

TO BE RESCINDED

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 (RR) requirements in compliance with section 1919(e)(7) of the Social Security Act, as in effect on January 1, 2014, which prohibits nursing facilities from retaining individuals with serious mental illness (SMI) as defined in rule 5160-3-15 of the Administrative Code or mental retardation and/or other developmental disabilities (MRDD) hereafter referred to as 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.
- (B) Resident review identification (RR/ID) is required for an individual who meets any of the following criteria:
- (1) The individual was admitted under the exemption from the preadmission screening identification (PAS/ID) provision set forth in rule 5160-3-15.1 of the Administrative Code, and has since been found to require more than thirty days of services at the nursing facility; or
 - (2) The individual's admission is a nursing facility transfer as defined in rule 5160-3-15 of the Administrative Code, or a nursing facility readmission as defined in rule 5160-3-15 of the Administrative Code and there are no preadmission screening and resident review (PASRR) records available from the previous nursing facility placement; or
 - (3) The individual had been in a nursing facility and was admitted directly into a different nursing facility following an intervening hospital stay for psychiatric treatment, or was readmitted to the same nursing facility directly following a hospital stay for psychiatric treatment, and since the last PASRR determination, has experienced a significant change in condition as defined in rule 5160-3-15 of the Administrative Code; or
 - (4) The individual has experienced a significant change in condition as defined in rule 5160-3-15 of the Administrative Code; or
 - (5) The individual received a categorical preadmission screening serious mental illness (PAS/SMI) or preadmission screening developmental disability (PAS/DD) determination as defined in rule 5160-3-15 of the Administrative Code, and has since been found to require a stay in a nursing facility that will exceed the specified time limit for that category; or

- (6) The individual received a resident review determination for a specified period of time as established by the Ohio department of developmental disabilities (DODD) and/or Ohio department of mental health and addiction services (OhioMHAS) and has since been found to require a stay in a nursing facility exceeding the specified period of time.

(C) Resident review identification (RR/ID) requirements:

- (1) The nursing facility shall initiate a resident review by completing and submitting the Ohio department of medicaid (ODM) 03622 "Preadmission Screening/Resident Review (PAS/RR) Identification Screen" (rev. 8/2014) or by completing and submitting the RR/ID via the electronic system approved by ODM. The submitter shall include supporting documentation with the ODM 03622 or within the electronic system in order to validate the answers on the ODM 03622.
 - (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 nursing facility has reason to believe the individual may need to remain in a nursing facility for thirty days or more.
 - (b) For those individuals specified in paragraph (B)(2) of this rule, as soon as the nursing facility finds that no PASRR records are available from the previous nursing facility placement.
 - (c) For those individuals specified in paragraphs (B)(3) and (B)(4) of this rule, as soon as the nursing facility has reason to believe a significant change may have occurred. The completed RR/ID request for an individual with indications of DD or SMI must be submitted to DODD and/or OhioMHAS 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 nursing facility has reason to believe the individual may need to remain in a nursing facility 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 DD and/or SMI, the completed RR/ID request must be submitted to DODD and/or OhioMHAS no later than the expiration date of the categorical determination.
 - (e) For those individuals specified in paragraph (B)(6) of this rule, at least thirty days prior to the expiration of the determination.

