

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PROPOSED

PUBLIC NOTICE

Nursing Facility Services – Preadmission Screening and Resident Review

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding administration of the Medicaid Preadmission Screening and Resident Review (PASRR), specifically, *Categorical Determinations and Specialized Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 2, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding administration of the Medicaid Preadmission Screening and Resident Review (PASRR), specifically, *Categorical Determinations and Specialized Services*.

Statutory Authority

- 1919(e)(7), *State Requirements for Preadmission Screening and Resident Review*
- 42 CFR 483 Subpart C, *Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals*

Background

Preadmission Screening and Resident Review (PASRR), a provision at section 1919(e)(7) of the Social Security Act, is a federally mandated screening process for individuals with serious mental illness and/or individuals with intellectual disability/developmental disability, who apply or reside in Medicaid certified beds in a nursing home regardless of payor. The screening helps ensure individuals in need of long term care services reside in the most appropriate and least restrictive setting possible, are not inappropriately placed in nursing homes, and receive services they need in that setting. Additionally, if a need for specialized services is determined, federal guidelines require that such services must be provided.

The PASRR process specified in 42 CFR §§ 483.100 through 483.138 requires that 1) all applicants to a Medicaid-certified nursing facility, which includes children under age 21 years, be evaluated for mental illness and/or intellectual disability; 2) be offered the most appropriate setting for their needs (in the community, a nursing facility, or acute care settings); and 3) receive the services they need in those settings.

As a process, PASRR has two core components. Level I and Level II:

Level I PASRR Screen

In brief, the PASRR process requires that all applicants to Medicaid-certified Nursing Facilities be given a preliminary assessment to determine whether they *might* have mental illness or intellectual disability/developmental disability. This is called a "Level I PASRR screen."

Level II PASRR Screen

Those individuals who test positive at Level I are then evaluated in depth, called "Level II PASRR screen." The results of this evaluation result in a determination of need, determination of appropriate setting, and a set of recommendations for services to inform the individual's plan of care.

Categorical Determinations

Categorical Determinations means the provisions in 42 CFR §483.130 for creating categories that describe certain diagnoses, severity of illness, or the need for a particular service that clearly indicates that admission to a nursing facility

is normally needed or that the provision of specialized services is not normally needed.

Categorical determinations permit states to omit the full Level II evaluation in certain circumstances that are time-limited or where the need for nursing facility services is clear. While categorical determinations do abbreviate the PASRR process, the function of the resulting determination is not different from an individualized determination and a determination document must be produced prior to admission. Categorical determinations are not “exemptions.”

Specialized Services

In accordance with 42 CFR §483.120, Specialized Services for Preadmission Screening and Resident Review means services that are provided in addition to the routine care provided by a nursing facility (NF) that result in the continuous and aggressive implementation of an individualized plan of care for mental illness (MI) or intellectual or developmental disability (IDD) or related conditions, as follows:

(1) For mental illness, specialized services means the services specified by the State which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that—

- (i) Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professionals and, as appropriate, other professionals.
- (ii) Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel; and
- (iii) Is directed toward diagnosing and reducing the resident's behavioral symptoms that necessitated institutionalization, improving his or her 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.

(2) For intellectual or developmental disability, specialized services means the services specified by the State which, combined with services provided by the NF or other service providers, results in treatment which meets the requirements of §483.440(a)(1).

The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or IDD whose needs are such that continuous supervision, treatment and training by qualified mental health or intellectual disability personnel is necessary, as identified by the screening provided in §483.130 or §§483.134 and 483.136.

Summary of Proposal

This state plan amendment is mandated by federal law to ensure that Medicaid-certified nursing facility applicants and residents with mental illness, intellectual or developmental disabilities, or related conditions are identified and admitted or allowed to remain in a nursing facility only if there is a verified need for nursing facility services.

Federal regulation prohibits Medicaid reimbursement to nursing facilities under certain circumstances, such as but not limited to, (1) Individual admitted without a completed preadmission screening and resident review (PASRR) screening indicating appropriateness for nursing facility placement, (2) Nursing facility fails to obtain a Level II determination when there are indicators of mental illness or intellectual disability/developmental disability.

