

5122-21-03

Pre-admission screening and resident review for nursing facility and passport waiver applicants and residents with serious mental illness.

(A) This rule applies to individuals seeking admission to a nursing facility who have indications of serious mental illness, individuals seeking enrollment in the PASSPORT home and community-based services waiver care program (defined in Chapter 5101:3-31 of the Administrative Code) who have indications of serious mental illness, residents of nursing facilities who have indications of serious mental illness, or individuals acting on the behalf of these applicants or residents. Individuals subject to the requirements of this rule are referred to the department in accordance with rules ~~5101:3-3-151~~ 5101:3-3-15.1 and ~~5101:3-3-152~~ 5101:3-3-15.2 of the Administrative Code.

(B) Definitions

(1) "Adverse Determination" means a determination made in accordance with this rule that an individual does not require the level of services provided by a nursing facility or that an individual does or does not require specialized services for serious mental illness. An adverse decision regarding an individual's need for the level of services provided by a nursing facility must meet both of the following conditions:

(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;

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

(2) "CDJFS" means the county department of job and family services, the county agency which supervises the state of Ohio's medicaid program.

~~(2)~~(3) "Dementia". 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 (DSM-III-R), revised in 1987" (or the most recent edition); or

- (b) The individual has a secondary diagnosis of a dementia, including Alzheimer's disease or a related disorder, as described in the DSM-III-R (or the most recent edition) and a primary diagnosis which is not a major mental disorder specified in paragraph (B)(12) of this rule.

~~(3)~~(4) "Department" means the Ohio department of mental health.

~~(4)~~(5) "Indications of serious mental illness." An individual shall be considered to have indications of serious mental illness if the individual meets at least two of the three criteria specified in paragraph (B)(12) of this rule or, due to a mental impairment, receives supplemental security income authorized under Title XVI of the Social Security Act dated January 1, 2003, as amended, or social security disability insurance authorized under Title II of the Social Security Act dated January 1, 2003.

~~(5)~~(6) "Long Term Resident" means an individual who has continuously resided in a nursing facility or a consecutive series of nursing facilities and/or medicare skilled nursing facilities for at least thirty months prior to the first resident review (RR)(defined in rule ~~5101:3-3-152~~ 5101:3-3-15.2 of the Administrative Code) determination in which the resident is found not to require the level of services provided by a nursing facility and to require specialized services. The thirty months may include temporary absences for hospitalization or therapeutic leave as defined in 5101:3-3-59 of the Administrative Code ~~as defined in rule 5101:3-3-03 of the Administrative Code~~.

~~(6)~~(7) "MR/DD" means mental retardation and/or other developmental disabilities or related condition as these are defined in rule ~~5101:3-3-151~~ 5101:3-3-15.1 of the Administrative Code.

~~(7)~~(8) "Nursing Facility (NF)" means a facility ~~or a distinct part of a facility~~ as defined in rule 5101:3-3-15.1 ~~section 5111.20~~ of the Administrative Revised Code.

(9) "ODJFS" or "JFS" means the Ohio department of job and family services, the state agency which administers the state of Ohio's medicaid program.

(10) "ODMR/DD" means the Ohio department of mental retardation and developmental disabilities, the state agency which administers the state of Ohio's services for people who have mental retardation and/or other developmental disability.

(11) "PAA" means PASSPORT administrative agency, the local agency designated

to implement universal preadmission screening and medicaid level of care authorization.

~~(8)~~(12) "Pre-admission Screening (PAS)" means the pre-admission screening portion of the pre-admission screening and resident review (PASRR) requirements mandated by section 1919(e)(7) of the Social Security Act, as amended, which must be met prior to admission to a NF or enrollment in the PASSPORT home and community-based services waiver care ~~care~~ program (defined in Chapter 5101:3-31 of the Administrative Code), and are implemented in accordance with the provisions of this rule and rules ~~5101:3-3-151~~ 5101:3-3-15.1 and 5123:2-14-01 of the Administrative Code.

~~(9)~~(13) "PAS/SMI" means pre-admission screening for serious mental illness and is the process ~~process~~ by which the department determines, whether, due to the individual's physical and mental condition, an individual who is subject to PAS and who has a serious mental illness, requires the level of services provided by a NF or another type of facility; and if the level of services provided by a NF are needed, whether the individual requires specialized services for serious mental illness.

~~(10)~~(14) "Resident review (RR)" means the resident review portion of the pre-admission screening and resident review (PASRR) requirements mandated by section 1919(e)(7) of the Social Security Act, as amended, which are implemented in accordance with the provisions of this rule and rules ~~5101:3-3-152~~ 5101:3-3-15.2 and 5123:2-14-01 of the Administrative Code.

