Vermont Health Care Association Comments on Economic Impact Assessment
Assisted Living Residences & Residential Care Homes Licensing Rules

1.25.24 = Initial report submission for consideration during review of proposed rule
7.25.24 = Updated with specific request for LCAR consideration added

The Vermont Health Care Association (VHCA) supports the goal of updating the state's licensing regulations for Assisted Living Residences (AL) and Residential Care Homes (RC). However, we have concerns about the feasibility of implementing the proposed rule, #23P044, as written. We believe that the state should not have waived the economic impact assessment for this rule. We recommend pausing the rule while an assessment is performed and an appropriate implementation plan is developed.

Key Points:

- In May and November of 2023, VHCA worked with members to identify components of the proposed rules that would deviate significantly from common practice and would pose significant challenges for implementation.

- VHCA members believed that some of the challenging components would not result in improved care and should be eliminated from the rules. For other components, the concern was primarily that Medicaid rates did not offer enough to cover the changes or that the proposed October 1, 2024, deadline did not offer enough time for implementation.

- The economic impact is primarily in Residential Care Homes that accept Medicaid ERC payment. VHCA could not find a member in this 'high concern' group who did not anticipate significant impact. A smaller group of concern was facilities that combined AL/RC licensed beds with a nursing home license, as changes to the state interpretation of rules made it more administratively difficult to match areas of overlap with the federal nursing home rules.

- 29 VHCA members anticipate significant operational changes will be necessary to comply with the proposed rules.

- VHCA notes that a 2023 report from DVHA shows significant gaps between ERC payments and actual costs of services, which have not yet been closed. The proposed rules add more demands on top of service requirements that are already unfunded.

Detailed Analysis:

The Vermont Health Care Association represents long term residential care providers in Vermont, including 10 assisted living residences (ALR) and 39 residential care homes (RCH).

In the spring of 2023, VHCA collected input from across our membership on an early draft of the proposed regulations and convened a regulatory review committee of 15 members to provide a detailed review of the proposal. We provided a collation of all member input for that review, along with a summary note of questions related to feasibility and lack of clarity. In November of 2023, we reconvened the regulatory review committee to revisit our initial input and the final proposed rule. We organized these comments into primary areas of anticipated impact on operations and challenges for feasible implementation by the October 1, 2024 start date.

Our primary concern with the final rule as presented is that it lacks an economic impact assessment. Our position remains that the rule should be paused while this analysis is performed and a reasonable implementation plan is developed. We are concerned that, without this step, the state is at risk of reducing Medicaid beneficiaries' access to care.

The following comments detail the analysis VHCA has carried out to reach this conclusion.

In February, 2023, the state published a review of Medicaid long term care rates. While some of the shortfalls in payment compared to service costs were addressed in FY2024 rate adjustments, Enhanced Residential Care payments received only a minor increase relative to the necessary increases identified in the review. The report found a gap of as much as 60% (depending on tier) between reimbursement rates and rates necessary to support care delivery. These proposed rules require operational changes, and associated costs, beyond what was considered in the 2023 study.

Not all residential long-term care providers will experience the same financial impacts from this rule.

The rule changes focus primarily on Residential Care Homes, which the state notes in their cover letter. We expect financial impacts to be concentrated in that provider type. However, we did hear from AL and skilled nursing facility (SNF) operators that they have concerns about ways the rules create new disconnects in their operations. For example, some administrative systems can be combined under current rules for SNF and AL that are owned/operated by the same owner/operator, but the details of how they must be managed under the proposed rule would require two separate systems to achieve the same goal. These types of administrative burdens increase costs without improving performance.

We also anticipated the financial concerns to be primarily from members relying on Medicaid (ACCS/ERC) payments. We confirmed that members who use a different form of payment, for example primarily private pay, did not have the same concerns. It is important to note that facilities may be enrolled in ACCS/ERC to accept those payments when a resident depletes their other resources, but not rely on Medicaid as a major share of the payer mix. Through provider interviews we distinguished between these two approaches.

For additional detail on how many members anticipate a direct financial impact, we fielded a survey highlighting four areas of operational changes discussed in previous member comments: Nursing Requirements, Non-Clinical Requirements, Staff Training, Administrative Burdens.