The Division of Medicaid and Medical Assistance (DMMA) will amend the Medicaid State plan and the Division of Social Services Manual to implement the nursing facility preadmission screening and resident review (PASRR) categorical determinations and specialized services definitions. This regulatory process defines the Level II evaluation provided to all individuals suspected of having mental illness or an intellectual developmental disability seeking admission to a Medicaid-certified nursing facility under the PASRR program. This regulatory process also identifies specialized services that will be available when determined to be needed through the PASRR evaluation process.

DMMA will utilize the PASRR state plan template, drafted by the Centers for Medicare and Medicaid Services (CMS), to ensure that the State's Medicaid plan and policies complies with PASRR federal regulations.

The provisions of this state plan amendment relating to Preadmission Screening and Resident Review are subject to approval by CMS.

IMPORTANT NOTE: People first language is respectful of the person and should always be used when referencing an individual with intellectual and other developmental disabilities. Current federal law and regulations use the term “mentally retarded”. DHSS/DMMA prefers to use the accepted term “individuals with intellectual disability” (ID) instead of “mental retardation.” The term “intellectual disability” will be reflected on all applicable amended State plan and policy pages.

Fiscal Impact Statement

There will be a fiscal impact. However, the actual calculation of costs is currently being determined. The projected impact for federal fiscal years 2014 and 2015 will be provided in a future issue of the Delaware *Register of Regulations*.

DMMA PROPOSED REGULATION #14-32a

REVISION:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

<u>Citation</u> 1902(a)(28)(D)(i), 1919(e)(7), 1919(b)(3)(E) of the Act; P.L. 100-203 (Sec. 4211(c)); P.L. 101-508 (Sec. 4801(b))	4.39	<u>Preadmission Screening and Annual Resident Review in Nursing Facilities</u> (a) The Medicaid agency has in effect a written agreement with the State mental health and mental retardation authorities that meet the requirements of 42 CFR 431.621(c). (b) The State operates a preadmission and annual resident review program that meets the requirements of 42 CFR 483.100-138, and <u>Section 1919e)(7)(B)(iii)</u> of the Act. (c) <u>The State identifies Nursing Facility (NF) applicants and residents who are known to, or have indications of possible, serious mental illness, intellectual disability or a related condition, and refers them to the State mental health or intellectual disability authorities for preadmission screening or resident review according to 42 CFR 483.128(a).</u> (e)(d)The State does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

- (~~d~~)(e)With the exception of NF services furnished to certain long-term NF residents defined in 42 CFR 483.118(c)(1), the State does not claim as "medical assistance under the State plan" the cost of NF services to individuals who meet the State's medical necessity criteria for NF, but for whom NF is determined not to be a needed and appropriate setting according to 42 CFR 483.132. Determining appropriate placement considers community and other institutional options.
- (f) The State defines minimum criteria, related to the resident assessment process for significant change in a residents physical or mental condition as required at 1919(b)(3)(E) of the Social Security Act, that require nursing facilities to promptly notify the State mental health or mental retardation authority that a resident review as required at section 1919(e)(7)(B)(iii) may be needed for residents with serious mental illness, intellectual disability or a related condition. The State mental health and intellectual disability authorities assess notifications from nursing facilities and upon determining that a resident review is needed, will promptly perform a PASRR Level II

evaluation and determination.

~~(e)(g)~~ ATTACHMENT 4.39 Page 1 specifies the State's definition of specialized services.

~~(f)(h)~~ The State ~~describes~~ applies any categorical determinations ~~it applies,~~ as specified in ATTACHMENT 4.39-A.

**DMMA PROPOSED REGULATION #14-32b
REVISION:**

Attachment 4.39
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
DEFINITION OF SPECIALIZED SERVICES

Specialized Services for PASRR

As defined in 42 CFR 483.120, Specialized Services for Preadmission Screening and Resident Review (PASRR) means services that are provided to supplement the care provided by a nursing facility under its Medicaid per diem payment that are intended to result in the continuous and aggressive implementation of an individualized plan of care for a nursing facility resident who has a mental illness or intellectual disability or developmental disability.

Mental Illness

For individuals with serious mental illness, defined in 42 CFR 483.102(b)(1), specialized services, as defined in 42 CFR 483.120(a)(1), means the services specified by the State which, combined with services provided by the nursing facility, results in the continuous and aggressive implementation of an individual plan of care that:

- Is developed and supervised by an interdisciplinary team, which includes a physician, qualified mental health professional and, as appropriate, other professionals,
- Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness, which necessitates supervision by trained mental health personnel, and
- Treatment is directed toward stabilization and restoration of the level of functioning that preceded the acute episode.

