

5101:3-3-15.1 **Preadmission screening (PAS) requirements for individuals seeking admission to nursing facilities (NFs) and/or PASSPORT home and community-based services (HCBS) waiver enrollment.**

(A) The purpose of this rule is to set forth the PAS requirements which must be met prior to any new admission (as defined in paragraph (B)(11) of this rule) in order to comply with section 1919(e)(7) of the Social Security Act. NFs and the PASSPORT HCBS waiver are prohibited from accepting any new admission, regardless of payment source, unless the individual has met the PAS requirements specified in this rule.

(B) Definitions:

(1) "Active treatment" for purposes of this rule, means a continuous treatment program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services for individuals with mental retardation and/or other developmental disabilities that are directed toward the following:

(a) The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(b) The prevention or deceleration of regression or loss of current optimal functional status.

(2) "Adverse determination" means a determination made in accordance with section 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act, this rule, rules 5101:3-3-15.2, 5122-21-03 and Chapter 5123:2-14 of the Administrative Code, that an individual does not require the level of services provided by a NF or that an individual does or does not require specialized services. No adverse decision regarding an individual's need for the level of services provided by a NF is accepted by the Ohio department of job and family services (ODJFS) as a determination unless both of the following conditions have been met:

(a) A registered nurse has conducted a face-to-face assessment of the individual and reviewed the medical records that accurately reflect the individual's current condition; and

(b) Authorized Ohio department of mental health (ODMH) and/or Ohio department of mental retardation and developmental disabilities (ODMR/DD) personnel other than the registered nurse who conducted the face-to-face assessment have reviewed the assessment and made the final determination regarding the need for NF services.

(3) "An inpatient psychiatric stay" means the admission of an individual to a psychiatric hospital operated by ODMH, a freestanding psychiatric hospital

or part of a hospital that is licensed by ODMH under section 5119.20 of the Revised Code.

(4) "Convalescent stay" means a new admission as defined in paragraph (B)(11) of this rule, to a NF or enrollment on the PASSPORT HCBS waiver that meets all of the following criteria:

(a) The individual is an Ohio resident who is to be admitted or enrolled directly from a hospital after receiving acute inpatient care at that hospital; and

(b) The inpatient hospital care received by the individual does not meet the criteria for an inpatient psychiatric stay set forth in paragraph (B)(3) of this rule; and

(c) A pre-admission screening/resident review (PASRR) determination that the individual does not require the level of services available in a NF has been issued by neither ODMH nor ODMR/DD within the sixty calendar days prior to this new admission or enrollment; and

(d) The individual requires the level of services provided by a NF for the condition which was treated in the hospital; and

(e) The individual's attending physician has provided written certification, signed and dated no later than the date of discharge from the hospital, stating that the individual is likely to require the level of services provided by a NF for less than thirty days.

(5) "Current diagnoses" means a written medical determination by the individual's attending physician, or another licensed health care professional whose scope of practice includes diagnosis, listing those diagnosed conditions which currently impact the individual's health and functional abilities. To be considered current, the written documentation of the diagnoses must have been made, dated and signed within ninety calendar days prior to the submission of the PASRR-ID.

(6) "Dementia" means an individual is considered to have dementia if he or she meets either of the following criteria:

(a) The individual has a primary diagnosis of a dementia, including Alzheimer's disease or a related disorder, as described in the "Diagnostic and Statistical Manual of Mental Disorders," third edition, revised in 1987 (DSM-III-R); or

(b) The individual has a secondary diagnosis of dementia, including Alzheimer's disease or a related disorder, (as described in the DSM-III-R), and a primary diagnosis which is not a major mental

disorder as specified in paragraph (B)(23)(a) of this rule.

