

**Department of Disabilities, Aging, and Independent Living
and
Department of Vermont Health Access**

Report on Nursing Home Minimum Occupancy Requirements

**In accordance with H.494 of 2023
Act 78. Sec. E.334(a)**

An act relating to making appropriations for the support of government.

Submitted to: House Committee on Human Services
House Committee on Appropriations
Senate Committee on Health and Welfare
Senate Committee on Appropriations

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Report Date: January 23, 2023

EXECUTIVE SUMMARY

DAIL and DVHA recommend reducing, but not fully eliminating, the minimum occupancy threshold used in nursing home rate setting. Changing minimum occupancy levels from 90% to 80% would result in an estimated \$7 million increase to Medicaid reimbursement for the nursing home system and would result in a financial benefit to all Medicaid-enrolled nursing homes in the state.

STATUTORY CHARGE AND INTRODUCTION

STATUTORY LANGUAGE

Act 78 of 2023, Section E. 334: NURSING HOME RATE SETTING

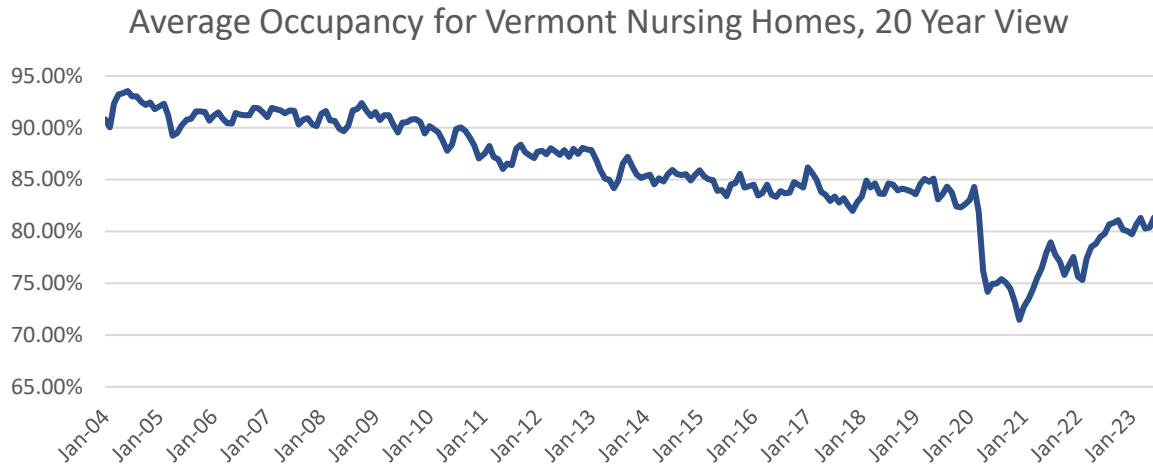
(a) The Department of Disabilities, Aging, and Independent Living and the Department of Vermont Health Access shall report to the House Committees on Human Services and on Appropriations and the Senate Committees on Health and Welfare and on Appropriations not later than December 15, 2023, on the budgetary impact of eliminating the minimum occupancy threshold in the nursing home rate setting process and reducing the minimum occupancy threshold to not more than 80 percent in the nursing home rate setting process. The report shall include a recommendation on whether to eliminate or reduce the minimum occupancy requirement, timeline, and next steps for implementing the recommendation and anticipated impact on sustainability of Vermont nursing homes.

INTRODUCTION

The nursing home 90% minimum occupancy threshold was initiated in 1993. At that time all facilities had occupancy over 90%. The intent of this policy was to encourage occupancy over 90% so that facilities would operate more economically by being full rather than having empty beds. However, as occupancy has steadily declined since this policy was implemented, Vermont nursing homes are increasingly being penalized by using a minimum of 90% occupancy for the number of days used to calculate the Medicaid daily reimbursement rate as required in [V.D.R.S.R.](#) Section 5.7. There are 36 total nursing homes in Vermont, 34 of which have Centers for Medicare and Medicaid Services (CMS) certification, 33 of which accept Medicaid. Of those 33 homes, the 32 privately owned nursing homes in Vermont (excluding the Vermont Veterans' Home) had an average occupancy rate of 82.82% as of September 2023 (latest data available).