Specialized Services do not include services that can be routinely managed by a primary care provider.

Intellectual Disability or Developmental Disability and Related Conditions

For individuals with intellectual disability or developmental disability, defined in 42 CFR 483.102(b)(3), specialized services, as defined in 42 CFR 483.120(a)(2), means the services that are specified by the State, which, combined with services provided by the nursing facility and other service providers results in a continuous active treatment which meets the requirements of 42 CFR 483.440(a)(1) and includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services directed toward:

- The acquisition of skills and behaviors necessary for the client to function with as much self-determination and independence as possible, and
- The prevention or deceleration of regression or loss of current optimal functional status

Active treatment does not include services to maintain generally independent clients who are able to function with little or no support in the absence of a continuous active treatment program.

**DMMA PROPOSED REGULATION #14-32c
REVISION:**

Attachment 4.39-A
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
CATEGORICAL DETERMINATIONS

PASRR Level II Preadmission Screening by Categorical Determination

The following categories developed by the State mental health or intellectual/developmental disability authorities and approved by the State Medicaid Agency may be made applicable to individuals identified by PASRR Level I as possibly

having serious mental illness/intellectual/developmental disability /related condition (MI/IDD/RC) when existing data on the individual appear to be current and accurate and are sufficient to allow the reviewer readily to determine that the individual fits the category. The data available includes physical, mental, and functional assessments as required by 42 CFR 483.132(c).

An adequate inspection of records for a categorical determination takes the place of the nursing facility (NF) individualized Level II evaluation and/or the Specialized Services individualized Level II evaluation as indicated below. Categorical evaluation and determination reports as required by 42 CFR 483.128 and .130, are produced, prior to admission, for all categorical determinations.

When existing data is not adequate, or any judgment is required about the presence of serious mental illness or intellectual/developmental disability, the individual is referred for individualized Level II evaluation. The State mental health or intellectual/developmental disability authority is responsible for: 1. assuring that the categorical determinations meet requirements; 2. assuring that the determinations are in the best interests of the residents; 3. retaining copies of the categorical evaluation and determination reports, and 4. maintaining a tracking system for all categorical determinations.

For time limited categories — individuals are either discharged, or evaluated by individualized Level II Resident Review, within the specified time limits. Federal Financial Participation (FFP) is not available for days of NF care after the time limit expires and before a Level II Resident Review is completed according to requirements.

(Check each that applies, and supply definitions and time limits as required.)

I. Categorical Determination that nursing facility (NF) placement is appropriate. (Level II Specialized Services evaluation and determination by the State Mental Health/ Intellectual Disabilities/ Developmental Disabilities Authorities (SMH/ID/DDA) is individualized. A new, individualized, Level II Resident Review is required if at any time the resident demonstrates need for services related to serious mental illness, intellectual disability, developmental disability, or a related condition, or the admission exceeds the specified time limit.)

Attachment 4.39-A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
CATEGORICAL DETERMINATIONS

PASRR Level II Preadmission Screening by Categorical Determination Continued

X Convalescent Care: NF services are needed for from an acute physical illness which required hospitalization, and does not meet all the criteria for an exempt hospital discharge. (An exempt hospital discharge as specified in 42 CFR 483.106(b)(2) is not subject to Preadmission Screening, at State option.)

<u>Definition</u>	<u>Time limit</u>
<u>Admission directly from hospital to NF for same condition can include special medical services. Individual lacks adequate supports to safely remain in the community for the needed medical services, observation or intervention.</u>	<u>120 days</u>

X Terminal Illness (as defined for hospice purposes at 42 CFR 418.3: a life expectancy of six (6) months or less if the illness runs its normal course). NF admission is not approved to a facility without a hospice contract unless terminal illness is documented and the individual waives a hospice contract.

<u>Additional Definition (optional)</u>
<u>No risk to self or others</u>

☐ Other category(s) defined by the State.

<u>Definition</u>	<u>Time limit</u>

II. Categorical Determination that NF placement is appropriate, and that Specialized Services are not needed. (Determination that Specialized Services are needed is individualized, not categorical.)

