

**METHODS, STANDARDS AND PRINCIPLES FOR
ESTABLISHING MEDICAID PAYMENT RATES
FOR LONG-TERM CARE FACILITIES**

**Explanation of Changes and
Description of Reasons for Decisions Regarding
Final Proposed Rule No. 14P048
Pursuant to 3 V.S.A. § 841
November 20, 2014**

This proposed rule is the final step in implementing the Companion Aide Pilot Project. The goal of this project is to improve dementia care within nursing facilities by embedding licensed nurse aides (LNAs) with specialized training in person-centered dementia care. On October 2, 2014, the proposed rule and application package were presented at the Vermont Healthcare Association's (VHCA's) Conference, where we received oral comments. A synopsis of the oral comments received is attached. A public hearing on this proposed rule was held on October 24, 2014. No oral comments were made at the public hearing. Written comments were received from the Vermont Legal Aid Long Term Care Ombudsman Project, and are attached.

The pilot will provide a per diem rate adjustment to five selected nursing facilities to employ Companion Aides. Each of the selected facilities will be reimbursed through their rates for five aides per 100 filled beds. For example, a nursing facility with 56 filled beds (not the number of licensed beds) would multiply the number of filled beds by 5% and round up or down to determine the number of Companion Aides that could be funded by this pilot project. In this case, the formula would be $56 \text{ beds} \times 0.05 = 2.80$. When this is rounded to the nearest whole number, it gives a result of three full time equivalents of Companion Aides.

All Vermont nursing facilities participating in Medicaid are eligible to apply for this pilot by completing an application that specifies the reporting requirements and all of the data that will need to be reported. To select the five facilities, Vermont will be divided into five geographical areas that are based on the Council on Aging's county groupings. The geographical areas will be Northwest Vermont (Addison, Chittenden, Franklin, and Grand Isle counties); Northeast Vermont (Caledonia, Essex, and Orleans counties); Central Vermont (Lamoille, Orange, and Washington counties); Southwest Vermont (Rutland and Bennington counties); and Southeast Vermont (Windham and Windsor counties).

Within each area, the facility with the highest proportion of residents with a diagnosis of Alzheimer's or dementia compared to the total number of residents will be selected to participate in the Companion Aide Pilot Project. The data will be from the Minimum Data Set (MDS) forms for the second quarter 2014 picture date (June 15, 2014). If no nursing facility applies from a given area, an additional nursing facility from the geographical area with the highest number of applicants will be selected. If there is a tie, the facility with the highest percentage of Medicaid residents to total residents in State Fiscal Year 2014 census information reported to the Division of Rate Setting (DRS) will be selected.

The selected facilities will be required to complete Outcome Reports in November 2015 and 2016. The Division may end the Companion Aide rate adjustment for a facility that does not comply with the ongoing reporting requirements.

The estimated economic impact of this rule is \$479,154 per year. The rule will be in effect for 2.5 years, so the estimated economic impact for the duration of the pilot will be approximately \$1,197,885. This pilot will be eligible for the federal Medicaid match.

Highlights of Amendments and Response to Comments by Subsection

Unless otherwise noted, no comments were made on the proposed changes. The substantive portion of this proposed rule implements the Companion Aide Pilot Project in the rate setting process. The following highlights each proposed change by subsection:

- § 1.13 – updates the effective date of these rules.
- § 14 – replaces the Division of Licensing and Protection with Adult Services Division. This change is necessary because the Adult Services Division is the Division within the Department of Disabilities, Aging and Independent Living (DAIL) which approves special rates for nursing facility residents.
- § 16 – adds two definitions: “Companion Aides” and “Person-Centered Dementia Care.”
- § 17 – updates the effective date of the proposed rule.
- § 17.1 – this subsection lays out the selection process, rate adjustment calculations, and reporting requirements of the Companion Aide Pilot Project.

Comment 1: The proposed rules does not define the specialized training requirements for the Companion Aides, the selected facilities should have to report the training completed in the Outcome Report, and the rule should be amended to explain that if the selected facility fails to comply with the reporting requirements, the Division could end the Companion Aide rate adjustment.

