

5160-3-15.2 **Resident review requirements for individuals residing in nursing facilities.**

(A) The purpose of this rule is to set forth resident review requirements in compliance with section 1919(e)(7) of the Social Security Act, as in effect on July 1, 2019, which prohibits nursing facilities (NF) from retaining individuals with serious mental illness (SMI) as defined in rule 5160-3-15 of the Administrative Code and/or developmental disabilities (DD) as defined in rule 5160-3-15 of the Administrative Code unless a thorough evaluation indicates that such placement is appropriate and adequate services are provided. A resident review will be completed whenever an individual experiences a significant change in condition as defined in rule 5160-3-15 of the Ohio Administrative Code and that change has a material impact on their functioning as it relates to their mental illness or developmental disability status.

(B) Resident review requirements.

(1) No individual with SMI or DD can be retained as a resident in a nursing facility (NF), regardless of payment source, unless it has been determined in accordance with rules 5122-21-03 and 5123:14-01 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 resident review determination that established that the individual does not require the level of services provided by a NF, and

(i) requires specialized services only; and

(ii) the individual has chosen to remain in a NF after being informed of service alternatives to NF placement.

(2) The NF will initiate and submit a resident review via the electronic system designated by ODM.

(3) The NF will include supporting documentation of the individual's current condition, including evidence of the individual's need for services in a NF, when submitting the resident review.

(4) The NF is responsible for the accurate and timely submission of the resident review request to the Ohio department of developmental disabilities (DODD) and/or Ohio department of mental health and addiction services (OhioMHAS) and for ensuring that a copy of the resident review determination is maintained in the resident's file in accordance with the provisions of this rule.

(C) Resident review will be completed for an individual who meets any of the following criteria:

- (1) The individual was admitted under the hospital discharge exemption as defined in rule 5160-3-15 of the Administrative Code, and has since been found to require more than thirty days of services at the NF. The resident review will be submitted no later than the twenty-ninth day from the date of admission; or
- (2) The individual had been in a NF and was admitted directly into a different NF following an intervening hospital stay for psychiatric treatment, or was readmitted to the same NF directly following a hospital stay for psychiatric treatment. A resident review for a significant change in condition will be submitted within twenty-four hours of the individual's NF admission to a different NF or readmission to the same NF; or
- (3) The individual has experienced a significant change in condition as defined in rule 5160-3-15 of the Administrative Code. The resident review will be submitted within seventy-two hours following identification of the significant change; or
- (4) The individual was admitted as a result of a negative level I preadmission screening and there is subsequent evidence of possible, but previously unrecognized or unreported, SMI and/or DD; or
- (5) The individual received a categorical determination as defined in rule 5160-3-15 of the Administrative Code, and has since been found to need a stay in a NF that will exceed the specified time limit for that category. Unless the individual meets the criteria for a resident review extension described in paragraph (F) of this rule, the resident review has to be submitted 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 expiration date of the categorical determination; or
- (6) The individual received a resident review determination for a specified period of time as established by DODD or OhioMHAS and has since been found to need a stay in a NF exceeding the specified period of time. The resident review will be submitted at least thirty days prior to the expiration of the determination.

(D) Resident review outcomes.

- (1) Individuals determined to have no indications of SMI or DD are not subject to further resident review.

- (2) Individuals determined to have indications of SMI or DD will be subject to further resident review by the OhioMHAS or DODD in accordance with rules 5122-21-03 and 5123-14-01 of the Administrative Code.
- (3) Individuals determined to have indications of both SMI and DD will not be considered to have completed the resident review process until both OhioMHAS and DODD have issued the resident review determinations.
- (4) If an individual who is subject to a resident review has indications of SMI or DD and is discharged from the NF after submission of the resident review request, but prior to the determination, or prior to the due date for the request, the NF will notify OhioMHAS and/or DODD.
- (5) Individuals previously determined by OhioMHAS and/or DODD to be ruled out from preadmission screening in accordance with rules 5122-21-03 and 5123-14-01 of the Administrative Code are not subject to further review.

(E) Resident review placement determinations.

