

State of Vermont
Division of Rate Setting

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Agency of Human Services

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Date: November 18, 2014

Re: Response to Comments for a Public Announcement that the Division of Rate Setting (DRS) will be changing its Methods, Standards and Principles for Establishing Medicaid Payment Rates for Long-Term Care Facilities effective December 2014.

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.

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 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 on October 2, 2014, during the notice and comment period for the state Administrative Procedures Act, 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: At the VHCA Conference during the notice and comment period for the state Administrative Procedures Act, we received an oral comment about whether we considered 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: At the VHCA Conference during the notice and comment period for the state Administrative Procedures Act, we received an oral comment about 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: At the VHCA Conference during the notice and comment period for the state Administrative Procedures Act, we received an oral comment about whether there is a rate of pay increase for the Companion Aides?

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.