

## TO BE RESCINDED

5123:2-14-01      **Preadmission screening and resident review for PASSPORT waiver applicants and nursing facility (NF) applicants and residents with mental retardation or developmental disabilities (MR/DD).**

## (A) Purpose

The purpose of this rule is to describe the preadmission screening (PAS) process for nursing facility (NF) and passport waiver applicants (as defined in Chapter 5101:3-31 of the Administrative Code) with indicators of MR/DD (PAS-MR/DD) and the resident review (RR) process for NF residents. Individuals with indications of MR/DD are referred to the department by the Ohio department of human services or its designee pursuant to rules 5101:3-3-151 and 5101:3-3-152 of the Administrative Code.

## (B) Definitions

- (1) "Active treatment" means a continuous treatment program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that are directed toward the following:
  - (a) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and
  - (b) The prevention or deceleration of regression or loss of current optimal functional status.
- (2) "Adverse determination" means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the "Social Security Act," as amended, that an individual does not require the level of services provided by a NF or that the individual does or does not require specialized services.
- (3) As used in this rule, a "county board of mental retardation and developmental disabilities," hereinafter referred to as "county board," includes:
  - (a) A county board operating independently;
  - (b) A regional council of government formed under Chapter 167. of the Revised Code when it includes at least one county board;

- (c) A private corporation that contracts with a county board to complete the PASRR evaluations.
- (4) "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 related disorder, as described in the "Diagnostic and Statistical Manual of Mental Disorders," third edition, revised in 1987 (or the most recent edition) (DSM-III-R); or
  - (b) The individual has a secondary diagnosis of a dementia, including Alzheimer's disease or related disorder, as described in the DSM-III-R, and a primary diagnosis which is not a major mental disorder specified in paragraph (B)(16)(a) of rule 5101:3-3-151 of the Administrative Code.
- (5) "Department" means the Ohio department of mental retardation and developmental disabilities.
- (6) "Long-term resident" means an individual who has continuously resided in a NF or a consecutive series of NFs and/or medicare skilled nursing facilities for at least thirty months prior to the first RR determination in which the individual was found not to require the level of services provided by a NF, and to require specialized services. The thirty months may include temporary absences for hospitalization or therapeutic leave as defined in rule 5101:3-3-59 of the Administrative Code.
- (7) "Mental retardation or other developmental disabilities (MR/DD)." An individual is considered to have mental retardation and/or a developmental disability if he or she has:
- (a) A level of retardation (mild, moderate, severe or profound) as described in the "American Association of Mental Retardation's Manual on Classification in Mental Retardation (1983)"; or
  - (b) A related condition as defined in paragraph (B)(11) of this rule.
- (8) "Nursing facility (NF)" means a facility or a distinct part of a facility as defined in section 5111.20 of the Revised Code.

- (9) "Preadmission screening for mental retardation/developmental disabilities (PAS-MR/DD)" is the process by which the county board recommends and the department determines whether, due to the individual's physical and mental condition, an individual who has MR/DD, seeking NF admission or PASSPORT enrollment, requires the level of services provided by a NF or another type of facility; and, if NF services are needed, whether the individual requires specialized services for MR/DD.
- (10) "Qualified MR/DD personnel" mean individuals employed by the county board or a contract agency holding a certification or registration under rules promulgated by the department or habilitation staff employed by a facility licensed or certified under rules of the department.
- (11) "Related condition" means a severe, chronic disability that meets all of the following conditions:
- (a) It is attributable to:
    - (i) Cerebral palsy or epilepsy; or
    - (ii) Any other condition other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for those persons;
  - (b) It is manifested before the person reaches the age of twenty-two;
  - (c) It is likely to continue indefinitely;
  - (d) It results in substantial functional limitations in three or more of the following areas of major life activity:
    - (i) Self-care;
    - (ii) Understanding and use of language;
    - (iii) Learning;
    - (iv) Mobility;

- (v) Self-direction;
- (vi) Capacity for independent living; and
- (vii) Economic self-sufficiency.

Individuals who have a developmental disability as defined in section 5123.01 of the Revised Code are considered to have a related condition.

- (12) "Resident review (RR)" and "resident review for mental retardation/developmental disabilities (RR-MR/DD)" means the resident review portion of the preadmission screening and resident review (PASRR) requirements for residents already in NFs as mandated by section 1919(e)(7)(B) of the "Social Security Act." (See rule 5101:3-3-152 of the Administrative Code.)
- (13) "Serious mental illness (SMI)." An individual is considered to have SMI 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)(4) of this rule), but has a major mental disorder diagnosable under the "Diagnostic and Statistical Manual of Mental Disorders," third edition, revised in 1987 (DSM-III-R) (or the most recent edition); and this mental disorder is one of the following: a 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 the most recent edition).
  - (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 intervention by housing or law enforcement officials.
- (14) "Specialized services for mental retardation/developmental disability" mean the services specified by the PASRR determination and provided or arranged for by the county board/department which are integrated with services provided by the NF or other service providers to result in continuous active treatment. Specialized services shall be made available at the intensity and frequency necessary to meet the needs of the individual.