~~(11)~~(15) "RR/SMI" means resident review for serious mental illness and is the process by which the department determines whether, due to the individual's physical and mental condition, an individual who is subject to RR and who has serious mental illness requires the level of services provided by a nursing facility or another type of facility; and whether that individual requires specialized services for serious mental illness.

~~(12)~~(16) "Serious mental illness (SMI)". An individual is considered to have serious mental illness 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)(2) of this rule but has a major mental disorder diagnosable under the DSM-III-R (or most recent edition) and this mental disorder is one of the following: 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 (or most recent edition), including alcohol and/or substance abuse.

- (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 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 the intervention by housing or law enforcement officials.

~~(13)~~(17) "Specialized services for serious mental illness" means those services which are provided in an inpatient psychiatric hospital certified by, licensed by, or operated by, the Ohio department of mental health and ~~—when combined with the types of services available in NPs, result in the continuous and aggressive implementation of an individualized plan of care approved by the department's medical director or a designee that:~~

- (a) Are ~~Is~~ developed and supervised by an interdisciplinary team which includes a physician, trained mental health professionals and, as appropriate, other professionals;
- (b) Prescribe ~~Prescribes~~ specific therapies and treatment activities for an individual who is experiencing an acute episode of serious mental illness which necessitates supervision by trained mental health personnel; and
- (c) Are ~~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.

(C) Review and determination process

(1) Required determinations:

(a) If an individual referred to the department for PAS is determined to have SMI, the department shall determine whether the individual requires the level of services provided in a NF and, if so, whether the individual requires specialized services for SMI.

(b) If an individual referred to the department for RR is determined to have SMI, the department shall determine whether the individual requires the level of services provided in a NF and whether the individual requires specialized services for SMI.

(2) PASRR determinations shall be based on an independent physical and mental evaluation performed by an individual who is not a civil service employee of the department and who does not have a direct or indirect affiliation with a NF. The evaluation may use relevant evaluative data, obtained prior to initiation of the pre-admission screening or resident review, if the data are considered valid accurate and reflect the current functional status of the individual. However, in the case of individualized ~~evaluations~~ determinations, to supplement and verify the currency and accuracy of existing data, the ~~pasrr~~ PASRR evaluator and/or the department may need to gather additional information to assess proper placement and treatment.

(3) Participation by individual and family: PASRR evaluations must involve the individual being evaluated, the individual's legal guardian if one has been designated under state law, and the individual's family, if available and if the individual or the legal guardian agrees to family participation.

(4) Adaptation to culture, language, and ethnic origin: PASRR evaluations must be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated.

(5) Data for individualized determinations:

(a) In the case of individualized evaluations, the PASRR evaluator shall gather information that is necessary for determining whether it is appropriate for the individual with SMI to be placed in a NF or in

another appropriate setting throughout all applicable portions of the evaluation.

- (b) In the case of individualized evaluations, the PASRR evaluator must evaluate and the department must determine in accordance with criteria set forth in 5101:3-3-06 of the Administrative Code whether the NF is the most appropriate setting taking into account:
- (i) The individual's total needs and whether they can best be met in a more appropriate community setting;
 - (ii) If institutional care is appropriate, the most appropriate institutional setting for meeting those needs such as a NF, a ~~hebs~~ Home and Community-based Services (HCBS) waiver, intermediate care facility for the mentally retarded, intermediate care facility, general hospital, hospital operated by the department, or hospital licensed by the department according to section 5119.20 of the Revised Code; and
 - (iii) The relationship of the individual's physical and mental needs, taking into account the severity of each condition and relative priority of each.
- (c) In order to evaluate and determine the need for the level of services provided in a NF, the data shall include:
- (i) Evaluation of physical status;
 - (ii) Evaluation of mental status;
 - (iii) Functional assessment.
- (d) In order to evaluate and determine the need for specialized services for serious mental illness, the data shall include:
- (i) A comprehensive history and physical examination. The following areas must be included (if not previously addressed):
 - (a) Complete medical history;
 - (b) Review of all body systems;

- (c) Specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, cognitive impairment and abnormal reflexes; and
 - (d) In the case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists as requested by the department.
- (ii) A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness;
 - (iii) A psychosocial evaluation of the person, including current living arrangements and medical and support systems;
 - (iv) A comprehensive psychiatric evaluation, which may be performed by a mental health professional who meets the PASRR mental health evaluator professional criteria specified in paragraph (D)(2) of this rule, including a complete psychiatric history, evaluation of general intellectual functioning, memory functioning, orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia degree of reality testing (presence and content of delusions) and hallucinations;
 - (v) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that the individual meets intermediate level of care; NF placement is required; and
 - (vi) The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.
- (6) The evaluation may be terminated if the PASRR evaluator or the department

finds at any time during the evaluation that the individual being evaluated does not have SMI.