- (7) "ICF-MR" means intermediate care facility for the mentally retarded. An ICF-MR is a long-term care facility certified to provide ICF-MR services, as defined in 42 CFR 440.150, dated October 1, 2002, to individuals with mental retardation or related conditions who require active treatment.
- (8) "Individual" for purposes of this rule, means a person, regardless of payment source, who is seeking admission, readmission or transfer to a NF, or resides in a NF or facility in the process of becoming certified as a NF, or who is seeking enrollment in the PASSPORT HCBS waiver.
- (9) "Long-term resident" means an individual who has continuously resided in a NF or a consecutive series of NFs and/or medicare skilled nursing facilities for at least thirty months prior to the first resident review (RR), defined in paragraph (B)(22) of this rule, determination in which the individual was found not to require the level of services provided by a NF, and to require specialized services. The thirty months may include temporary absences for hospitalization or therapeutic leave as defined in rule 5101:3-3-59 of the Administrative Code.
- (10) "Mental retardation and/or other developmental disabilities (MR/DD)." An individual is considered to have mental retardation and/or a developmental disability if he or she has:
- (a) A level of retardation (mild, moderate, severe or profound) as described in the "American Association on Mental Retardation's Manual on Classification in Mental Retardation" (1989); or
- (b) A related condition as defined in paragraph (B)(21) of this rule.
- (11) "New admission" means:
- (a) The admission, to an Ohio medicaid-certified NF, of an individual who was not a resident of any Ohio medicaid-certified NF immediately preceding the current NF admission nor immediately preceding a hospital stay from which the individual is to be admitted directly to a NF. This includes individuals with no previous NF admissions; individuals admitted from other states, regardless of type of prior residence; and individuals with prior Ohio NF admissions who had been discharged from an Ohio NF and did not have either an intervening hospital or other NF stay immediately preceding the current NF admission; and/or
- (b) The enrollment of an individual who has applied for the PASSPORT HCBS waiver who was not a PASSPORT HCBS waiver consumer or a resident of any Ohio medicaid-certified NF immediately preceding the

current PASSPORT HCBS waiver enrollment nor immediately preceding a hospital stay from which the individual is to be enrolled directly onto the PASSPORT HCBS waiver; and/or

(c) The admission to an Ohio medicaid-certified NF, of an individual directly from an inpatient psychiatric stay, as defined in paragraph (B)(3) of this rule, regardless of type of prior residence; and/or

(d) The admission to an Ohio medicaid-certified NF, of an individual twenty-two to sixty-four years of age directly from an inpatient psychiatric stay, as defined in paragraph (B)(3) of this rule, regardless of type of prior residence unless the individual was a NF resident immediately preceding the inpatient psychiatric stay, has timely exercised the right to a state hearing regarding the termination of medicaid eligibility pursuant to placement in an institution for mental diseases and the outcome of such appeal is still pending; and/or

(e) The admission, with or without an intervening hospital stay, to an Ohio medicaid-certified NF, of an individual who discharged from an Ohio medicaid-certified NF immediately preceding the current NF admission in accordance with an adverse PASRR determination or following an overruled appeal of an adverse PASRR determination; and/or

(f) For PASRR purposes only and effective on the date the facility submits its application packet for medicaid certification to ODJFS, individuals whose circumstances are described in paragraphs (B)(11)(a) to (B)(11)(e) of this rule who are seeking admission to, or any individuals who are currently residing in, a facility that is in the process of obtaining its initial medicaid certification by the Ohio department of health (ODH) and that facility and its residents were not subject to PASRR requirements preceding the submission of this application for medicaid certification. This does not include facilities that have already received medicaid NF certification and are undergoing a change of operator; and/or

(g) With the exception of those circumstances specified in paragraphs (B)(11)(a) to (B)(11)(f) of this rule, NF transfers and readmissions as defined in paragraphs (B)(13) and (B)(20) of this rule are not considered to be new admissions for purposes of this rule.

(12) "Nursing facility (NF)" means any long term care facility other than an ICF-MR, or part of a facility, currently certified by ODH as being in compliance with the nursing facility standards and medicaid conditions of participation. For PASRR purposes only, a long term care facility that has submitted an application packet for medicaid certification to ODJFS is considered to be in the process of obtaining its initial medicaid certification

by the Ohio department of health and shall be treated as a NF.

