

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 which prohibits nursing facilities from retaining individuals with serious mental illness (SMI) (as defined in paragraph (B)(32) of rule 5101:3-3-14 of the Administrative Code) or mental retardation and/or other developmental disabilities (MRDD) (as defined in paragraph (B)(16) of rule 5101:3-3-14 of the Administrative Code) unless a thorough evaluation indicates that such placement is appropriate and adequate services are provided.

(B) Resident review identification (RR/ID) is required for all individuals who meet any of the following criteria:

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

(2) The individual's admission is a NF transfer, as defined in paragraph (B)(19) of rule 5101:3-3-14 of the Administrative Code, or a NF readmission as defined in paragraph (B)(25) of rule 5101:3-3-14 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, or was readmitted to the same NF directly following a hospital stay for psychiatric treatment, and since the last PASRR determination, has experienced a significant change in condition as defined in paragraph (B)(33) of rule 5101:3-3-14 of the Administrative Code; or

(4) The individual has experienced a significant change in condition as defined in paragraph (B)(33) of rule 5101:3-3-14 of the Administrative Code; or

(5) The individual received a categorical PAS-SMI or PAS-MRDD determination as defined in paragraph (B)(3) of rule 5101:3-3-14 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

(6) The individual received an RR determination for a specified period of time as established by the Ohio department of developmental disabilities (DODD) and/or Ohio department of mental health (ODMH) and has since been found to require a stay in a NF exceeding the specified period of time.

(C) RR/ID requirements:

(1) The NF shall initiate a resident review:

- (a) For those individuals specified in paragraph (B)(1) of this rule, as soon as (and no later than the twenty-ninth day from the date of admission) the NF has reason to believe the individual may need to remain in a NF for thirty days or more.
 - (b) For those individuals specified in paragraph (B)(2) of this rule, as soon as the NF finds that no PASRR records are available from the previous NF placement.
 - (c) For those individuals specified in paragraphs (B)(3) and (B)(4) of this rule, as soon as the NF has reason to believe a significant change may have occurred. The completed RR/ID request for an individual with indications of MRDD or SMI must be submitted to DODD and/or ODMH within seventy-two hours following identification of the significant change.
 - (d) For those individuals specified in paragraph (B)(5) of this rule, 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 but no later than the date of the expiration of the categorical determination. If the individual has indications of MRDD and/or SMI, the completed RR/ID request must be submitted to DODD and/or ODMH no later than the expiration date of the categorical determination.
 - (e) For those individuals specified in paragraph (B)(6) of this rule, at least 30 days prior to the expiration of the determination.
- (2) The NF shall initiate the RR/ID via the completion of a PASRR Identification Screen form (JFS 03622) (rev. 11/09) and is responsible for ensuring that necessary documentation for all individuals subject to RR/ID is submitted timely.
- (3) The NF shall review the completed JFS 03622 form to ensure it is completed accurately and to determine whether the individual has indications of SMI and/or MRDD (as defined in paragraphs (B)(3)(a) and (B)(3)(b) of rule 5101:3-3-15.1 of the Administrative Code).
- (a) Individuals determined to have indications of SMI shall be subject to further review by the ODMH in accordance with rule 5122-21-03 of the Administrative Code.
 - (b) Individuals determined to have indications of MRDD shall be subject to further review by the DODD in accordance with rule 5123:2-14-01 of the Administrative Code.
 - (c) Individuals determined to have indications of both SMI and MRDD shall

be subject to further review by both ODMH and DODD in accordance with this rule and rules 5122-21-03 and 5123:2-14-01 of the Administrative Code.

(d) Individuals determined to have no indications of SMI and/or MRDD are not subject to further RR review.

(4) Routing of completed JFS 03622 and supporting documentation:

(a) For individuals determined to have no indications of either MRDD 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 either or both SMI and MRDD, the NF shall timely submit to ODMH and DODD the JFS 03622 form, 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. If medicaid is the payer, such documentation must also include the JFS 03697, 'level of care assessment' form (rev. 4/03).

(c) For individuals determined to have indications of MRDD and/or SMI, the NF is responsible for the accurate and timely submission of the RR/ID request to DODD and/or ODMH in accordance with the provisions of this rule.

(5) If the individual is subject to RR/SMI and/or RR-MRDD 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 DODD.

(6) If an individual who is subject to RR/ID has indications of MRDD and/or SMI and is discharged from the NF after submission of the RR/ID request but prior to the determination, and/or prior to the due date for the request, the NF will notify DODD and/or ODMH.

(7) 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/MRDD and/or RR/SMI determinations:

(a) The sending NF must notify DODD and/or ODMH of the transfer. Such notice must be written and must be provided to DODD 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.

(b) 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 individual and written notice of the individual's current status with regard to PASRR. If known, the notice must include contact information for the RR evaluator assigned by ODMH and/or DODD.

(c) 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.

(d) 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 no later than the date on which the individual is transferred.

(8) NFs that, 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.

(9) 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. The NF is ultimately responsible to ensure that the RR/ID is completed and the determination is on file.

(10) Individuals who have indications of SMI or MRDD shall not be considered to have completed the RR process until ODMH and/or DODD have issued the RR/SMI and/or RR/MRDD determinations.

(11) The NF shall maintain the results of the RR/ID in the individual's resident record at the facility.