- (7) The PASRR evaluator shall interpret and explain the findings of the evaluation to the individual and, where applicable, to a legal guardian.
- (8) For those individuals who will be relocating from outside of Ohio, who are not Ohio residents, and are known to have indications of 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 this rule.
- (9) If ODMH or its designee require additional information in order to make the PAS/ID and/or PAS-SMI determinations, the department 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 denial of the admission, enrollment, or continued stay because a determination could not be made without the requested information;
 - (e) In the event the individual and/or submitter does not provide the necessary information with 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

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;

(f) If the individual or other entity submits the requested information within the timeframes specified in the notice, ODMH shall continue with the PAS process.

(D) Personnel requirements

- (1) The history and physical examination shall be performed by a registered nurse, an individual registered by the state medical board as a physician assistant under Chapter 4730. of the Revised Code, or by a physician. If not performed by a physician, then a physician must review and concur with the conclusions.
- (2) PASRR evaluators shall meet the provider qualifications of the pre-hospitalization screening standard specified in rule ~~5122-23-08~~ 5122-29-10 (C) (1) of the Administrative Code.

(E) Evaluation reports

- (1) In the case of individualized evaluations, the PASRR evaluator shall issue findings in the form of a written evaluative report which:
 - (a) Identifies the name and professional title of the person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;
 - (b) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;
 - (c) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including any mental health services which are of a lesser intensity than specialized services;
 - (d) If specialized services are not recommended, identifies any mental health services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs;

- (e) If specialized services are recommended, identifies the specific mental health services required to meet the evaluated individual's needs; ~~and~~
 - (f) Includes the bases for the report's conclusions.
- (2) A copy of the individualized evaluation report shall be sent to:
- (a) The department;
 - (b) The evaluated individual and, where applicable, his/her legal guardian;
 - (c) The individual's attending physician;
 - (d) The admitting or retaining NF for inclusion in the individual's medical record; and
 - (e) The discharging hospital if the individual is seeking NF admission from a hospital.
- (3) In the case of categorical determinations, the department shall issue findings in the form of a written report which:
- (a) Identifies the name and professional title of the person(s) applying the categorical determination(s) and the date on which the application was made;
 - (b) Explains the categorical determination(s) that has (have) been made and, if only one of the two required determinations can be made categorically, describes the nature of any further screening which is required;
 - (c) Identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and
 - (d) Includes the basis for the report's conclusions.

(F) Determinations.

Based on the information submitted, the department shall do all of the following:

- (1) Determine whether the individual meets the criteria for serious mental illness in accordance with paragraph (B)(12) of this rule.
- (2) Determine whether the individual requires the level of services provided by a NF based on a comprehensive analysis of all data, consideration of the most appropriate placement for meeting the individual's needs in the least restrictive environment or an environment such that the individual's needs for treatment do not exceed the level of services which can be delivered in the NF. ~~through NF services alone or, where necessary, through NF services supplemented with specialized services provided or arranged by the department, and in accordance with the requirements specified in Chapter 5101:3-3 of the Administrative Code.~~

(a) Individualized determinations.

Unless categorically determined to require the level of services provided by a NF, all determinations regarding whether an individual requires the level of services of a NF shall be based on an individualized evaluation conducted in accordance with paragraph (C) of this rule.

(b) Categorical determinations.

- (i) A categorical determination that an individual requires the level of services provided by a NF may be made based upon the data submitted to the department at the time NF admission application is made when:

(a) The individual is being admitted for up to fourteen days for respite for the caregiver and plans to return to the care of the caregiver at the end of the NF stay; or

(b) The individual is being admitted pending further assessment in emergency situations requiring protective services with placement not to exceed seven days.

- (ii) In the event that the individual's stay exceeds the time specified, the admitting NF shall notify the department and a resident review shall be completed ~~within nine working days after notification.~~

- (3) If required by paragraph (C)(1) of this rule, determine whether there is a need for specialized services for serious mental illness.

