

TO BE RESCINDED

5101:3-3-15.2 **Resident review (RR) requirements for individuals residing in nursing facilities (NFs).**

(A) The purpose of this rule is to set forth the RR requirements which must be met in order to comply with Section 1919 (e)(7) of the Social Security Act, as amended. NFs are prohibited from retaining any individual who has serious mental illness (SMI) (as defined in paragraph (B)(16) of rule 5101:3-3-151 of the Administrative Code) or mental retardation and/or other developmental disabilities (MR/DD) (as defined in paragraph (B)(7) of rule 5101:3-3-151 of the Administrative Code) unless the RR requirements specified in this rule have been met.

(B) Definitions:

- (1) "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, as amended, which must be implemented in accordance with the provisions of this rule and rules 5122-21-03 and/or 5123:2-14-01 of the Administrative Code.
- (2) "RR identification (RR/ID)." "RR/ID" is the process by which individuals are identified who, pursuant to the provisions of paragraphs (D) and (E) of this rule, are subject to RR.
- (3) "Resident review for serious mental illness (RR/SMI)" means the process, set forth in rule 5122-21-03 of the Administrative Code, by which the Ohio department of mental health (ODMH) determines whether, due to the individual's physical and mental condition, an individual who is subject to RR, and who has serious mental illness (SMI) (as defined in paragraph (B)(16) of rule 5101:3-3-151 of the Administrative Code) requires the level of services provided by a NF or another type of facility; and, whether that individual requires specialized services for serious mental illness (as defined in paragraph (B)(17) of rule 5101:3-3-151 of the Administrative Code).
- (4) "Resident review for mental retardation/developmental disabilities (RR-MR/DD)" means the process, set forth in rule 5123:2-14-01 of the Administrative Code, by which the Ohio department of mental retardation and developmental disabilities (ODMR/DD) determines whether, due to the individual's physical and mental condition, an individual who is subject to RR, and who has mental retardation/developmental disabilities (MR/DD) (as defined in paragraph (B)(7) of rule 5101:3-3-151 of the Administrative Code) requires the level of services provided by a NF or another type of facility; and, whether the individual requires specialized services for MR/DD.

- (5) "Current diagnoses" means those diagnoses verified by the individual's attending physician as current in the most recent physical examination report, physician progress notes, or annual reevaluation of current diagnoses performed while the individual is a NF resident.
 - (6) "Individual." For purposes of this rule, individual means a person, regardless of payment source, who resides in a NF.
 - (7) "Significant change of condition." For purposes of this rule, "significant change of condition" has the same meaning used in administering the routine resident assessment requirements specified in rule 5101:3-3-40 of the Administrative Code and that at least one of the following criteria is met:
 - (a) There is a change in the individual's current diagnosis(es), mental health treatment, functional capacity, or behavior such that, as a result of the change, the individual who did not previously have indications of SMI, or who did not previously have indications of MR/DD, now has such indications (as defined in paragraph (C)(5) of rule 5101:3-3-151 of the Administrative Code) (this includes any individual who may have had indications of one or the other but now has indications of both SMI and MR/DD), or who was previously determined by ODMH not to have SMI but who now meets all three of the defining criteria for SMI (set forth in paragraph (B)(16) of rule 5101:3-3-151 of the Administrative Code); or
 - (b) The change is such that it may impact the mental health treatment or placement options of an individual previously identified as having SMI and/or may result in a change in the specialized services needs of an individual previously identified as having MR/DD.
 - (8) "Hospital stay for psychiatric treatment" means the admission of an individual to a psychiatric hospital operated by ODMH, or a psychiatric hospital or psychiatric unit of a hospital licensed by ODMH under section 5119.20 of the Revised Code.
- (C) RR/ID is required for all individuals who meet any of the following criteria:
- (1) The individual was admitted under the exempted hospital discharge provision set forth in paragraph (C)(2) of rule 5101:3-3-151 of the Administrative Code, and has since been found to require more than thirty days of services at the NF level;

- (2) The individual's admission is a NF transfer, as defined in paragraph (B)(9) of rule 5101:3-3-151 of the Administrative Code, and there are no PASRR records available from the previous NF placement;
- (3) The individual had been in a different NF and was admitted directly following an intervening hospital stay for psychiatric treatment (as defined in paragraph (B)(8) of this rule), or was readmitted to the same NF directly following a hospital stay for psychiatric treatment, and has experienced a significant change of condition since the last PASRR determination;
- (4) The individual has experienced a significant change in condition (as defined in paragraph (B)(7) of this rule); or
- (5) The individual received a categorical PAS-SMI or PAS-MR/DD determination (as defined in rules 5122-21-03 and 5123:2-14-01 of the Administrative Code) and the stay has exceeded the specified time limit for that category.

(D) RR/ID requirements:

- (1) Timelines for submission:
 - (a) For those individuals specified in paragraphs (C)(1) to (C)(2) of this rule, RR/ID must be initiated not more than thirty days following the date of the current admission.
 - (b) For those individuals specified in paragraphs (C)(3) and (C)(4) of this rule, the RR/ID must be initiated promptly upon identification of the significant change.
 - (c) For those individuals specified in paragraph (C)(5) of this rule, the RR/ID must be initiated no later than the expiration date of the categorical determination.
- (2) The NF must initiate the RR/ID.
- (3) RR/ID must be initiated via the completion of a PASRR Identification Screen" form (ODHS 3622).
- (4) The NF shall review the completed ODHS 3622 form to determine whether the individual has indications of having SMI and/or MR/DD (as defined in

paragraphs (C)(5)(a) and (C)(5)(b) of rule 5101:3-3-151 of the Administrative Code).