- (13) "NF transfer." Except as specified in paragraphs (B)(11)(a) to (B)(11)(e) of this rule, a NF transfer occurs when an individual's place of residence is changed from one Ohio medicaid-certified NF to another Ohio medicaid-certified NF, with or without an intervening hospital stay; or when an individual enrolled on the PASSPORT HCBS waiver is admitted to an Ohio medicaid-certified NF, or when an individual is discharged from an Ohio medicaid-certified NF and is immediately enrolled on the PASSPORT HCBS waiver, with or without an intervening hospital stay.
- (14) "PAS identification (PAS/ID)" is the process by which ODJFS or its designee, screens individuals who are seeking new admissions to identify those who have indications of serious mental illness (SMI) as defined in paragraph (C)(5)(a) of this rule, and/or MR/DD as defined in paragraph (C)(5)(b) of this rule; and who, therefore, must be further evaluated by ODMH and/or ODMR/DD.
- (15) "PAS-MR/DD" is the process by which ODMR/DD determines whether, due to the individual's physical and mental condition, an individual who has MR/DD requires the level of services provided by a NF or another type of facility; and, if the level of services provided by a NF is needed, whether the individual requires specialized services for MR/DD.
- (16) "PAS/SMI" is the process by which ODMH determines whether, due to the individual's physical and mental condition, an individual who has SMI requires the level of services provided by a NF or another type of facility; and, if the level of services provided by a NF is needed whether the individual requires specialized services for serious mental illness.
- (17) "PASSPORT HCBS waiver" means the PASSPORT home and community-based services waiver as described in Chapter 5101:3-31 of the Administrative Code.
- (18) "Physician" means a doctor of medicine or osteopathy who is licensed to practice medicine, and, for purposes of this rule, may also include a physician's assistant and/or a nurse practitioner.
- (19) "Primary diagnosis" means that diagnosis which was made and identified as the primary diagnosis by a physician or another licensed health care professional whose scope of practice includes diagnosis. If two or more diagnoses have such indications, none of them can be considered to be the primary diagnosis for purposes of this rule.
- (20) "Readmission." Except as specified in paragraphs (B)(11)(a) to (B)(11)(e) of this rule, "readmission" means the individual is readmitted to the same NF, or reenrolled on the PASSPORT HCBS waiver, following a stay in a hospital to

which he or she was sent for the purpose of receiving care.

(21) "Related condition" means a severe, chronic disability that meets all of the following conditions:

(a) It is attributable to:

(i) Cerebral palsy, epilepsy; or

(ii) Any other condition other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for those persons;

(b) It is manifested before the person reaches the age of twenty-two;

(c) It is likely to continue indefinitely;

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; or

(e) Individuals who have a developmental disability as defined in rule 5123:2-1-02 of the Administrative Code are considered to have a related condition.

(22) "Resident Review (RR)" means the resident review portion of the preadmission screening and resident review (PASRR) requirements mandated by section 1919(e)(7) of the Social Security Act, which must be implemented in accordance with rules 5101:3-3-15.2, 5122-21-03 and/or Chapter 5123:2-14 of the Administrative Code.

(23) "Serious mental illness (SMI)" means an individual is considered to have SMI if the individual meets all of the following criteria on diagnosis, level of impairment and recent treatment:

- (a) "Diagnosis" means the individual does not have dementia as defined in paragraph (B)(6) of this rule, but has a major mental disorder diagnosable under the "Diagnostic and Statistical Manual of Mental Disorders," third edition, revised in 1987 (DSM-III-R); and this mental disorder is one of the following: a schizophrenic, mood, delusional (paranoid), panic or other severe anxiety disorder, somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder other than mental retardation that may lead to a chronic disability diagnosable under the DSM-III-R.
 - (b) "Level of impairment" means within the past six months, due to the mental disorder, the individual has experienced functional limitations on a continuing or intermittent basis in major life activities that would be appropriate for the individual's developmental stage.
 - (c) "Recent treatment" means the treatment history indicates that the individual has experienced at least one of the following:
 - (i) Psychiatric treatment more intensive than counseling and/or psychotherapy performed on an outpatient basis more than once within the past two years; or
 - (ii) Within the last two years, due to the mental disorder, experienced an episode of significant disruption to the usual living arrangement, for which supportive services were required, or which resulted in intervention by housing or law enforcement officials.
- (24) "Specialized services for serious mental illness" means those services which, when combined with the types of services available in NFs, result in the continuous and aggressive implementation of an individualized plan of care approved by the medical director of ODMH or a designee that:
- (a) Is developed and supervised by an interdisciplinary team which includes a physician, trained mental health professionals and, as appropriate, other professionals;
 - (b) Prescribes specific therapies and treatment activities for an individual who is experiencing an acute episode of SMI which necessitates supervision by trained mental health personnel; and
 - (c) Is time limited and directed toward diagnosing and reducing the individual's behavioral symptoms that necessitated intensive and aggressive intervention, improving the individual's level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized

services at the earliest possible time.

(d) Federal financial participation (FFP) is not available for specialized services furnished to NF residents as NF services.

(25) "Specialized services for mental retardation and/or other developmental disabilities" means the services specified by the PAS-MR or RR-MR determination which must be provided or arranged for by ODMR/DD, or its designee, and which are integrated with services provided by the NF or other service providers to result in continuous active treatment. Specialized services shall be made available at the intensity and frequency necessary to meet the needs of the individual. The individual's specialized service needs must be identified and documented in the PASRR-MR determination and the delivery of specialized services must be documented and monitored by ODMR/DD. FFP is not available for specialized services furnished to NF residents as NF services.