#### (C) Procedure

The county board/department shall be responsible for specifying and requesting any information necessary to make a PASRR-MR/DD determination. The department shall not delegate the determination or the evaluation to a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

##### (1) Notification of PASRR-MR/DD review

- (a) The PASRR evaluation must be adapted to the cultural background, ethnic origin, and means of communication used by the individual being evaluated.
- (b) The department, in conjunction with the county board, shall involve in the PASRR evaluation process the individual, the individual's legal representative, and the individual's family if available and if the individual or the individual's legal representative agrees to said participation.

##### (2) Data collection

The department, in conjunction with the county board, shall collect data and complete the evaluation of all PASRR-MR/DD data as identified in paragraphs (C)(2)(a) to (C)(2)(c) of this rule. The county board shall complete the data and evaluation and submit to the department. For PAS, the data and evaluation must be submitted to the department within five working days of the PAS. For RRS, the data and evaluation must be submitted within nine working days.

(a) NF need assessment

The county board shall recommend whether or not an individual with MR/DD requires NF services. The department shall determine whether or not an individual with MR/DD requires NF services. The department shall make its NF determination based on an evaluation of the written documentation which covers the following information:

- (i) Physical history and examination, including a review of all body systems;
- (ii) Nursing care needs; and
- (iii) Functional status.

(b) MR/DD assessment

The individual's first PASRR data collection and evaluation shall include the following:

- (i) Intellectual functioning measurement of the individual with MR/DD or related condition as identified by a licensed psychologist.
- (ii) The individual's substantial functional limitations in major life areas shall be assessed through the completion of the eligibility determination for MR/DD pursuant to section 5123.01 of the Revised Code. The evaluation must reflect current functioning in the following seven life areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is age sixteen or older and not in a program operated pursuant to Chapter 3323. of the Revised Code, capacity for economic self-sufficiency.

(c) Specialized services need assessment

The county board shall recommend whether or not the individual has a specialized services need for MR/DD services. The department shall determine if the individual has a specialized services need for MR/DD. The determination will be based on an evaluation of the written documentation, which includes a comprehensive history and physical examination, which will permit the reviewer to assess the individual's situation. The collected information may include, but is not limited to,

the following:

- (i) Medical problems and their impact on the individual's independent functioning.
- (ii) Current medications and current responses by the individual to any prescribed medication in the following drug groups:
  - (a) Hypnotics;
  - (b) Antipsychotics (neuroleptics);
  - (c) Mood stabilizers and antidepressants;
  - (d) Antianxiety sedative agents; and
  - (e) Antiparkinson agents.
- (iii) The individual's ability to self-monitor health and nutritional status.
- (iv) The individual's skills in self-administering and scheduling of medical treatments.
- (v) The individual's self-help skills.
- (vi) The individual's sensorimotor development.
- (vii) The individual's speech and language development.
- (viii) The individual's social development.
- (ix) The individual's academic/educational development, including functional learning skills.
- (x) The individual's capacity for independent living development.
- (xi) The individual's vocational development.
- (xii) The individual's affective development.

(xiii) Presence of maladaptive or inappropriate behaviors.

- (d) The county board evaluators may utilize data obtained prior to the initiation of the preadmission screening (PAS) or resident review (RR-MR/DD), if the data is considered valid, accurate and reflective of the current functional status of the individual. The county board evaluators shall issue findings in the form of a written evaluative report which identifies the individual(s) making the determination; identifies the individual(s) performing the assessment; if NF services are recommended, recommends specialized services and/or to the extent possible services of lesser intensity provided by the NF to meet the individual's needs; if NF services are not recommended, includes the bases for the report's conclusions. The department may request additional information in order to make a determination.

### (3) Determinations

The determination of the need for NF and specialized services is interrelated and based on a comprehensive analysis of all data concerning the individual. Determination shall be made by the department based on the information submitted by the county board in the PASRR-MR/DD.

- (a) Determine whether the individual has MR or other DD

The county board/department shall determine if the individual has MR/DD in accordance with paragraphs (B)(7) or (B)(11) of this rule and section 5123.01 of the Revised Code.

- (b) Determine whether there is a NF need

- (i) Individualized determination

As a result of the individualized determination, the county board shall recommend, subject to the department's approval, 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 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 or arranged by the county board/department, and in accordance with the requirements specified in Chapter 5101:3-3 of the Administrative Code.

