

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 (1997). NFs are prohibited from retaining any individual, regardless of payment source, who has serious mental illness (SMI) (as defined in paragraph (B)(23) of rule 5101:3-3-15.1 of the Administrative Code) or mental retardation and/or other developmental disabilities (MR/DD) (as defined in paragraph (B)(10) of rule 5101:3-3-15.1 of the Administrative Code) unless the RR requirements specified in this rule have been met.

(B) Definitions:

- (1) "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 initiation of the PASRR-ID.
- (2) "Individual." For purposes of this rule, individual 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.
- (3) "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) 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)(6) of this rule.
- (4) "Nursing facility (NF)" means any long-term care facility, or part of a facility, that is not an intermediate care facility for the mentally retarded (ICF-MR), and is currently certified by the Ohio department of health as being in compliance with the nursing facility standards and medicaid conditions of participation.
- (5) "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.
- (6) "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 developmental disabilities as defined in rule 5123:2-1-02 of the Administrative Code shall be considered to have a related condition.

(7) "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 (1997) 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.

(8) "RR identification (RR/ID)." "RR/ID" is the process set forth in this rule by which individuals who are subject to RR must be identified.

(9) "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 MR/DD requires the level of services provided by a NF or another type of facility; and, whether the individual requires specialized services for MR/DD.

(10) "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) 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.

(11) "Significant change of condition." For purposes of this rule, "significant change of condition" means that 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 5101:3-3-15.1 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)(12) of this rule; 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.

(12) "SMI." 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. The individual does not have dementia (as defined in paragraph (B)(6) of rule 5101:3-3-15.1 of the Administrative Code), 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. 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. The treatment history indicates that the individual has experienced at least 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.

(C) RR/ID is required for all individuals who meet any of the following criteria:

(1) The individual was admitted under the exemption from PAS/ID provision set forth in paragraph (C)(2) of rule 5101:3-3-15.1 of the Administrative Code, and has since been found to require thirty days or more of services at the NF level;

(2) The individual's admission is a NF transfer, as defined in paragraph (B)(13) of rule 5101:3-3-15.1 of the Administrative Code, and there are no PASRR records available from the previous NF placement or PASSPORT HCBS waiver enrollment.

(3) The individual has experienced a significant change of condition (as defined in paragraph (B)(11) of this rule;

(4) 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 has since been found to require a stay in a NF that will exceed the specified time limit for that category; or

(5) The individual's admission is a NF transfer or a readmission, as defined in paragraph (B)(20) of rule 5101:3-3-15.1 of the Administrative Code, and the individual is less than twenty-two years of age or is sixty-five years of age or older and had an intervening inpatient psychiatric stay, as defined in paragraph (B)(3) of rule 5101:3-3-15.1 of the Administrative Code, or the individual is any age and experienced an intervening hospital stay in a psychiatric unit of a hospital that is licensed by ODMH under section 5119.20 of the Revised Code.

(D) RR/ID requirements:(1) Timelines for submission:

- (a) For those individuals specified in paragraph (C)(1) of this rule, RR/ID shall be initiated as soon as the NF has reason to believe the individual may need to remain in a NF for thirty days or more and, if the individual has indications of MR/DD and/or SMI, the completed RR/ID request must be submitted to ODMR/DD and/or ODMH not more than twenty-nine days following the date of the PAS/ID-exempt admission.
- (b) For those individuals specified in paragraph (C)(3) of this rule, the RR/ID must be initiated as soon as the NF has reason to believe a significant change may have occurred and the completed RR/ID request of an individual with indications of MR/DD and/or SMI must be submitted to ODMR/DD and/or ODMH within twenty-four hours following identification of the significant change.
- (c) For those individuals specified in paragraph (C)(4) of this rule, the RR/ID shall be initiated as soon as the NF has reason to believe the individual may need to remain in a NF beyond the expiration date of the categorical determination and, if the individual has indications of MR/DD and/or SMI, the completed RR/ID request must be submitted to ODMR/DD and/or ODMH no later than the expiration date of the categorical determination;
- (d) For those individuals specified in paragraphs (C)(2) and (C)(5) of this rule, the RR/ID must be initiated no later than the day of the NF transfer or readmission. If the individual has indications of MR/DD and/or SMI, the completed RR/ID request must also be submitted to ODMR/DD and/or ODMH no later than the day of the NF transfer or readmission.
- (2) The NF must initiate the RR/ID and is responsible for ensuring that all individuals subject to RR/ID are reviewed timely. If the individual has indications of MR/DD and/or SMI, the NF is responsible for the accurate and timely submission of the RR/ID request to ODMR/DD and/or ODMH in accordance with the provisions of this rule. NFs that, whether intentionally or otherwise, accept any readmission or NF transfer, or retain as a resident any individual 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. If it is determined that the NF failed to initiate the RR/ID in accordance with this rule, an RR/ID may be initiated by the individual or by another entity on behalf of the individual. Such action by an entity other than the NF shall in no way be considered to mitigate the NF's accountability for meeting these requirements.

