

LEGAL NOTICE
STATE OF OHIODEPARTMENT OF JOB AND FAMILY SERVICES
COLUMBUS, OHIO

Date: 2/2/2004

Place: 1865

Time: 10:00 a.m.

Pursuant to Sections 5111.02 and Chapter 119. of the Ohio Revised Code, the Director of the Department of Job and Family Services gives notice of the Department's intent to rescind rules 5101:3-3-151 and 5101:3-3-152, and adopt rules 5101:3-3-15.1 and 5101:3-3-15.2 of the Ohio Administrative Code on a permanent basis and to conduct a public hearing thereon.

Rule 5101:3-3-151 Preadmission screening (PAS) requirements for individuals seeking admission to nursing facilities and/or passport waived services is proposed for rescission.

Rule 5101:3-3-15.1 Preadmission screening (PAS) requirements for individuals seeking admission to nursing facilities (NF) and/or PASSPORT home and community-based services (hcbs) Waiver enrollment is proposed for adoption. This rule sets forth the PAS requirements which must be met prior to any new admission to a NF or enrollment on the PASSPORT HCBS waiver. NFs and the PASSPORT waiver are prohibited from accepting any new admission regardless of payment source, unless the requirements specified in the rule are met. Many of the changes from the prior version of this rule were primarily made to improve clarity, to put the definitions in alphabetical order, and to clarify the respective responsibilities of the NFs, ODJFS or its designee, ODMH, and ODMR/DD and do not represent changes in policy or procedures.

However, we have made the following significant changes to PASRR policy and procedures in this rule. First, the definition of an inpatient psychiatric stay was revised to exclude a stay in a part of a hospital that is licensed by ODMH. It now includes only admissions to psychiatric hospitals operated by ODMH or freestanding psychiatric hospitals licensed by ODMH under section 5119.20 of the Revised Code. This was done because psychiatric hospitals are considered to be institutions for mental diseases (IMD) by contrast psychiatric units that are parts of hospitals are not considered IMDs. Individuals between the ages of twenty-two and sixty-four lose their Medicaid eligibility when they are admitted to IMDs and must be discharged if they were residing in a NF at the time of the admission to the IMD. If the individual then returns to a NF following discharge from the IMD, it is considered to be a new admission. If the individual received care in a psychiatric unit of a hospital that is not an IMD, the return to a NF setting is considered to be a readmission.

Individuals coming from inpatient psychiatric stays will no longer eligible for the convalescent stay exemption from PAS. Individuals age 22-64 must undergo Preadmission Screening (PAS) before they can go to a NF following an inpatient stay in a psychiatric hospital if they were never in a NF or if they were discharged from a NF while in the psychiatric hospital. This does not include stays in psychiatric units of other hospitals. Nor does it apply to individuals who were former NF residents who filed timely appeals

of the termination of their Medicaid benefits following admission to an institution for mental diseases (IMD) and whose appeals are still pending. All others with inpatient psychiatric stays will now be subject to Resident Review (RR).

The definition of current diagnoses was changed to include diagnoses made by licensed health care professional other than physicians, whose scope of practice includes diagnosis and to exclude those diagnoses which do not impact the individuals current health and functional abilities. The requirement that the diagnosis be made within one year prior to the PAS was replaced with a requirement that the documentation of the diagnosis be made within ninety calendar days prior to the submission of the PASRR-ID.

The definition of Physician was changed to include physician's assistants and nurse practitioners.

Individuals moving directly from the PASSPORT waiver to a NF, or vice versa, will be considered to be transfers rather than new admissions. They will no longer be required to undergo PAS prior to such transfers.

The current rules do not specifically address how non-residents of Ohio would be processed. The proposed rule specifies that non-residents coming to Ohio who have SMI and/or MR/DD must undergo the PAS level two evaluations in the sending state and submit the evaluation report with Ohio's PAS-ID screen and a completed JFS 03697 form. Such individuals cannot be admitted to an Ohio NF or the PASSPORT waiver prior to receipt of Ohio's PAS-SMI and/or PAS-MR/DD yes NF determinations. This change implements current practice.

Facilities that have submitted applications to ODJFS for Medicaid provider status will be treated as NFs for PASRR purposes. Once the facility submits the application all new residents must meet the PAS requirements prior to admission and all existing residents must meet the PAS requirements prior to the approval of the provider agreement. This change is being made in order to codify the timelines for compliance when a nursing home becomes a NF and to allow the increased number of PASRR determinations to be made over a period of time. The current rule is silent regarding the timing of PASRR for transitioning facilities.

A provision was added to enable state authorities to request missing information that is needed to make PASRR determinations, allowing the individual or NF twenty-five days to respond, and enabling the state authorities to prohibit NF admission or PASSPORT enrollment and put closure on the interaction when they fail to submit the required information. This provision mirrors the time lines in the level of care rule, 5101:3-3-15; except that rather than allow a five day extension to the twenty day response deadline, this will allow twenty-five days to respond and no extensions. The agency that needs the information and finds it was not submitted will request it, track the response time lines, and issue the denial notice and hearing rights when it is not received by the deadline.

A PAS determination that the individual has no indications of SMI or MR/DD or that the individuals needs the level of services available in a NF will expire on the thirtieth day following the date of the determination

if the individual is not admitted to a NF or enrolled on the PASSPORT waiver within that time. If such placement is still desired following the expiration, the individual will need to undergo a new PAS.

Rule 5101:3-3-152 Resident review (RR) requirements for individuals residing in nursing facilities (NF) is proposed for rescission.

Rule 5101:3-3-15.2 Resident review (RR) requirements for individuals residing in nursing facilities (NF) is proposed for adoption. This rule sets forth the requirements which must be met in order to comply with Section 1919 (e)(7) of the Social Security Act. NFs are prohibited from retaining any individual regardless of payment source who has SMI or MR/DD unless the RR requirements of this rule have been met. Most of the revisions to this rule were to add clarity or to codify existing procedures and to put the definitions in alphabetical order. In addition, the following substantive policy and/or procedure changes are included in the new rule:

The reference to rule 5101:3-3-40 of the Administrative Code has been removed from the definition of significant change of condition because of the timelines were in conflict with those for the PASRR process and for clarity.

Individuals with indications of SMI who return to a NF setting following a psychiatric hospitalization that are not subject to PAS will now have to submit the RR no later than the date of transfer or readmission. If such individuals transfer again prior to the determination being made, the sending NF must notify the receiving NF of the PASRR status of the individual and notify the MH and/or MR/DD authority of the individual's new location.

A public hearing on these rules will be held on February 2, 2004 at 10:00 a.m. in room 1865 of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio. Either written or verbal testimony on the rules will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the hearing will be treated as testimony.

A copy of the proposed rules is available for review in each county department of job of family services, at <http://jfs.ohio.gov/ols/pubhearings/> and at <http://www.registerofohio.state.oh.us> Requests for a copy of the rules or comments on them should be submitted by mail to Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at legal@odjfs.state.oh.us. Written comments may be reviewed at the department at the address listed above.