- (5) RR/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 RR review.
 - (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.
 - (c) Individuals determined to have indications of MR/DD shall be subject to further review by ODMR/DD in accordance with rule 5123:2-14-01 of the Administrative Code.
 - (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 rules 5122-21-03 and 5123:2-14-01 of the Administrative Code.
- (6) Routing of completed forms:
- (a) For individuals determined to have no indications of either MR/DD or SMI, the NF shall place and maintain the ODHS 3622 and all supporting evidence in the resident's record at the facility.
 - (b) For individuals determined to have indications of SMI and/or MR/DD, the NF shall submit the ODHS 3622, documentation supporting the ODHS 3622, as well as documentation of the individual's current condition and evidence of the individual's need for services at the NF level to ODMH and/or ODMR/DD so that it may be determined whether the individual has SMI and/or MR/DD; and if so, for the RR/SMI and/or RR-MR/DD review.
 - (c) ODMH and/or ODMR/DD, may request any additional information required in order to make an RR/ID determination, and shall report the outcome of the RR/ID to the NF that initiated the review and, where applicable, indicate the agency to which the individual was referred for further evaluation.
 - (d) The NF shall maintain the results of the RR/ID in the individual's resident

record at the facility.

(E) RR/SMI and RR-MR/DD requirements:

- (1) RR/SMI is required for all individuals who were determined by ODMH during the RR/ID, in accordance with this rule and rule 5122-21-03 of the Administrative Code, to have SMI.
- (2) RR-MR/DD is required for all individuals who were determined by ODMR/DD during the RR/ID in accordance with this rule and rule 5123:2-14-01 of the Administrative Code, to have MR/DD.
- (3) Individuals with both SMI and MR/DD are subject to both RR/SMI and RR-MR/DD.
- (4) If the individual is subject to RR/SMI and/or RR-MR/DD and there is no record of the determinations in the medical record and/or no indication that they are in progress, the NF shall notify ODMH and/or ODMR/DD.
- (5) 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 ODHS 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 may 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.
- (6) ODMH and/or ODMR/DD shall provide written notification of all RR/SMI and/or RR-MR/DD determinations made.
 - (a) Such written notice shall be provided to:
 - (i) The evaluated individual and his or her legal representative;
 - (ii) The NF in which the individual is a resident; and
 - (iii) The individual's attending physician.
 - (b) Such written notice shall include all of the following components:

- (i) The determination as to whether the individual requires the level of services provided by a NF;
 - (ii) The determination as to whether the individual requires specialized services for SMI and/or MR/DD;
 - (iii) The placement and/or service options that are available to the individual consistent with those determinations; and
 - (iv) The individual's right to appeal the determination(s).
 - (7) The NF shall retain the written notification of the RR/SMI and/or RR-MR/DD determinations received from ODMH and/or ODMR/DD in the individual's resident record at the facility.
 - (8) Adverse determinations may be appealed in accordance with division level designation 5101:6 of the Administrative Code.
- (F) In accordance with section 1919(e)(7) of the Social Security Act, no individual with SMI or MR/DD shall be retained as a resident in a NF, regardless of payment source, unless it has been determined, in accordance with rules 5122-21-03 and/or 5123:2-14-01 of the Administrative Code, that:
- (1) The individual needs the level of services provided by a NF; or
 - (2) The individual had resided in a NF for at least thirty months at the time of the first RR determination that the individual does not require the level of services provided by a NF and requires specialized services only; and the individual has chosen to remain in a NF in accordance with the federal regulations set forth in 42 CFR 483.118(c)(1).
- (G) Medicaid vendor payment.
- (1) Medicaid vendor payment is not available for the provision of specialized services for SMI and/or MR/DD.
 - (2) Medicaid vendor payment is available for the provision of NF services to medicaid-eligible individuals subject to RR/SMI and/or RR-MR/DD only when the individual has met the criteria for retention set forth in paragraph (F) of this rule.

- (3) For those medicaid-eligible individuals subject to RR/SMI and/or RR-MR/DD who do not meet the retention criteria set forth in paragraph (F) of this rule, medicaid vendor payment shall be available for no more than thirty days following the date of the adverse determination or thirty days following the date of a hearing decision upholding an adverse determination, whichever is later.
- (4) When an RR/ID is not initiated by the NF within the timeframes specified in paragraph (D)(1) of this rule, but is performed at a later date, medicaid vendor payment is not available for services furnished to the eligible individual from the date the RR/ID was due through the seventh calendar day following the receipt of the ODHS 3622 form by ODMH or ODMR/DD or the date of the RR determinations, whichever is earlier.

Effective: 12/01/2009

R.C. 119.032 review dates: 07/22/2009

CERTIFIED ELECTRONICALLY

Certification

11/17/2009

Date

Promulgated Under: 119.03
Statutory Authority: 5111.02, 5101.75, 5101.752
Rule Amplifies: 5111.01, 5101.02, 5101.202, 5101.752, 119.032
Prior Effective Dates: 5-1-93, 1-1-98