- (a) An individual shall be considered to be in need of specialized services for serious mental illness if ~~if~~ he or she:
- (i) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
 - (ii) Represents a substantial risk of physical harm to others as manifested by evidence of threats of, or attempts at homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
 - (iii) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that he/she is unable to provide for and is not providing for his/her basic needs because of his/her mental illness and that appropriate provision for such needs cannot be made immediately available in the community;
 - (iv) Would benefit from treatment in an inpatient setting for his/her mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or self; or
 - (v) Is experiencing an acute episode of mental illness which can reasonably be expected to respond to time limited treatment that is directed toward diagnosing and reducing the individual's behavioral symptoms, improving his or her level of independent functioning, and, achieving a functional level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.
- (b) Unless categorically determined to not require specialized services for SMI, all determinations of the need for specialized services for SMI shall be individualized and based on the data requirements specified in paragraph (C) of this rule.~~Individualized determinations.~~
- ~~(i) Unless categorically determined to not require specialized services for SMI, all determinations of the need for specialized services for SMI shall be individualized and based on the data requirements specified in paragraph (C) of this rule.~~

~~(ii) If a determination is made to admit or allow to remain in a NF an individual who requires specialized services for SMI, the services shall be provided or arranged by the department while the individual resides in the NF.~~

(c) Categorical determinations

A categorical determination that specialized services for SMI are not needed may be made when:

(i) The data submitted indicates that the individual requires the level of services provided by a NF and is being admitted for up to fourteen days for respite for the caregiver and plans to return to the caregiver at the end of the NF stay; or

(ii) The data submitted indicates that the individual requires the level of services provided by a NF for a condition other than SMI, and is being admitted pending further assessment in emergency situations requiring protective services with placement not to exceed seven days.

(4) Identify placement options. The placement options are as follows:

(a) Can be admitted to a NF. Any applicant for admission to a NF who has SMI and who is determined to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, may be admitted to a NF.

(b) Cannot be admitted to a NF. Any applicant for admission to a NF who has SMI and who is determined not to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, is inappropriate for NF placement and must not be admitted.

(c) Can be considered appropriate for continued placement in a NF. Any NF resident with SMI who is determined to require the level of services provided by a NF in accordance with paragraph (F)(2)(a) of this rule can continue to reside in the NF.

(d) May choose to remain in the NF even though the placement would otherwise be inappropriate. Any long-term resident with SMI who is determined not to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, but to require specialized

services may choose to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting licensed or certified by the Ohio department of mental health. ~~Wherever the resident chooses to reside, the department must meet his/her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.~~

(e) Cannot be considered appropriate for continued placement in a NF and must be discharged. Any NF resident with SMI who is determined not to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, but to require specialized services for SMI, and who is not a long-term resident, must be discharged in accordance with 42 CFR 483.12(a) to an appropriate setting where the department, through the mental health services board responsible for the individual's mental health services in the state of Ohio, must provide, make referral for, or arrange for specialized services for SMI. The determination notice shall ~~must~~ provide information on ~~how, when, and by whom the resident will be advised of discharge arrangements and of his/her~~ appeal rights under ~~both PASRR and discharge~~ provisions.

(f) Cannot be considered appropriate for continued placement in a NF and must be discharged. Any NF resident with SMI who is determined not to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, and not to require specialized services for SMI, regardless of his or her length of stay, must be discharged in accordance with 42 CFR 483.12(a). The determination notice shall ~~must~~ provide information concerning ~~on~~ how, when, and by whom the various placement options available to the resident will be fully explained to the individual ~~the resident will be advised of discharge arrangements and of his/her appeal rights under both PASRR and discharge provisions.~~ If it is determined that a NF resident must be discharged, discharge options and appeal rights are included.

(5) Coordinate the determination(s) with the department of mental retardation/developmental disabilities, if the individual is also subject to PASRR due to mental retardation/developmental disability.

(G) Notification

The department shall notify, in writing, all persons specified in paragraph (E)(2) of this rule and ODJFS and CDJFS for the county in which the individual is residing

at the time of PAS-ID of the following:

- (1) The determination as to whether the individual requires the level of services provided by a NF;
- (2) The determination as to whether the individual requires specialized services for SMI;
- (3) The placement and/or service options that are available to the individual consistent with these determinations; and
- (4) Discharge arrangements, if applicable; and
- (5) The right to appeal as outlined in paragraph (H) of this rule.

(H) Appeals

- (1) The individual or his or her authorized representative may appeal adverse determinations made by the department within ninety calendar days of the date of determination by filing an appeal with the ~~department of human services~~ ODJFS ~~on~~ in accordance with division-level 5101:6 of the Administrative Code.
- (2) The department ~~shall~~ may conduct an informal reconsideration of the case when notified of the appeal or at the request of the individual or authorized representative consisting of a reexamination of the documentation including any additional information submitted after the date of the determination describing the physical and mental condition of the individual at the time of the determination.
- (3) If the individual is subject to pre-admission screening or resident review due to both SMI and MR/DD, the informal reconsideration and appeal shall be conducted jointly with the department of mental retardation/developmental disabilities.

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