator care payment.

(2) (ii) A county nursing facility's supplemental ventilator care payment is calculated as follows:

(i) (A) The supplemental ventilator care per diem is ((number of MA-recipient residents who receive medically necessary ventilator care/total MA-recipient residents) × \$69) × (the number of MA-recipient residents who receive medically necessary ventilator care/total MA-recipient residents).

(ii) (B) The amount of the total supplemental ventilator care payment is the supplemental ventilator care per diem multiplied by the number of paid MA facility and therapeutic leave days.

**(2) SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT.**

**(i) A SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT WILL BE MADE EACH CALENDAR QUARTER, EFFECTIVE JULY 1, 2014, TO COUNTY NURSING FACILITIES SUBJECT TO THE FOLLOWING:**

**(A) TO QUALIFY FOR THE SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT, THE COUNTY NURSING FACILITY SHALL SATISFY BOTH OF THE FOLLOWING THRESHOLD CRITERIA ON THE APPLICABLE PICTURE DATE:**



(I) THE COUNTY NURSING FACILITY SHALL HAVE A MINIMUM OF TEN MA-RECIPIENT RESIDENTS WHO RECEIVE MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE.

(II) THE COUNTY NURSING FACILITY SHALL HAVE A MINIMUM OF 10% OF ITS MA-RECIPIENT RESIDENT POPULATION RECEIVING MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE.

(B) FOR PURPOSES OF SUBPARAGRAPH (i), THE PERCENTAGE OF THE COUNTY NURSING FACILITY'S MA-RECIPIENT RESIDENTS WHO REQUIRE MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE WILL BE CALCULATED BY DIVIDING THE TOTAL NUMBER OF MA-RECIPIENT RESIDENTS WHO RECEIVE MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE BY THE TOTAL NUMBER OF MA-RECIPIENT RESIDENTS AS DESCRIBED IN SUBPARAGRAPH (ii)(A). THE RESULT OF THIS CALCULATION WILL BE ROUNDED TO TWO PERCENTAGE DECIMAL POINTS. (FOR EXAMPLE, .0945 WILL BE ROUNDED TO .09 (OR 9%); .1262 WILL BE ROUNDED TO .13 (OR 13%)).

(C) TO QUALIFY AS AN MA-RECIPIENT RESIDENT WHO RECEIVES MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE, THE RESIDENT SHALL BE LISTED AS AN MA RESIDENT AND HAVE A POSITIVE RESPONSE FOR THE MDS ITEM FOR VENTILATOR USE OR TRACHEOSTOMY CARE ON THE FEDERALLY-APPROVED PA-SPECIFIC MDS ASSESSMENT LISTED ON THE COUNTY NURSING FACILITY'S CMI REPORT FOR THE APPLICABLE PICTURE DATE.

(D) THE NUMBER OF TOTAL MA-RECIPIENT RESIDENTS IS THE NUMBER OF MA-RECIPIENT RESIDENTS LISTED ON THE COUNTY NURSING FACILITY'S CMI REPORT FOR THE APPLICABLE PICTURE DATE. MA-PENDING INDIVIDUALS OR THOSE INDIVIDUALS FOUND TO BE MA ELIGIBLE AFTER THE COUNTY NURSING FACILITY SUBMITS A VALID CMI REPORT FOR THE PICTURE DATE AS PROVIDED UNDER § 1187.33(a)(5) SHALL NOT BE INCLUDED IN THE COUNT AND SHALL NOT RESULT IN AN ADJUSTMENT OF THE PERCENT OF VENTILATOR DEPENDENT OR TRACHEOSTOMY CARE MA RESIDENTS.

(E) THE APPLICABLE PICTURE DATES AND THE AUTHORIZATION OF A QUARTERLY SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT ARE AS FOLLOWS:

<b>PICTURE DATES</b>	<b>AUTHORIZATION SCHEDULE</b>
FEBRUARY 1	SEPTEMBER
MAY 1	DECEMBER
AUGUST 1	MARCH
NOVEMBER 1	JUNE

(F) IF A COUNTY NURSING FACILITY FAILS TO SUBMIT A VALID CMI REPORT FOR THE PICTURE DATE AS PROVIDED UNDER § 1187.33(a)(5), THE FACILITY CANNOT QUALIFY FOR A SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT.

(ii) A COUNTY NURSING FACILITY'S SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT IS CALCULATED AS FOLLOWS:

(A) THE SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PER DIEM IS ((NUMBER OF MA-RECIPIENT RESIDENTS WHO RECEIVE MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE/TOTAL MA-RECIPIENT RESIDENTS) × \$69) × (THE NUMBER OF MA-RECIPIENT RESIDENTS WHO RECEIVE MEDICALLY NECESSARY VENTILATOR CARE OR TRACHEOSTOMY CARE/TOTAL MA-RECIPIENT RESIDENTS).

(B) THE AMOUNT OF THE TOTAL SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT IS THE SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PER DIEM MULTIPLIED BY THE NUMBER OF PAID MA FACILITY AND THERAPEUTIC LEAVE DAYS.

(3) If the Department grants a county nursing facility a waiver to the 180-day billing requirement, the MA-paid days that may be billed under the waiver and after the authorization date of the waiver will not be included in the calculation of the supplemental ventilator care payment UNDER PARAGRAPH (1)(ii) OR THE SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT UNDER PARAGRAPH (2)(ii). The Department will not retroactively revise the supplemental ventilator care payment amount UNDER PARAGRAPHS (1) AND (2).

(4) The paid MA facility and therapeutic leave days used to calculate a qualifying facility's supplemental ventilator care OR SUPPLEMENTAL VENTILATOR CARE AND

TRACHEOSTOMY CARE ~~payment~~ PAYMENTS ~~under paragraph~~ PARAGRAPHS (1)(ii) AND (2)(ii) will be obtained from the calendar quarter that contains the picture date used in the qualifying criteria as described in ~~paragraph~~ PARAGRAPHS (1) AND (2).

(5) The supplemental ventilator care OR SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE payments will be made quarterly in each month listed in ~~paragraph~~ PARAGRAPHS (1) AND (2).

**Commentator List – Supplemental Ventilator Care and Tracheostomy Care Payments**

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TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-535
SUBJECT: SUPPLEMENTAL VENTILATOR CARE AND TRACHEOSTOMY CARE PAYMENT FOR MEDICAL ASSISTANCE NURSING FACILITIES
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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Table with columns: DATE, SIGNATURE, DESIGNATION. Rows include: HOUSE COMMITTEE ON HEALTH SERVICES OR HUMAN SERVICES (Majority Chair: Gene DiGiroalano, Minority Chair: Angel Cruz); SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE (Majority Chair: Patricia H. Vance, Minority Chair: Shirley M. Kitchen); INDEPENDENT REGULATORY REVIEW COMMISSION; ATTORNEY GENERAL (for Final Omitted only); LEGISLATIVE REFERENCE BUREAU (for Proposed only).