(26) "Secondary diagnoses" means all diagnoses other than that which is a primary diagnosis as defined in paragraph (B)(19) of this rule.

(27) "Usual living arrangement" means an individual's usual living arrangement, including but not limited to homelessness, homeless shelter, private home, adult care facility licensed by ODH or ODMH, adult foster home, residential care facility licensed by ODMR/DD, ICF-MR, NF, rehabilitation center, jail, or hospital or part of a hospital licensed by ODMH under section 5119.20 of the Revised Code.

(C) PAS/ID requirements:

(1) PAS/ID must be completed prior to any new admission as defined in paragraph (B)(11) of this rule, unless the admission meets the criteria for a convalescent stay as set forth in paragraph (B)(4) of this rule and the NF or, for PASSPORT HCBS waiver consumers, the responsible PASSPORT administrative agency (PAA) has met the requirements for exemption set forth in paragraph (C)(2) of this rule.

(a) ODJFS or its designee, ODMH, and/or ODMR/DD are the only entities that have the authority to render PAS-ID determinations.

(b) The receiving NFs or PAAs are responsible for ensuring that all individuals subject to PAS/ID receive a review and determination by ODJFS or its designee and, if applicable, a PAS/SMI review and determination by ODMH and/or a PAS-MR/DD review and determination by ODMR/DD prior to entering the NF or enrolling on the PASSPORT HCBS waiver.

(c) NFs who, whether intentionally or otherwise, accept any new admission,

readmission, or NF transfer in violation of this rule are in violation of their medicaid provider agreements. This is true regardless of the payment source for the individual's NF stay.

(d) Medicaid payment is not available for NF stays or PASSPORT HCBS waiver services provided to individuals who are otherwise medicaid-eligible until the date on which the PAS requirements have been met. Payments shall not be made for NF or PASSPORT HCBS waiver services delivered prior to the date on which all of the required PAS determinations are made, or the date on which the NF or responsible PAA has met the exemption requirements set forth in paragraph (C)(2)(a) of this rule.

(2) Requirements for exemption from PAS/ID. The admitting NF or, for individuals enrolling on the PASSPORT HCBS waiver, the responsible PAA must:

(a) Prior to acceptance of the new admission, obtain from the discharging hospital, and/or the individual's attending physician, written documentation which verifies that each of the defining criteria for a convalescent stay set forth in paragraph (B)(4) of this rule have been met; and

(b) The admitting NF shall maintain the documentation required by paragraph (C)(2)(a) of this rule in the individual's resident record at the facility. For individuals enrolling on the PASSPORT HCBS waiver, the responsible PAA shall retain such documentation in the individual's PASSPORT HCBS waiver record.

(c) For individuals seeking medicaid coverage of their NF stays or PASSPORT HCBS waiver services who are admitted or enrolled under the exemption from the PAS/ID, the admitting NF or responsible PAA must submit a copy of the documentation required under paragraph (C)(2)(a) of this rule with the level of care request in accordance with rule 5101:3-3-15 of the Administrative Code. In the absence of such documentation, the PAS/ID requirements set forth in this rule must be met.

(3) PAS/ID may be initiated by the individual, who is seeking the new admission, or by another entity on behalf of the individual.

(4) PAS/ID must be initiated via the completion, and submission to ODJFS or its designee, of a JFS 03622 "PASRR Identification Screen" (rev. 2/93), and a JFS 03697 "Level of Care Assessment" (rev. 3/96) or an alternative form approved by ODJFS.

(a) For those individuals who will be relocating from outside of Ohio, who are not Ohio residents, and are known to have SMI and/or MR/DD or

whose JFS 03622 forms contain indications of MR/DD and/or SMI; the submitter shall obtain and submit with the JFS 03622 and JFS 03697 forms the sending state's applicable level two PASRR evaluation(s) of the individual and any additional documentation necessary to provide the applicable required evaluation elements specified in rule 5122-21-03 and/or Chapter 5123:2-14 of the Administrative Code. Submission of the required forms and information does not constitute completion of the PAS/ID process.

(b) The individual must not move into an Ohio NF or be enrolled on the PASSPORT HCBS waiver until all required PAS determinations have been made.

