



HARRY L. CHEN, M.D., ACTING SECRETARY  
DIXIE HENRY, DEPUTY SECRETARY

STATE OF VERMONT  
AGENCY OF HUMAN SERVICES

MEMORANDUM

**TO:** Senator Mark A. MacDonald, Chair, Legislative Committee on Administrative Rules

**FROM:** Harry L. Chen, M.D., Acting Secretary, Vermont Agency of Human Services *H Chen*

**DATE:** December 19, 2014

**SUBJECT:** Final Proposed Rule Amendment No. 14P048—*Methods, Standards and Principles for Establishing Medicaid Payment Rates for Long-Term Care Facilities.*

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On December 4, 2014, Rebecca Fay, Staff Attorney, and Kathleen Denette, Director, of the Division of Rate Setting (DRS) appeared before the Legislative Committee on Administrative Rules (LCAR), and provided testimony regarding the Companion Aide Pilot Project (Pilot) and the DRS proposed rule amendment. The Pilot was developed to address the growing problem of individuals with dementia being denied admission to nursing facilities in Vermont and to provide Licensed Nurse Aides (LNAs) who have a special focus on developing creative and effective ways to interact with the numerous Vermont nursing home residents suffering from dementia. The Pilot will facilitate the improved care of persons with dementia by providing increased funding to five nursing facilities in Vermont, specifically for the hiring of additional Licensed Nursing Assistants (LNA), termed “Companion Aides,” trained specifically to care for persons with dementia.

During the December 4<sup>th</sup> hearing, members of the Committee raised concerns about oversight of the Pilot and enforcement of the relevant Vermont regulations. Based on those concerns, the Committee requested information from the Secretary of the Agency of Human Services (AHS) regarding whether the Secretary is vested with the authority to direct the Division of Licensing and Protection, Survey and Certification (S&C), to make compliance with the DRS rules a condition of licensure for nursing facilities. It is within the Secretary’s authority to “prescribe minimum standards of care, program administration, and sanitation for facilities licensed under this chapter.” 33 V.S.A. § 7117(a).

In this case, it is not necessary for the Secretary to exercise this authority because nursing facilities and LNAs are currently regulated under existing Vermont law. S&C is responsible for assessing compliance with state and federal rules for Vermont nursing facilities. 33 V.S.A. § 504(a)(6) and 42 C.F.R. Part 488. The Vermont regulations implement state laws that govern licensing, operation, and standards of care in nursing facilities. *Licensing and Operating Rules for Nursing Homes* §§ 1.1 and 1.2. In addition, individually, LNAs are regulated by the Board of Nursing. 26 V.S.A. § 1591, *et. seq.* The licensing rules for nursing facilities and the professional regulations for LNAs currently provide ample mechanisms for oversight to address quality of care.

The Office of the Long Term Care Ombudsman argued to the Committee that the Pilot is inappropriately placed in the DRS rules because it should be incorporated into licensing regulations under the Department of Disabilities, Aging and Independent Living (DAAIL). As indicated above, the DRS proposed rule amendment implements a Pilot that provides a rate adjustment. Rate adjustment is a reimbursement issue, which is entirely under the purview of DRS.

The Committee also raised the issue of changing licensing regulations. Since by definition a pilot is a program subject to potential termination based on outcome performance measures, it is premature to change licensing regulations for this program. This Pilot is designed to provide the selected nursing facilities with flexibility to effect a culture change in person-centered dementia care and to identify best practices for the care of persons with dementia. At the conclusion of the Pilot, AHS will review and identify methods of care that constitute best practices. Only at that point would AHS be sufficiently informed to assess the need to amend the licensing regulations. AHS appreciates the opportunity to address the issues raised by the Committee during the December 4<sup>th</sup> hearing.

Thank you