We asked members to indicate where they did (or did not) anticipate significant operational changes to comply with the proposed rules. Additional assumptions used in this analysis:

- We included both upfront costs to come into compliance and ongoing costs, such as adding permanent staff positions.
- We did not ask if members agreed with the proposed changes. We were only measuring if there would be practical barriers that included a meaningful financial impact - members could agree that a change would improve care quality and still anticipate difficulty implementing it.
- The majority of VHCA members participated in providing earlier feedback on the rule, so had an existing familiarity with the proposed changes. We also provided links to the proposed rule. Respondents were instructed to choose “I don’t know” if they were not familiar with a component of the rule.
- Some members had staff changes between their initial input on the proposed rule and the follow-up survey; they were excluded from the review. The actual number of facilities with concerns is likely greater than reported here.
- Our focus is on the absolute number of facilities anticipating a financial impact, not the relative number of all facilities in the state. However, most members expressed significant concern; we would expect concerns also exist in non-VHCA members.

The results for each category of potential financial impact are as follows. In total, 29 members had concerns about the feasibility of implementing the proposed rule.

	Yes	**No**	**DK**
Administrative	26	1	2
Training	26	2	1
Nursing	24	2	3
Non-Clinical Services	22	6	1

Our conclusion is that the impacts of the rule change will be far-reaching for RC providers that accept Medicaid ERC/ACCS payments. Some members expressed concerns over the AL license changes but were not as broadly concerned. Our membership overall has few AL-*only* facilities.

The total impacted facilities, 29, underestimates the true number as it reflects only VHCA members who were engaged in understanding the proposed rule during the comment period. We did not find a facility in our ‘high concern’ group of Residential Care Homes enrolled in Medicaid ERC/ACCS that expected low impact from these proposed changes. It is critical that the state support our providers in maintaining access to care while also achieving their goals for updated licensure regulations.

VHCA does not agree with the state's conclusion that there is no anticipated economic impact from these rule changes.

Responses to Economic Impact of Regulations

Through a series of discussions with VHCA members and through review of materials submitted pertaining to the proposed facility licensing regulations, VHCA anticipates several potential responses by providers to mitigate operational challenges and come into compliance with the updated regulations. As stated in the assessment above, the primary area of anticipated change will be in Residential Care Homes Level III. A more detailed economic impact assessment would quantify the level of risk beyond what is provided here.

- Changes to admissions policies to disallow admission for individuals with Medicaid enrollment pending (this introduces the potential for gaps in coverage while waiting for the application to be processed, along with staff time to assist in gaining coverage).
- Adjustments in the ratios of Medicaid beds to private pay, to increase private pay in the revenue mix. For facilities with a payer-blind admissions policy, this may be a new admissions assessment structure.
- Imposition of a required private pay period before a resident can use Medicaid as a primary payer.
- If these approaches to balance revenues with costs do not succeed, then facilities may consider withdrawing from the Medicaid program. The only members who listed that as a first option for response were new to joining the program, others indicated they would attempt less dramatic strategies before considering withdrawing.
- Facilities that have a majority mix for Medicaid and focus on serving this group of prospective residents, they have the option of drawing in funds from alternative sources (for example, an endowment, charitable contributions, etc.). However, the financial stress of the Covid-19 pandemic and persistent workforce shortages will have depleted the reserves and/or available margin from these alternatives.

As an alternative to increasing revenues, providers might instead adjust their operational strategy – for example by no longer serving more-acute residents under waivers or higher tiers of RCH / ERC. The economic impact then distributes to other parts of the care system. If a nursing home accepts these residents, then the cost can be easily calculated. Recent changes to reimbursement structure for nursing homes increases the financial penalty for accepting lower-acuity residents. At the same time, nursing homes struggle with capacity for the current resident mix. A more likely outcome is a need to find non-facility-based options for these individuals.

The most dramatic response to financial pressure for a long-term care provider would be closure. There are pressures outside of these regulations that also increase this risk. In previous comments on AL/RC capacity, VHCA has recommended tracking beds in a manner that accounts for:

- Total Beds Available, by facility type
- Geographical Distribution of Beds
- Beds Enrolled in ACCS / ERC
- Beds *Accepting* ACCS / ERC, which would require:

  - Noting where Medicaid is /is not accepted as Initial Payer
  - Tracking trends in facility ratios of Medicaid to other payer types

Request for Economic Impact Assessment

It is VHCA's position that we have provided enough preliminary details to show that a full economic impact review is necessary before implementing new Assisted Living and Residential Care Home licensing regulations. The next step in gathering details would be to conduct the assessment that we have requested. This review would allow the state to:

- Develop an implementation strategy to ensure the changes are feasible
  - For some pieces of the rule this may mean the cost-benefit ratio suggests striking the change. For others the issue may be more a question of what support the state provides, phased implementation, or other strategies.

- Communicate expected areas of economic impact with DVHA so that they may assess reimbursement adequacy and make any relevant changes.

- Track risk points for lost access to care – particularly for residents in need of RCH Level III care with Medicaid as primary payer – and have a strategy to respond if access is reduced.

VHCA believes that the proposed rule requires a full analysis before it can be feasibly implemented.