(c) For those individuals identified as new admissions in accordance with paragraph (B)(11)(e) of this rule who already reside in the facility at the time the PAS/ID is initiated, the submitter must notify ODJFS or its designee of the status of the facility at the time of the PAS/ID submission.

(5) ODJFS, or its designee, shall review the JFS 03622 form to determine whether the individual has MR/DD and/or indications of SMI.

(a) An individual shall be determined to have indications of SMI if the individual:

(i) Meets at least two of the three criteria specified in paragraph (B)(23) of this rule; or

(ii) Due to a mental impairment, receives supplemental security income (SSI) authorized under Title XVI of the Social Security Act; or

(iii) Due to a mental impairment, receives social security disability insurance (SSDI) authorized under Title II of the Social Security Act; or

(b) An individual shall be determined to have indications of MR/DD if the individual's condition meets the defining criteria set forth in paragraph (B)(10) of this rule.

(6) PAS/ID results shall determine whether an individual is subject to further review.

(a) Individuals determined to have no indications of SMI and/or MR/DD are not subject to further PAS review. Such individuals are considered to have met the PAS requirements effective on the date on which the PAS/ID determination is made.

- (b) Individuals determined to have indications of SMI shall be subject to further review by ODMH in accordance with rule 5122-21-03 of the Administrative Code. Such individuals shall not be considered to have completed the PAS process until ODMH has issued the PAS-SMI determination.
- (c) Individuals determined to have indications of MR/DD shall be subject to further review by ODMR/DD in accordance with Chapter 5123:2-14 of the Administrative Code. Such individuals shall not be considered to have completed the PAS process until ODMR/DD has issued the PAS-MR/DD determination.
- (d) Individuals determined to have indications of both SMI and MR/DD shall be subject to further review by both ODMH and ODMR/DD in accordance with rule 5122-21-03 and Chapter 5123:2-14 of the Administrative Code. Such individuals shall not be considered to have completed the PAS process until ODMH has issued the PAS-SMI determination and ODMR/DD has issued the PAS-MR/DD determination.
- (7) When an individual has been determined to have indications of SMI and/or MR/DD, ODJFS or its designee shall forward the JFS 03622 form, the JFS 03697 or an alternative form specified by ODJFS and, when applicable, the sending state's evaluation information to ODMH and/or ODMR/DD, as appropriate, so that it may be determined whether the individual has SMI and/or MR; and if so, for the PAS/SMI and/or PAS-MR/DD review.
- (8) If the materials submitted to ODJFS, or its designee, with the JFS 03622 form are incomplete, or if additional information is required by ODJFS or its designee, as determined by ODJFS or its designee, in order to make the PAS/ID determination; or, if ODMR/DD and/or ODMH or its designee require additional information in order to make the PAS/ID, PAS-MR/DD and/or PAS-SMI determinations, the agency requiring the missing or additional information shall provide written notice to the submitter, the individual, the individual's representative, if applicable, and the NF or responsible PAA. This notice shall:
- (a) Specify the missing forms, data elements and/or other documentation that are required in order to make the required determination(s);
- (b) Indicate that the individual or another entity must provide that information no later than twenty-five days following the date on which the notice was sent;
- (c) Provide information about who to contact for technical assistance regarding each of the missing items; and

(d) Explain that the individual cannot be admitted to a NF or enrolled on the PASSPORT HCBS waiver until the PAS process is completed and that failure to submit the additional information within twenty-five days shall result in the prohibition of the admission or enrollment because a determination could not be made without the requested information. The admission or enrollment must be denied for failure to cooperate with the PAS determination process if the requested information is not submitted within the allotted twenty-five days.

(9) Handling of responses to requests for additional information.

(a) In the event the individual and/or other entity does not provide the necessary information within the allotted twenty-five days, the agency that requested the information shall provide written notice to the individual, the individual's representative, if applicable, and the NF or responsible PAA that the admission or enrollment is prohibited due to failure to provide information necessary for the completion of the PAS process and that the individual may appeal the determination in accordance with the provisions of division-level designation 5101:6 of the Administrative Code. If the individual was seeking medicaid coverage of the proposed NF stay or PASSPORT HCBS waiver enrollment, the county department of job and family services (CDJFS) must also be notified that the individual is not eligible for the admission or enrollment due to failure to cooperate in the establishment of eligibility. The individual, regardless of payment source, must not be admitted to the NF nor enrolled on the PASSPORT HCBS waiver.

(b) If the individual or other entity submits the requested information within the timeframes specified in the notice, ODJFS or its designee, or ODMR/DD and/or ODMH shall continue with the PAS process.