- (2) The nursing facility shall review the completed ODM 03622 or RR/ID completed via the ODM-approved electronic system to ensure it is completed accurately and to determine whether the individual has indications of SMI and/or DD as defined in rule 5160-3-15 of the Administrative Code.
- (a) Individuals determined to have indications of SMI shall be subject to further resident review (RR/SMI) by the OhioMHAS in accordance with rule 5122-21-03 of the Administrative Code.
 - (b) Individuals determined to have indications of DD shall be subject to further resident review (RR/DD) 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 DD shall be subject to further resident review by both OhioMHAS 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 DD are not subject to further resident review.
- (3) Routing of a completed ODM 03622 and supporting documentation:
- (a) For individuals determined to have no indications of either DD or SMI, the nursing facility shall maintain the ODM 03622 and all supporting evidence in the resident's record at the facility. When using the ODM approved electronic system to complete the RR/ID, all related documentation must be printed and maintained in the resident's record at the facility.
 - (b) For individuals determined to have indications of SMI and/or DD, the nursing facility shall timely submit to OhioMHAS and/or DODD, as appropriate, the ODM 03622, supporting documentation, and documentation of the individual's current condition including evidence of the individual's need for services in a nursing facility. The nursing facility may submit this documentation using the electronic system approved by ODM. If medicaid is the payer, documentation must also include the ODM-approved level of care assessment.
 - (c) For individuals determined to have indications of DD and/or SMI, the nursing facility is responsible for the accurate and timely submission of the RR/ID request to DODD and/or OhioMHAS in accordance with the provisions of this rule.

- (4) If the individual is subject to RR/SMI and/or RR/DD and there is no record of the determinations in the medical record and/or no indication that they are in progress, the nursing facility shall notify OhioMHAS and/or DODD.
- (5) If an individual who is subject to RR/ID has indications of DD and/or SMI and is discharged from the nursing facility after submission of the RR/ID request but prior to the determination, and/or prior to the due date for the request, the nursing facility will notify DODD and/or OhioMHAS.
- (6) If an individual is to be transferred to another Ohio nursing facility after submission of the RR/ID request but prior to receipt of the RR/ID, RR/DD and/or RR/SMI determinations:
 - (a) The sending nursing facility must notify DODD and/or OhioMHAS of the transfer. Such notice must be written and must be provided to DODD and/or OhioMHAS not later than the day the individual is transferred. The sending nursing facility 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 nursing facility must also provide the receiving nursing facility 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 OhioMHAS and/or DODD.
 - (c) The receiving nursing facility must not accept the individual as a nursing facility transfer unless it receives this information at or prior to the time the individual is admitted to the receiving nursing facility.
 - (d) If the transferring individual is medicaid eligible at the time of the transfer, the sending nursing facility must also provide written notice of the transfer and the current PASRR status of the individual to ODM or its designee. Such notice must be provided no later than the date on which the individual is transferred.
- (7) A nursing facility that, intentionally or otherwise, accepts any readmission or nursing facility transfer, or retains as a resident any individual in violation of this rule is in violation of its medicaid provider agreement. This is true regardless of the payment source for the individual's nursing facility stay.
- (8) If it is determined that the nursing facility failed to initiate the RR/ID in accordance with this rule, an RR/ID may be initiated by the individual or by any state

agency or their designee responsible for PASRR or by another entity on behalf of the individual. The nursing facility is ultimately responsible to ensure that the RR/ID is completed and the determination is on file.

- (9) Individuals who have indications of SMI or DD shall not be considered to have completed the resident review process until OhioMHAS and/or DODD have issued the RR/SMI and/or RR/DD determinations.
- (10) The nursing facility shall maintain the ODM 03622, all supporting documentation and results of the RR/ID in the resident's record at the facility. When using the ODM-approved electronic system to complete the RR/ID, this documentation must be printed and maintained in the resident's record at the facility.

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

- (1) No individual with SMI or DD shall be retained as a resident in a nursing facility, 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 nursing facility; or
 - (b) The individual had resided in a nursing facility 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 nursing facility and requires specialized services only; and the individual has chosen to remain in a nursing facility following receipt of information pertaining to service alternatives to nursing facility placement.
- (2) OhioMHAS and/or DODD may approve a determination that the level of services provided by a nursing facility are needed to best meet the individual's needs long term and for an unspecified period of time.
- (3) OhioMHAS and/or DODD may approve a determination that the level of services provided by a nursing facility are needed to best meet the individual's needs short term and for a specified period of time.
 - (a) OhioMHAS and/or DODD may approve such a determination for no more than one hundred eighty days.
 - (b) OhioMHAS and/or DODD shall not issue an extension to the initial determination without ODM approval. Extensions shall not exceed ninety days.