Response 1: All nursing facilities participating in Medicaid will receive an application package. This will include further information about the expectations for the pilot. This is where the specialized training is defined as trainings from the Alzheimer’s Association, OASIS, Hand and Hand, or other approved CMS trainings. As this is a 2.5 year pilot and person-centered dementia care is evolving, the proposed rule is designed to see the different ways nursing facilities can create culture change with dementia care. There is no one way to make this change, so it is important the nursing facilities have options in deciding how to train their Companion Aides. At this time, it is not appropriate to require specific trainings in the rule, but to use a flexible approach and require that the training relate to person-centered dementia care.

November 20, 2014

As to the comment about requiring the selected nursing facilities to report the training completed by the Companion Aides on the Outcome Report, this criteria has been added to the forms. According to the text of the rules, if a selected facility does not comply with the ongoing reporting requirements, this will be a basis to discontinue a facility's participating in the pilot.

Comment 2: Section 17.1 requires homes to comply with the job description outlined in the application. The commenter would like the job description included in the rule so that the residents and family members know what to expect from the Companion Aide and allow enforcement by the state Survey and Certification Agency.

Response 2: The job description, which is part of the application package, is a detailed presentation with the qualifications the applicants must have and descriptions of possible job duties. The Companion Aides can use many different skills and services to better meet the needs of individuals with dementia. At this time, the rules need to be broad enough to give the selected nursing facilities flexibility when creating these positions and to adjust the positions based on the success of the work. The job description will evolve as we learn how the facilities are using the Companion Aides. The Division does not think it necessary or desirable to include the text of the job description in the rule at the pilot stage.

Also, as participation in this pilot project is voluntary, both DAIL and DRS feel that it is not advisable to add Survey and Certification enforcement or oversight of the performance of the Companion Aides at this time. Currently the oversight for the pilot is based on outcomes.

Comment 3: The rules should require facilities to post the names of Companion Aides on duty during a specific shift and the number of residents assigned to each during the shift. The federal rules require nursing homes to post information about their direct care workers. 42 C.F.R. §483.30(e). Including additional information about Companion Aides would not present an undue burden and it would allow residents and family members to assess if they or their loved ones are receiving the additional services that justify the increased reimbursement.

Response 3: According to the proposed rules, Companion Aides must be licensed nurse aides (LNAs). V.D.R.S.R. §16 (Definitions). The federal law requires nursing homes to post information about the following category of direct care workers: registered nurses, licensed practical nurses or licensed vocational nurses, and certified nurse aides. 42 C.F.R. §483.30(e)(iii). LNAs and certified nurse aides are synonymous. Because federal law already requires the selected nursing facilities to post the names LNAs in order to comply with 42 C.F.R. §483.30(e)(iii)(C), there is no need to restate this provision in the proposed rule.

Comment 4: The proposed rule should include a provision that gives the state Survey and Certification agency the authority to monitor and enforce provisions related to the new Companion Aides. Enforcing rules that impact quality of care falls squarely

November 20, 2014

within the authority of the Survey and Certification agency. The fact that the new service is being created in the rate setting rules rather than in the rules governing the operation of nursing homes should not leave residents and family without any access to an enforcement process that helps to promote quality care.

Response 4: The workgroup discussed in depth how we could monitor the work of the Companion Aides. It was decided that the oversight of this pilot would be outcome measures. This is why we are having facilities complete annual Outcome Reports, so that we can measure the success of this pilot. As this is a pilot, and will only last 2.5 years, a regulatory approach involving the state Survey and Certification agency is not appropriate based on the temporary nature of this rule. The Companion Aide Pilot Project is one way for facilities to provide care that meets federal and state regulatory requirements. At this point, we are in the pilot stage. If the pilot project is a success and expands participation in the future, this would be the time to engage the state Survey and Certification agency as a way to monitor duties of the Companion Aides. In the meantime, if there are problems with quality of care, there are other regulatory mechanisms to address concerns that a particular facility may not be providing resident centered care. *See e.g. Vermont's Licensing and Operating Rules for Nursing Homes*, §§ 4.1, 4.3, 4.6, and 7.1.

Comment 5: Companion Aides will be used to meet the routine daily care needs of all residents, not work only to improve the lives of those residents with dementia. The Vermont Ombudsman Project receives many complaints related to lack of adequate staffing in nursing homes. The Vermont Ombudsman Project is concerned that without specific guidance in the rules, these new aides will be diverted to other residents who have an immediate need for assistance with toileting, transferring, eating, ambulating, or personal hygiene. At the VHCA Conference, there were oral comments from the nursing home providers expressing concern that they needed flexibility with the Companion Aide positions as they could foresee needing the Companion Aide staff to help with general LNA duties. One commenter explained that if there was no flexibility, they would not be interested in participating in the pilot.