(10) ODJFS, or its designee, shall report the outcome of the PAS/ID to the individual or other entity who initiated the review and, where applicable, indicate the department(s) to which the JFS 03622, JFS 03697 and, if applicable, the sending state's evaluation information were sent for further review.

(11) The admitting NF shall maintain the results of the PAS/ID in the individual's resident record at the facility. For individuals enrolling for the PASSPORT HCBS waiver, the PAA shall maintain the results of the PAS/ID in the individual's PASSPORT HCBS waiver record.

(D) PAS/SMI and PAS-MR/DD determination requirements:

(1) PAS/SMI and/or PAS-MR/DD must be completed for each individual determined by ODMH and/or ODMR/DD during the PAS process to have

SMI and/or MR/DD unless the individual is a long-term resident as defined in paragraph (B)(9) of this rule.

- (a) For all such individuals identified as new admissions under the provisions of paragraphs (B)(11)(a) to (B)(11)(f) of this rule, and regardless of payment source, the PAS/SMI and/or PAS-MR/DD requirements must be met before the individual is admitted to any NF or facility in the process of obtaining its initial medicaid certification and NF provider agreement or before the individual is enrolled on the PASSPORT HCBS waiver. Individuals determined not to need NF services shall not be admitted or enrolled.
- (b) For all such individuals identified as new admissions under the provisions of paragraph (B)(11)(f) of this rule who are current residents of the facility, the PAS/SMI and/or PAS-MR/DD requirements must be met prior to the effective date of the NF provider agreement between ODJFS and the newly certified NF and/or prior to the initiation of medicaid payment for the medicaid eligible individual. In the event that the PAS-SMI and/or PAS-MR/DD determination is made that the individual does not need NF services, ODMR/DD and/or ODMH must provide written notice of the adverse determination to the individual, the facility, and must notify ODJFS. If the individual has applied for medicaid coverage, the appropriate CDJFS must also be notified. The facility must then provide the individual, regardless of payment source, with notice of intent to discharge and, if applicable, the CDJFS shall deny NF payment.
- (2) For long-term residents, the choice to reside in a NF and to receive specialized services for SMI and/or MR/DD provided by ODMH and/or ODMR/DD is a portable benefit. Therefore, unless there is evidence that the resident's condition has changed such that the individual needs the level of services provided by a NF and/or is no longer in need of specialized services, ODMH and/or ODMR/DD may notify the individual and the receiving NF of the individual's status as a long-term resident and make arrangements for the continued provision of specialized services. FFP is not available for specialized services provided to NF residents as NF services.
- (3) Section 1919(e)(7) of the Social Security Act prohibits ODMH and/or ODMR/DD from utilizing criteria relating to the need for NF care or specialized services that are inconsistent with that statute and the ODJFS approved state plan for medicaid. The approved state plan for medicaid includes level of care criteria, contained in Chapter 5101:3-3 of the Administrative Code. Therefore, ODMH and ODMR/DD must not use criteria inconsistent with Chapter 5101:3-3 of the Administrative Code in making their determinations regarding whether individuals with SMI and/or MR/DD need the level of services provided by a NF.

- (4) The admitting NF shall retain the written notification of the PAS/SMI and/or PAS-MR/DD determinations received from ODMH and/or ODMR/DD in the individual's resident record at the facility. For individuals enrolling on the PASSPORT HCBS waiver, the responsible PAA shall retain such determinations in the individual's PASSPORT HCBS waiver record.
- (5) Adverse determinations may be appealed in accordance with division-level designation 5101:6 of the Administrative Code.
- (6) Any individual who has been issued a PAS/ID determination that no indications of MR/DD and no indications of SMI were present, or has received a PAS-SMI determination and/or PAS-MR/DD determination that NF services are needed, and has not been admitted to a NF or enrolled on the PASSPORT HCBS waiver within sixty days following the effective date of the most recent determination, shall be required to undergo a new PAS/ID in accordance with the provisions of this rule.
- (E) In accordance with section 1919(e)(7) of the Social Security Act, and except as provided for in paragraph (D)(1)(b) of this rule, there shall be no new admission of any individual with SMI or MR/DD, regardless of payment source, unless the individual has either been determined, in accordance with rule 5122-21-03 and/or Chapter 5123:2-14 of the Administrative Code, to need the level of services provided by a NF, or has qualified for admission under the exemption provision set forth in paragraph (C)(2) of this rule.

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