- (3) RR/ID must be initiated via the accurate completion of a "PASRR Identification Screen" form (JFS 03622).
- (4) The NF shall review the completed JFS 03622 form to ensure it is completed accurately and 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 5101:3-3-15.1 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. Such individuals are considered to have met the RR requirements effective on the date on which the RR/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 RR process until ODMH has either determined the individual does not have SMI or has issued the RR-SMI determinations that the individual needs or does not need:
- (i) The level of service available in a NF; and
- (ii) Specialized services for SMI.
- (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. Such individuals shall not be considered to have completed the RR process until ODMR/DD has either determined the individual does not have MR/DD or has issued the RR-MR/DD determinations that the individual needs or does not need:
- (i) The level of service available in a NF; and
- (ii) Specialized services for MR/DD.
- (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. Such individuals shall not be considered to have completed the RR process until ODMH has either determined the individual does not have SMI or has issued the RR-SMI determinations and ODMR/DD has either determined the individual does not have MR/DD or has issued the RR-MR/DD determinations.

(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 JFS 03622 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 timely submit to ODMH and/or ODMR/DD the JFS 03622, documentation supporting the JFS 03622, as well as documentation of the individual's current condition and evidence of the individual's need for services at the NF level 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. Such documentation must include a "Patient Care and Plan of Treatment" form (JFS 03697), or an alternative form approved by ODJFS:
- (i) If an individual who is subject to RR/ID has indications of MR/DD and/or SMI and is discharged to an ICF-MR or a non-institutional setting from the NF after submission of the RR/ID request but prior to receipt of the RR/ID, RR-MR/DD and/or RR/SMI determinations, and/or prior to the due date of the request, the NF must notify ODMR/DD and/or ODMH, as appropriate, and withdraw the RR/ID request.
- (ii) PASRR/SMI and/or PASRR-MR/DD evaluations cannot be completed retrospectively. ODMH and ODMR/DD are prohibited from making retroactive PASRR determinations.
- (iii) If an individual is to be transferred to another Ohio NF after submission of the RR/ID request but prior to receipt of the RR/ID, RR-MR/DD and/or RR/SMI determinations, the sending NF must notify ODMR/DD and/or ODMH of the transfer. Such notice must be written and must be provided to ODMR/DD and/or ODMH not later than the day the individual is transferred. The sending NF must provide sufficient contact information to enable the completion of the RR process. At or prior to the time the individual is transferred, the sending NF must also provide the receiving NF with copies of all PASRR-related documents pertaining to the the individual and written notice of the individual's current status with regard to PASRR. If known, such notice must include contact information for the RR evaluator assigned by ODMH and/or ODMR/DD. The receiving NF must not accept the individual as a NF transfer unless it receives this information at or prior to the time the individual is admitted to the receiving NF. If the transferring individual is medicaid eligible at

the time of the transfer, the sending NF must also provide written notice of the transfer and the current PASRR status of the individual to ODJFS or its designee. Such notice must be provided not later than the date on which the individual is transferred.

(c) ODMH and/or ODMR/DD may request any additional information required in order to make an RR/ID determination. If ODMH and/or ODMR/DD require additional information in order to make the RR/ID determination, the agency requiring the missing or additional information shall provide written notice to the NF, the individual, and the individual's representative, if applicable. This notice shall specify the missing forms, data elements and/or other documentation that are needed in order to make the required determinations. The NF, in cooperation with the individual or individual's authorized representative, must, to the greatest extent possible, provide the information necessary to complete the RR/ID. In the event the NF is unable to obtain the requested information, it must notify the requesting agency and provide the reason the information was unobtainable.

(d) ODMH and/or ODMR/DD shall report the outcome of the RR/ID to the individual or other entity that initiated the review, and under the circumstances described in paragraph (D)(6)(b)(iii) of this rule, to the NF in which the individual resides at the time the determination is made. If applicable, the notice shall indicate the agency to which the individual was referred for further evaluation.

(e) 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 evidence 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 (1997) 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 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, if applicable, his or her legal representative;
 - (ii) The NF in which the individual is a resident;
 - (iii) The individual's attending physician;
 - (iv) ODJFS; and
 - (v) For individuals who are seeking or have been receiving medicaid coverage of their current NF stays and who receive adverse determinations, the appropriate county department of job and family services.
- (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 (1997), 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), dated October 1, 2002.

(G) Medicaid vendor payment.

(1) Medicaid vendor payment is not available for the provision of specialized services for SMI and/or MR/DD. Federal financial participation is not available for specialized services provided to NF residents as NF services.

(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) All individuals, regardless of payment source, who are subject to RR/SMI and/or RR-MR/DD and who do not meet the retention criteria set forth in paragraph (F) of this rule must be discharged from the NF and relocated to an appropriate setting. 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, the CDJFS shall initiate procedures to terminate medicaid vendor payment upon receipt of the notice of the adverse RR/SMI or RR-MR/DD determination and shall provide written notice to the NF, the individual and, if applicable, the individual's representative. Under no circumstances shall medicaid vendor payment be available for 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 JFS 03622 form by ODMH or ODMR/DD or the

date the RR/ID determination was made if the individual had no indications of MR/DD or SMI, or the date on which ODMH and/or ODMR/DD made the RR-SMI and/or RR-MR/DD determinations, whichever is earlier.

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