- (c) In conjunction with local entities, the nursing facility 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 nursing facility shall initiate an RR/ID at least thirty days prior to the expiration of the determination. A request for an extension shall include documentation of discharge planning activities. The written record of discharge planning activities shall include the alternative settings and services explored and the steps taken to ensure that a safe and orderly discharge occurs.
- (4) RR/SMI is required for all individuals who were determined by OhioMHAS during the RR/ID, in accordance with this rule and rule 5122-21-03 of the Administrative Code, to have SMI.
 - (5) RR/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 DD.
 - (6) Individuals with both SMI and DD are subject to both RR/SMI and RR/DD.
 - (7) OhioMHAS and/or DODD are prohibited from utilizing criteria relating to the need for nursing facility care or specialized services that are inconsistent with the statute and the ODM approved state plan for medicaid. The approved state plan for medicaid includes level of care criteria, contained in Chapter 5160-3 of the Administrative Code. Therefore, OhioMHAS and DODD must use criteria consistent with Chapter 5160-3 of the Administrative Code in making their determinations regarding whether individuals with SMI and/or DD need the level of services provided by a nursing facility.
 - (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 rule 5160-3-15 of the Administrative Code is not subject to further review.
 - (9) An RR determination is not a level of care determination. Individuals seeking medicaid payment for the nursing facility stay shall meet the level of care requirements in accordance with Chapter 5160-3 of the Administrative Code.
- (E) RR/ID, RR/SMI, and RR/DD requests for additional information:
- (1) OhioMHAS and/or DODD may request additional information necessary to make a resident review determination.

- (2) If OhioMHAS and/or DODD requires additional information to make the resident review determination the agency shall provide written notice to the nursing facility, the individual, and the individual's representative, if applicable. This notice shall specify the missing forms, data elements and/or other documentation 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 nursing facility that a continued stay in the nursing facility is prohibited 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.

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

- (1) In accordance with all requirements specified in rule 5101:6-2-32 of the Administrative Code, OhioMHAS and/or DODD shall provide written notification of all RR/SMI and/or RRDD determinations made.
 - (a) Such written notice shall be provided to:
 - (i) The evaluated individual and his or her legal representative;
 - (ii) The nursing facility in which the individual is a resident;
 - (iii) The individual's attending physician;
 - (iv) ODM, the individual's medicaid managed care plan as defined in rule 5160-26-01 of the Administrative Code and the CDJFS, as applicable, when an adverse determination or an approval for a specified period of time is issued.
 - (b) Such written notice shall 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 nursing facility;
 - (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 nursing facility shall provide the individual with notice of the intent to discharge. When an expiration date is specified in the written notice, the nursing facility 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/DD and who do not meet the retention criteria set forth in paragraph (D)(1) of this rule must be discharged from the nursing facility and relocated to an appropriate setting in accordance with section 3721.16 of the Revised Code. The nursing facility shall maintain a written record of discharge planning activities which shall include the alternative settings and services explored and the steps taken to ensure that a safe and orderly discharge occurs.
- (3) The nursing facility shall retain the written notification of the RR/SMI and/or RR/DD determinations received from OhioMHAS and/or DODD in the resident's record at the facility.

(G) Medicaid payment for services

- (1) Medicaid payment is not available for the provision of specialized services for SMI and/or DD.
- (2) Medicaid payment is available for the provision of nursing facility services to medicaid-eligible individuals subject to RR/SMI and/or RR/DD 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 nursing facility 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 DD or SMI, the seventh calendar day following the receipt of the ODM 03622 or RR/ID submitted via the ODM approved electronic system by OhioMHAS or DODD; or

- (b) If the individual had no indications of DD or SMI, the date the RR/ID determination was made;
- (H) Adverse resident review determinations may be appealed in accordance with division 5101:6 of the Administrative Code.
- (I) ODM has authority to ensure compliance with the provisions of this rule. Nursing facilities, 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 ODM or its designees.

Effective:

Five Year Review (FYR) Dates: 10/1/2019

Certification

Date

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