In calendar year 2005, there was a daily average of 3,107 residents in Vermont nursing homes. In the first six months of calendar 2023, there was a daily average of 2,308 residents in Vermont nursing homes, reflecting a decrease of 799 residents per day¹. The primary driver of this decline is Vermont's Choices for Care program, implemented in 2005, which provides home and community-based alternatives to nursing home care. A secondary driver of the decline is likely the staffing challenges every nursing home is facing coming out of the public health emergency. Reductions in the total number of residents who make a Vermont nursing home their choice for care, combined with ongoing challenges recruiting and retaining staff makes it very difficult for most nursing homes to maintain occupancy above 90%. Nursing homes with occupancy below 90% are incurring a financial penalty to their Medicaid rate calculation.

¹ Seven nursing homes with a combined total of 349 beds have closed since July 2005. In the same period, another 266 certified Medicaid beds have been delicensed by nursing homes that continued their operations with fewer licensed beds. If these beds were still online, the occupancy percentage would be even lower.



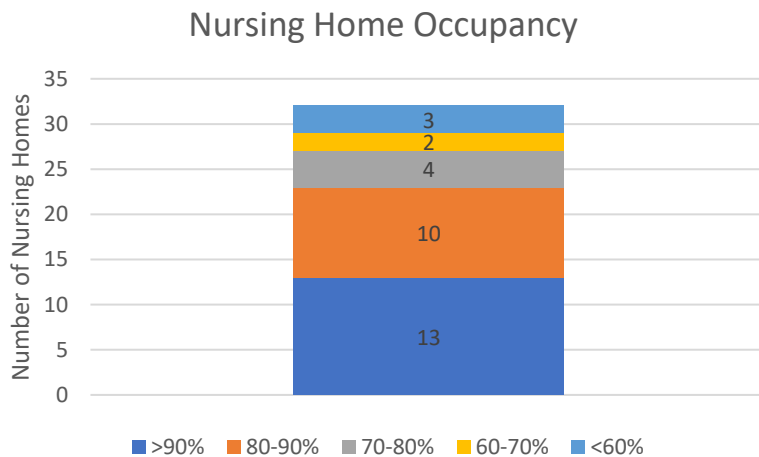
ANALYSIS OF NURSING HOME MINIMUM OCCUPANCY THRESHOLD

HOW DOES THE 90% MINIMUM OCCUPANCY REQUIREMENT IN V.D.R.S.R. SECTION 5.7 IMPACT PROVIDER REIMBURSEMENT?

Only costs that have been deemed allowable are affected by the occupancy limit. DRS auditors have already removed any unallowable costs before the occupancy limit calculations are performed as part of the rate setting process. Therefore, amounts not paid due to the application of the minimum occupancy limit are costs that DRS auditors have otherwise deemed necessary and reasonable, yet they are not reimbursed to incentive the facility to run at higher occupancy. The total amount of allowable costs not reimbursed due to the current 90% occupancy limit is estimated to be \$11.7 million for SFY 2024.

HOW MANY HOMES ARE CURRENTLY BELOW THE 90% OCCUPANCY LIMIT?

Of the 32 privately owned nursing homes in Vermont (excludes Vermont Veterans' Home), 13 are currently between 100% and 90% occupancy, 10 are between 90% and 80% occupancy, 4 are between 80% and 70% occupancy, 2 are between 70% and 60% occupancy and 3 are between 60% and 50% occupancy for August 2023. The lowest occupancy is 55%.



WHAT IS THE COST TO THE MEDICAID PROGRAM TO LOWER THE CURRENT MINIMUM OCCUPANCY OF 90% TO 80%, OR TO ELIMINATE THE OCCUPANCY REQUIREMENT?

Costs and resident days from base year 2021 were used for the SFY 2024 Medicaid rate calculations effective July 1, 2023. The average occupancy for calendar 2021 was 76.2%. Nursing home occupancies sharply declined from 84% in February 2020 with the onset of COVID to a low of 71% in December 2020 and continued to remain low throughout 2021 and 2022.

With the 90% occupancy limit, Vermont nursing home providers are not receiving approximately \$11.7 million of allowable costs in SFY 2024 through their Medicaid payments. If the minimum occupancy limit was to be lowered, a portion of the \$11.7 million from decreased reimbursement to nursing homes would be allocated through Medicaid reimbursement. If the occupancy limit was lowered to 80%, approximately \$7 million of the \$11.7 million would be issued in Medicaid payments. If the minimum occupancy requirement were fully eliminated, the full \$11.7 million would be issued in Medicaid payments.