(D) RR/SMI and RR/MRDD determination requirements:

(1) No individual with SMI or MRDD 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 5123:2-14-01 of the Administrative Code, that:

(a) The individual needs the level of services provided by a NF; or

(b) 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 following receipt of information pertaining to service alternatives to nursing facility placement.

- (2) ODMH and/or DODD may approve a determination that the level of services provided by a NF are needed to best meet the individual's needs long term and for an unspecified period of time.
- (3) ODMH and/or DODD may approve a determination that the level of services provided by a NF are needed short term and for a specified period of time in order to meet the individual's needs.
- (a) ODMH and/or DODD may approve such a determination for no more than one hundred eighty days.
- (b) ODMH and/or DODD shall not issue an extension to the initial determination without ODJFS approval. Extensions shall not exceed ninety days.
- (c) In conjunction with local entities, the NF shall initiate and continue discharge planning activities throughout the period of time specified on the determination notice.
- (d) In order to receive consideration for an extension to the initial determination, the NF shall initiate an RR/ID at last thirty days prior to the expiration of the determination. A request for an extension shall include documentation of discharge planning activities.
- (4) 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.
- (5) RR-MR/DD is required for all individuals who were determined by DODD during the RR/ID in accordance with this rule and rule 5123:2-14-01 of the Administrative Code, to have MRDD.
- (6) Individuals with both SMI and MRDD are subject to both RR/SMI and RR-MRDD.
- (7) ODMH and/or DODD are prohibited from utilizing criteria relating to the need for NF care or specialized services that are inconsistent with the 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 DODD must use criteria consistent with Chapter 5101:3-3 of the Administrative Code in making their determinations regarding whether individuals with SMI and/or MRDD need the level of services provided by a NF.
- (8) Any individual twenty-two years of age or older, who has previously been determined by DODD to be ruled out from PAS as defined in paragraph

(B)(31) of rule 5101:3-3-14 of the Administrative Code are not subject to further review.

(9) An RR determination is not a level of care determination. Individuals seeking medicaid payment for the NF stay shall meet the level of care requirements in accordance with division 5101:3 of the Administrative Code.

(E) RR/ID, RR/SMI, and RR/MRDD requests for additional information:

(1) ODMH and/or DODD may request any additional information required in order to make an RR determination.

(2) If ODMH and/or DODD require additional information in order to make the RR determination they 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 to make the required determinations.

(3) In the event the individual and/or other entity does not provide the necessary information within fourteen calendar days, the agency that requested the information shall provide written notice to the individual, the individual's representative, if applicable, and the NF that a continued stay at the NF is prohibited due to failure to provide information necessary for the completion of the RR process and that the individual may appeal the determination in accordance with the provisions of division 5101:6 of the Administrative Code.

(F) RR/ID, RR/SMI, and RR/MRDD notification:

(1) In accordance with all requirements specified in rule 5101:6-2-32 of the Administrative Code, ODMH and/or DODD shall provide written notification of all RR/SMI and/or RR-MRDD 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.

(iv) In the case of an adverse determination and an approval which is issued for a specified period of time ODJFS and the medicaid managed care plan as defined in rule 5101:3-3-14 of the Administrative Code and the CDJFS, when applicable.

(b) Such written notice shall include all of the following components:

- (i) The determination as to whether and when applicable, for how long 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 MRDD;
 - (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).
- (2) Upon receipt of the written notice of an adverse determination, the NF shall provide the individual with notice of the intent to discharge. When an expiration date is specified in the written notice, the NF shall provide the individual with notice of the intent to discharge at least thirty days prior to the expiration date. All individuals, regardless of payment source, who are subject to RR/SMI and/or RR/MRDD and who do not meet the retention criteria set forth in paragraph (D)(1) of this rule must be discharged from the NF and relocated to an appropriate setting in accordance with Chapter 3721. of the Revised Code.
- (3) The NF shall retain the written notification of the RR/SMI and/or RR-MRDD determinations received from ODMH and/or DODD in the individual's resident record at the facility and shall maintain a written record of discharge planning activities.

(G) Medicaid payment for services

- (1) Medicaid payment is not available for the provision of specialized services for SMI and/or MRDD.
- (2) Medicaid payment is available for the provision of NF services to medicaid-eligible individuals subject to RR/SMI and/or RR-MRDD only when the individual has met the criteria for retention set forth in paragraph (D)(1) of this rule.
- (3) For medicaid eligible individuals, medicaid payment is available through the time period specified in the notice or during the period an appeal is in progress.
- (4) When a RR/ID is not initiated by the NF within the timeframes specified in paragraph (C)(1) of this rule, but is performed at a later date, medicaid payment is not available for services furnished to the eligible individual from the date the RR/ID was due through the earlier of:
 - (a) If the individual had indications of MRDD or SMI the seventh calendar

day following the receipt of the JFS 03622 form by ODMH or DODD;
or

(b) If the individual had no indications of MRDD or SMI, the date the RR/ID determination was made;

(H) Adverse determinations may be appealed in accordance with division 5101:6 of the Administrative Code.

(I) ODJFS has authority to assure compliance with the provisions of this rule. NF's, local administrators, hospitals and all state agencies and their designees shall comply, with accuracy and timeliness, to all requests for records and compliance plans issued by ODJFS or its designees.

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