Response to Comment 5: In an effort to address both the concern that Companion Aides will be used for routine work expressed by Vermont Ombudsman Project and the opposing concern of nursing facilities that Companion Aides be available to help with other duties when needed, we revised the application package to give the selected facilities more guidance on the appropriate use of Companion Aides. The application package now requires nursing facilities to track how they are using the Companion Aides. The application package also explains that although it is foreseeable that Companion Aides may need to help in the case of emergencies, under this pilot, this should only happen in extremely limited situations. The limited situations include:

An event that results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution; an inevitable accident (i.e. snow storms or floods) so that other LNAs on a large scale cannot make it into work; and

Short-term assistance in emergency situations (when a resident has fallen or needs immediate assistance).

As this is a pilot that is outcome based, and the facilities will be tracking and reporting how the Companion Aides spends his/her time, the workgroup will be able to determine whether the facilities use of the Companion Aides meets the goals of the pilot. If the Companion Aides are used as extenders for LNA care and not for person-centered dementia care, this may be a reason to change or not expand the pilot in 2.5 years.

Comment 6: Nursing facilities that are chosen will receive additional reimbursement for the Companion Aides beyond the 2.5 years—these costs will be included in the base year costs beginning in 2017.

Response to Comment 6: It is true that the Companion Aide costs incurred under the pilot program will be part of the selected nursing facilities' 2015 base year costs and these costs will be used as the base for rates starting July 1, 2017. The selected facilities will only receive a rate adjustment for the 2.5 year duration of the pilot. Our rules would allow any facility to hire additional staff to invest in providing care to their residents at any time. The facilities not included in the pilot would not receive reimbursement exactly when they hired additional staff. They would have to wait until these new costs were in a base year. If a facility, which was not selected for the pilot, hired additional staff in early 2015 when the pilot begins, the difference would be the 2.5 years that these costs were paid for by the State. As of July 1, 2017 all facilities would be treated the same way. This rebase of nursing costs is typically every two years. If the proposed rules were amended to disallow costs paid for by the pilot in future rate setting cycles, the facilities might be unable to keep the new Companion Aide staff. This would be counter to the desired outcome which is the continued use of Companion Aides. This would have a negative effect on the willingness of nursing facilities to participate in this pilot.

Comment 7: Did we consider using hospice for dementia care?

Response to Comment 7: No. With this pilot we wanted to reach individuals with dementia at a nursing facility setting, but we did not want to limit the reach of this pilot to only the residents who were at the end of their life. If this pilot is successful, this may be another consideration for the workgroup on another way to branch out person-centered dementia care.

Comment 8: Which surveys need to be included with the application?

Response to Comment 8: The nursing facilities should send the most recent survey results on staff and resident satisfaction administered by an independent third party.

Comment 9: Is there a rate of pay increase for the Companion Aides?

November 20, 2014

Response to Comment 9: Yes. The proposed rule will inflate the Companion Aide's rate of pay the same way as the Division of Rate Setting does for other nursing costs.

Based on the comments received, we reviewed the proposed rule. The comments gave us a lot to consider, but we felt a majority of the concerns could be addressed by improving the application package instead of revising the proposed rule. This is because the proposed rule is a pilot. It is only meant to last 2.5 years and designed to give the workgroup a better understanding of whether Companions Aides are a viable way to bring person-centered dementia care into Vermont nursing facilities. As person-centered dementia care is evolving, it is essential that the selected facilities are given autonomy to implement these positions. As the selected facilities will be submitting Outcome Reports throughout the pilot, we will be able to see the impact the Companion Aides will have.

As the comments received were addressed by improving the application package or relate to on-going work that is not yet ready to be finalized, there was no change to the text of the final proposed rule based on the comments. Since filing the proposed rule with ICAR, there has been a revision to subsection § 17.1(a)(3) to clarify that after the facilities are ranked, we will select the facility with the highest ranking to participate in the pilot. The revision is in italics below:

Within each geographical area, the applicants will be ranked by the proportion of their residents with a diagnosis of Alzheimer's or dementia compared to the number of total residents, *and the facility with the highest proportion will be selected.* This data will be reported on the Companion Aide application and must be from the Minimum Data Set (MDS) information used for the June 15, 2014 picture date in the second quarter of 2014.

This change was made before the comment period began and was part of the filing with the Secretary of State.