RECOMMENDATION

Consistent with prior legislative reports from [2018](#) and [2019](#), DAIL and DVHA recommend reducing, but not fully eliminating, the minimum occupancy threshold used in nursing home rate setting. The departments believe that there is utility in maintaining a threshold for minimum occupancy to continue to reinforce the expectation that nursing homes are operating efficiently and are providing needed services. However, reducing the threshold from 90% occupancy to 80% occupancy would be better aligned with the current landscape, and would result in more allowable costs being reimbursed through Medicaid rates.

The Division could implement this reduced occupancy threshold by amending its rules. The Division hopes to initiate a rule change addressing a variety of potential changes, including a change to the minimum occupancy threshold, by January 1, 2024 in hopes of being able to implement changes effective July 1, 2024. This change would also require an appropriation to DAIL's budget for the Choices for Care program. In the event funds were approved for the 2025 State Fiscal Year and the corresponding rule changes were finalized, the Division of Rate Setting would update the nursing home rate calculations for the quarter beginning July 1, 2024.

SUSTAINABILITY OF VERMONT NURSING HOMES

Changing the minimum occupancy threshold from 90% to 80% would result in a financial benefit to all Medicaid-enrolled nursing homes in the state, having the most equitable impact of all potential factors for financial investment. However, changing the minimum occupancy requirements alone will not fully address the financial sustainability of Vermont nursing homes. Vermont nursing homes are experiencing financial pressures due to many factors. Consequently, requests for Extraordinary Financial Relief (EFR) have increased (in both the number of requests and the amount of funding requested) from State Fiscal Year (SFY) 2022 to SFY 2023, and are expected to increase further through the remainder SFY 2024. Other factors impacting the sustainability of Vermont's nursing homes include:

- The current cost of **nursing staff** given the nation's shortage of nurses and the need for homes to pay for a traveling, contracted workforce to care for residents. As of this report submission, it is estimated that the State will pay an *additional* \$9M in contracted nursing expenses in SFY 2026 through Medicaid reimbursement to nursing homes.

- The **cost caps** currently used in the State's rate setting methodology have not changed since 2015. Capped expenses translate to unpaid costs for homes. Like minimum occupancy, the levels at which such methodological caps are set should be periodically evaluated and potentially re-set based on the broader context in which nursing homes are operating.
- The **retrospective nature of the state's rate setting methodology** captures historical costs to align with nursing homes' cost experience and reimburses homes on a delayed basis, adjusted for inflation. Current rules require rebasing of expenses every two to four years, depending on the cost category. This means that Medicaid rates are based on historic costs, and not current costs. While this presented a significant challenge for homes during the pandemic given the sudden increase in inflation, and poses a problem for some homes, DVHA and DAIL believe that the stability this model provides still benefits the majority of homes.
- The need for **contracted Medical Directors** required to operate homes. The pandemic resulted in local medical groups withdrawing their Medical Director contracts from Vermont nursing homes. This left homes to contract more regionally and nationally at an increased expense.
- Addressing **barriers to nursing home placement**, such as transitions from hospitals for post-acute patients who are difficult to place.
- Identifying a viable **replacement for the case mix** adjustment system currently used in setting Medicaid nursing homes rates. DAIL and DVHA are working in partnership with the Vermont Health Care Association and homes to evaluate a replacement model for Vermont. No decisions will be made until the potential financial implications for each nursing home are understood.

DAIL and the Division of Rate Setting will continue to support homes experiencing financial distress through the Extraordinary Financial Relief process to ensure the state maintains critical nursing home capacity. Changing minimum occupancy levels from 90% to 80% would add an estimated \$7 million to the system.

Other funding gaps and systemic pressures may continue to affect some Vermont nursing homes. Appendix 1 contains a more detailed assessment of sustainability factors and their estimated financial impact for each nursing home, including reducing minimum occupancy from 90% to 80%, reducing the effect of certain cost caps, rebasing the nursing care cost component annually, and EFR requests for SFYs 2022-2024 (to date).