- (1) OhioMHAS and DODD may approve a determination that the level of services provided by the NF will meet the individual's long term needs and for an unspecified period of time.
- (2) OhioMHAS and DODD may approve a determination that the level of services provided by a NF will meet the individual's short term needs and for a specified period of time.
 - (a) OhioMHAS and DODD may approve such a determination for no more than one hundred eighty days.
 - (b) Unless a resident review extension is requested and granted in accordance with paragraph (F) of this rule, the NF will initiate a resident review in accordance with paragraph (C)(4) of this rule when the individual stay exceeds the specified period of time.
 - (c) In conjunction with local entities, the NF will initiate and continue discharge planning activities throughout the period of time specified on the determination notice.

(F) Resident review extension request requirements.

- (1) A resident review determination extension may be requested by the NF on behalf of an individual that received a resident review determination for a specified

- period of time as established by the DODD or OhioMHAS and is believed to need a stay in a NF exceeding the specified period of time.
- (2) The NF will submit the resident review extension request for consideration directly to DODD or OhioMHAS for approval via the electronic system approved by ODM.
- (3) Extension requests and approvals cannot exceed ninety days.
- (4) In order to receive consideration for an extension to the initial determination, the NF will initiate a resident review at least thirty days prior to the expiration of the determination.
- (a) The NF is responsible for the accurate and timely submission of the resident review extension request to DODD or OhioMHAS in accordance with the provisions of this rule.
- (b) Resident review extension requests submitted after the expiration of the individual's determination are in violation of this rule and the NF will be considered out of compliance with PASRR requirements in accordance with this rule from the day after the expiration of specified date stated on the initial resident review until the day the resident review extension is subsequently approved if applicable, by DODD or OhioMHAS.
- (c) DODD and OhioMHAS are expected to notify ODM in writing when instances specified in paragraph (F)(4)(b) of this rule occur.
- (5) The NF will include supporting documentation of the individual's current condition including evidence of the individual's need for services in a NF past the specified period of time established by DODD and/or OhioMHAS when submitting the request for an extension.
- (6) A request for an extension is expected to include documentation of discharge planning activities. The written record of discharge planning activities has to include the alternative settings and services explored and the steps taken to ensure that a safe and orderly discharge occurs.
- (7) DODD and OhioMHAS will keep a record of all resident review extension requests received by NFs and approved or denied by DODD or OhioMHAS.
- (8) DODD and OhioMHAS will submit a resident review extension summary in the form of a list to ODM on a monthly basis with the following information:
- (a) Date extension request was received by DODD or OhioMHAS;

(b) Name of NF;

(c) Name of resident;

(d) Date of original specified resident review;

(e) The number of previous granted extensions and number of days currently being requested by the NF;

(f) Reason for extension; and

(g) Date of approval or denial of extension request.

(9) The NF is expected to maintain a printed copy of the resident review extension approval and all supporting documentation in the resident's record at the NF.

(G) NF to NF transfers:

(1) If an individual is to be transferred to another Ohio NF after submission of the resident review request but prior to receipt of the resident review determination:

(a) The transferring NF will notify the appropriate level II entity of the transfer. Written notice will be provided to the level II entity by the NF no later than the day the individual is transferred. The transferring NF is expected to provide sufficient contact information to enable the completion of the resident review process.

(b) At or prior to the time the individual is transferred, the transferring NF will provide the admitting NF with copies of all PASRR related documents pertaining to the individual and written notice of the individual's current PASRR status. If known, the notice should include contact information for the resident review evaluator assigned by OhioMHAS and DODD.

(c) The admitting NF cannot accept the individual as a NF transfer unless it receives this information at or prior to the time the individual is admitted to the NF.

(d) If the transferring individual is medicaid eligible at the time of the transfer, the transferring NF will also provide written notice of the transfer and the current PASRR status of the individual to ODM or its designee. Such notice will be provided no later than the date on which the individual is transferred.

(H) Resident review requests for additional information:

- (1) OhioMHAS and DODD may request additional information necessary to make a resident review determination.
- (2) If OhioMHAS or DODD request additional information to make the resident review determination, the agency will provide written notice to the NF, the individual, and the individual's representative, if applicable. This notice will specify the missing forms, data elements and other documentation needed to make the required determinations.
- (3) In the event the individual or other entity does not provide the necessary information within fourteen calendar days, the agency that requested the information will provide written notice to the individual, the individual's representative, if applicable, and the NF that a continued stay in the NF is not permitted due to failure to provide information necessary for the completion of the resident review process and the individual may appeal the determination in accordance with the provisions of division 5101:6 of the Administrative Code.