(ii) Categorical determination

A categorical determination that NF services are needed may be made when:

- (a) The individual 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
- (b) The individual is being admitted pending further assessment in emergency situations requiring protective services with placement not to exceed seven days.
- (c) In the event that the individual's stay exceeds the time specified, then an RR shall be completed within nine working days after the end of the specified period.

(c) Determine whether there is a need for specialized services

- (i) As a result of an individualized determination, the county board shall recommend, subject to the department's approval, whether or not the individual requires specialized services. The determination for specialized services shall be made for individuals whose needs are such that continuous supervision, treatment and training by qualified MR/DD personnel are necessary to address needs in each of the life areas in which functional limitations have been identified. The specialized services program must be of measurable benefit to the individual.
- (ii) A categorical determination that specialized services are not needed may be made when:
  - (a) An individual with MR/DD has a diagnosis of dementia; or
  - (b) The individual is being admitted for up to fourteen days for respite and plans to return to the care provider; or
  - (c) The individual is being admitted pending further assessment in emergency situations requiring protective services with placement in the NF not to exceed seven days.

(d) The county board shall identify placement options and ensure that they are fully explained to the individual and legal representative. The placement options are as follows:

(i) Can be admitted to a NF

Any applicant for admission to a NF who has MR/DD and who is determined to require the level of services provided by a NF in accordance with paragraphs (C)(3)(b) to (C)(3)(c) of this rule may be admitted to a NF.

(ii) Cannot be admitted to a NF

Any applicant for admission to a NF who has MR/DD and who does not require the level of services provided by a NF in accordance with paragraphs (C)(3)(b) to (C)(3)(c) of this rule is inappropriate for NF placement and must not be admitted.

(iii) Can be considered appropriate for continued placement in a NF

Any NF resident with MR/DD who is determined to require the level of services provided by a NF in accordance with paragraphs (C)(3)(b) to (C)(3)(c) of this rule, regardless of the length of the resident's stay, can continue to reside in the NF.

(iv) May choose to remain in the NF even though the placement would otherwise be inappropriate

Any long-term NF resident with MR/DD who is determined not to require the level of services provided by a NF in accordance with paragraphs (C)(3)(b) to (C)(3)(c) of this rule, but does require specialized services, may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the county board must meet the resident's specialized services needs. The department shall ensure specialized services needs are met.

(v) Cannot be considered appropriate for continued placement in a NF and must be discharged

Any NF resident with MR/DD who is determined not to require the level of services provided by a NF in accordance with

paragraphs (C)(3)(b) to (C)(3)(c) of this rule, but does require specialized services for MR/DD, and who is not a long-term resident must be discharged in accordance with 42 C.F.R. 483.12(a) to an appropriate setting where the county board must provide specialized services for MR/DD. The county board, in conjunction with the NF, shall arrange for a safe and orderly discharge.

- (vi) Cannot be considered appropriate for continued placement in a NF and must be discharged

Any NF resident with MR/DD who is determined not to require the level of services of a NF in accordance with paragraphs (C)(3)(b) to (C)(3)(c) of this rule and does not require specialized services for MR/DD, regardless of the resident's length of stay, must be discharged in accordance with 42 C.F.R. 483.12(a).

- (e) The department shall document all determinations in the individual's file and maintain the file at the department.
- (f) The department shall ensure that a copy of the evaluator's report is included in the notice of determination.

#### (4) Notice of determinations

The department shall notify, in writing, the following entities of the outcome of the determination, including discharge arrangements, placement options, and the right to appeal, as outlined in paragraph (D) of this rule:

- (a) The individual evaluated and the individual's legal representative;
- (b) The admitting or retaining NF;
- (c) The individual's attending physician; and
- (d) If applicable, the discharging hospital, unless the individual is exempt from preadmission screening.

- (5) If the individual is also subject to PASRR/SMI, as defined in rule 5122-21-03 of the Administrative Code, the department shall coordinate its determinations with the Ohio department of mental health, ensuring interdisciplinary cooperation.

- (6) Where parts of the PASRR-MR/DD evaluation are performed by more than one evaluator, the department shall ensure interdisciplinary coordination.

(D) Appeal process

- (1) The individual or the individual's authorized representative may appeal adverse determinations made by the department within ninety calendar days of the date of the action by filing an appeal with the Ohio department of human services in accordance with Chapter 5101:6 of the Administrative Code.
- (2) The department shall conduct an informal reconsideration of the case when notified of the appeal or at the request of the individual or guardian.
- (3) If the individual is subject to both PASRR-MR/DD and PASRR/SMI, the informal reconsideration and appeal shall be conducted jointly.
- (4) The county board shall participate in the appeal process and shall attend all PASRR state hearings.

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CERTIFIED ELECTRONICALLY

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Certification

10/05/2009

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Date

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