APPENDIX 1: ESTIMATED FISCAL IMPACT OF KEY SUSTAINABILITY FACTORS

Vermont Nursing Home	Minimum Occupancy (Change threshold from 90% to 80%)	Nursing Cap (Increase cap from 90th percentile to 95th percentile)	Resident Care Cap (Increase cap from median + 5% to median + 25%)	Indirect Care Cap (Increase cap from median + 5% to median + 15%)	Workforce Costs Updated for Inflation (If rebased annually, for SFY25, instead of every two years, next rebase SFY26)	Extraordinary Financial Relief Requests - SFY 2022	Extraordinary Financial Relief Requests - SFY 2023	Extraordinary Financial Relief Requests - SFY 2024 (to date)
1	\$300,558	\$0	\$0	\$0	\$2,000,188	\$0	\$0	\$0
2	\$344,562	\$0	\$0	\$0	\$1,064,471	\$1,807,245	\$1,272,067	\$0
3	\$68,211	\$84,155	\$49,410	\$67,220	\$397,087	\$0	\$0	\$0
4	\$365,692	\$473,593	\$76,515	\$198,212	\$1,766,196	\$0	\$1,647,316	\$0
5	\$286,822	\$0	\$0	\$0	\$12,339	\$0	\$0	\$0
6	\$230,647	\$0	\$0	\$0	\$674,824	\$944,824	\$1,136,045	\$0
7	\$49,647	\$0	\$0	\$0	\$1,737,564	\$0	\$2,500,000	\$0
8	\$262,298	\$0	\$0	\$0	(\$1,502,487)	\$0	\$0	\$1,511,612
9	\$215,996	\$0	\$0	\$0	\$211,504	\$0	\$0	\$0
10	\$59,019	\$0	\$0	\$7,682	\$90,654	\$889,132	\$300,000	\$0
11	\$452,557	\$0	\$0	\$0	(\$2,301,232)	\$0	\$0	\$2,222,936
12	\$88,354	\$0	\$0	\$0	\$405,233	\$0	\$0	\$245,613
13	\$331,023	\$0	\$0	\$0	\$1,075,635	\$0	\$0	\$1,045,675
14	\$280,318	\$0	\$0	\$0	(\$1,718,635)	\$0	\$0	\$1,638,458
15	\$47,743	\$0	\$18,975	\$25,815	\$3,605	\$0	\$0	\$0
16	\$252,710	\$0	\$0	\$0	\$272,047	\$0	\$0	\$0
17	\$529,859	\$0	\$0	\$0	\$1,434,647	\$0	\$0	\$0
18	\$11,428	\$0	\$28,763	\$39,131	\$0	\$0	\$0	\$0
19	\$423,272	\$0	\$0	\$0	\$2,257,222	\$0	\$0	\$0
20	\$213,326	\$0	\$0	\$0	(\$965,016)	\$0	\$0	\$1,231,695
21	\$117,878	\$0	\$0	\$0	(\$110,527)	\$0	\$0	\$0
22	\$100,721	\$0	\$29,525	\$99,257	\$647,132	\$0	\$0	\$0
23	\$97,388	\$0	\$0	\$3,317	(\$21,089)	\$0	\$2,277,969	\$0
24	\$82,194	\$0	\$32,594	\$80,999	\$243,049	\$1,061,507	\$676,895	\$0
25	\$394,109	\$0	\$0	\$0	\$677,533	\$0	\$0	Amount TBD
26	\$168,658	\$0	\$55,433	\$97,287	\$614,536	\$0	\$0	\$0
27	\$25,472	\$14,172	\$33,131	\$45,074	\$0	\$0	\$491,460	Amount TBD
28	\$109,241	\$0	\$64,050	\$87,138	\$24,939	\$1,075,000	\$0	\$0
29	\$486,740	\$0	\$0	\$0	\$392,293	\$0	\$0	\$0
30	\$338,617	\$0	\$0	\$0	(\$1,960,296)	\$0	\$0	\$1,835,498
31	\$78,340	\$0	\$18,507	\$71,101	\$549,003	\$0	\$851,088	\$0
32	\$267,006	\$374,880	\$115,326	\$156,897	\$942,319	\$0	\$2,062,801	\$0
Total	\$7,080,408	\$946,800	\$522,229	\$979,130	\$8,914,737	\$5,777,708	\$13,215,641	\$9,731,487