(I) Resident review notification:

- (1) In accordance with rule 5101:6-2-32 of the Administrative Code, the appropriate level II entity will provide written notification of all resident review determinations made.
 - (a) Such written notice will be provided to:
 - (i) The evaluated individual and his or her legal representative;
 - (ii) The NF in which the individual is a resident;
 - (iii) The individual's attending physician;
 - (iv) The individual's medicaid managed care plan, if applicable, as defined in rule 5160-26-01 of the Administrative Code.
 - (b) Such written notice has to include all of the following components:
 - (i) The determination as to whether and, when applicable, the estimated length of time 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 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).
- (2) Upon receipt of the written notice of an adverse determination, the NF will provide the individual with notice of the intent to discharge. When an expiration date is specified in the written notice, the NF will provide the individual with notice of the intent to discharge at least thirty days prior to the expiration date.
- (3) All individuals who are subject to a resident review and who do not meet the retention criteria set forth in paragraph (B)(1) of this rule will be discharged from the NF and relocated to an appropriate setting in accordance with section 3721.16 of the Revised Code.
- (4) The NF will maintain a written record of discharge planning activities which will include the alternative settings and services explored and the steps taken to ensure that a safe and orderly discharge occurs.
- (5) The NF will retain the written notification of the resident review determinations received from OhioMHAS and DODD in the resident's record at the facility.

(J) Medicaid payment for services.

- (1) Medicaid payment is available for the provision of NF services to medicaid-eligible individuals subject to resident review only when the individual has met the criteria for retention set forth in paragraph (B)(1) of this rule.
- (2) A resident review determination is not a level of care determination. Individuals seeking medicaid payment for the NF stay will meet the level of care requirements in accordance with Chapter 5160-3 of the Administrative Code.
- (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 resident review is not initiated by the NF within the timeframes specified in paragraph (C) 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 resident review was due through the date in which the resident review determination was received by the NF.

(K) Resident review compliance.

- (1) NFs who fail to initiate a resident review or request a resident review extension pursuant to this rule are in violation of their medicaid provider agreements. This is true regardless of the payment source for the individual's NF stay.
- (2) Adverse PASRR determinations may be appealed in accordance with division 5101:6 of the Administrative Code.
- (3) Level II resident review determinations made by OhioMHAS or DODD in accordance with section 1919(e)(7) of the Social Security Act, as in effect July 1, 2019 cannot be overturned by ODM or Ohio department of health. Only appeals determinations made in accordance with division 5101:6 of the Administrative Code may overturn an adverse PASRR determination.
- (4) If the individual is subject to resident review and there is no record of the determination in the medical record and no indication that they are in progress, the NF will notify OhioMHAS and/or DODD.
- (5) OhioMHAS and DODD will utilize criteria relating to the need for NF care or specialized services that is consistent with section 1919(e)(7) of the Social Security Act, as in effect July 1, 2019, and the ODM approved state plan for medicaid, including criteria consistent with Chapter 5160-3 of the Administrative Code, in making their determinations whether individuals with SMI and/or DD meet the level of services provided by a NF.
- (6) ODM has authority to ensure compliance with the provisions of this rule, including but not limited to the following:
 - (a) Official notice to the NF of PASRR noncompliance;
 - (b) Development of a compliance corrective action plan;
 - (c) Mandatory PASRR training;
 - (d) NF site visits;
 - (e) Recoupment of funds for number of days PASRR requirements were not met for the resident in accordance with 42 C.F.R. 483.122.

Replaces: 5160-3-15.2
Effective: 12/30/2019
Five Year Review (FYR) Dates: 12/30/2024

CERTIFIED ELECTRONICALLY

Certification

12/09/2019

Date

Promulgated Under: 119.03
Statutory Authority: 5164.02
Rule Amplifies: 5164.02, 5119.40
Prior Effective Dates: 05/01/1993, 01/01/1998, 12/01/2009, 03/01/2015