X Medical Dependence: documented severe physical illness which results in a level of impairment documented to be so severe that the individual could not be expected to benefit from Specialized Services. For example: coma, ventilator dependence, functioning at a brain stem level, or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure 42 CFR 483.130 (c)(3)

Definition
No risk to self or others

☐ Other category(s) defined by the State, in which a level of impairment is documented to be so severe that the individual could not be expected to benefit from Specialized Services.

Attachment 4.39-A
Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
CATEGORICAL DETERMINATIONS

PASRR Level II Preadmission Screening by Categorical Determination Continued

Definition	Time limit (optional)

III. Provisional admissions. Categorical Determination that NF placement is appropriate for a brief period. Option to also categorically determine by the SMH/ID/DDA (not Level I screeners) that Specialized Services are not needed because stay is expected to be brief and the individual does not have a history of need for intensive MI or ID/DD services. (Determination that Specialized Services (SS) are needed is individualized, not categorical.)

X Delirium: Provisional admission pending further assessment in case of where an accurate diagnosis cannot be made until the delirium clears.

Additional Definition (optional)	SS Not Needed Categorical	Time limit (≤7 days)
No risk to self or others	<input type="checkbox"/>	7 days

X Emergency Situations: Provisional admission pending further assessment requiring protective services, with placement in the nursing facility not to exceed seven (7) days.

Additional Definition (optional)	SS Not Needed Categorical	Time limit (≤7 days)
No risk to self or others	<input type="checkbox"/>	7 days

X Respite: Very brief and finite stays of up to a fixed number of days to provide to in-home caregivers to whom the individual with MI or ID/DD is expected to return following the brief NF stay.

Additional Definition (optional)	SS Not Needed Categorical	Time limit
No risk to self or others	<input type="checkbox"/>	Fourteen (14) days

IV. Categorical determination that Specialized Services are not needed. (Determination that Specialized Services are needed is individualized, not categorical. Determination by the State MH/ID/DD authority that NF placement is appropriate and is individualized.)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
CATEGORICAL DETERMINATIONS

PASRR Level II Preadmission Screening by Categorical Determination Continued

X Dementia and Intellectual Disability/Developmental Disability (ID/DD). The State intellectual disability authority (not Level I screeners) makes categorical determinations that an individual with dementia in combination with intellectual disability or a related condition, does not need Specialized Services. The dementia is of a severity to affect the individual's need for or ability to make use of Specialized Services.

Additional Definition (optional)

**DMMA PROPOSED REGULATION #14-32d
REVISIONS:**

PAS POL 20102.3.1 PREADMISSION SCREENING AND RESIDENT REVIEWS (PASRR)

~~This applies to all nursing home applicants or residents of a Medicaid certified facility (NF) regardless of payment source or diagnoses.~~

Preadmission Screening and Resident Review (PASRR) Screening applies to all applicants to a Medicaid certified nursing facility, regardless of the applicant's payer source. PASRR screening must be completed prior to the individual's admission.

1. The Division of Medicaid and Medical Assistance (DMMA) is Responsible for PASRR Oversight has oversight responsibility for Level 1 screenings.

All involved parties are eligible to conduct the Level 1 screenings, including the State Medicaid, Mental Health, or Intellectual or Developmental Disability authorities, nursing facilities, discharging hospitals, or contractors.

Level I assessments of possible mental illness (MI)/intellectual disability (ID)/developmental disability (DD) must be made by qualified professionals such as hospital discharge planners, nurses, or social workers.

DMMA will assure PASRR program operates in accordance with federal regulations.

2. A Level 1 PASRR Screening is completed on all residents or potential residents of a Medicaid certified Nursing home.

2. A Level I screening is the process of identifying individuals who are suspected of having mental illness or intellectual disability or developmental disability/related conditions or if categorical determinations are met.

The Nursing Facility is responsible for completing the Level I screening for non-Medicaid individuals.

The Division of Medicaid and Medical Assistance is responsible for completing the Level I screening for Medicaid and potential Medicaid individuals when notified.

3. Determination is made regarding the need for a Level II PASRR screening.

Based on the Level I screening, the individual will meet one of three the following categories:

a. No indication of mental illness/mental retardation intellectual disability/developmental disability or related condition – nursing home admission/continued stay is appropriate - No further evaluation is needed.

b. There are indicators of mental illness/mental retardation intellectual disability/developmental disability/related condition however, individual meets any of the following Physician's Exemption Categorical Determination Criteria:

Primary Diagnosis of Dementia or related disorder

i. Convalescent Care; not to exceed 30 days – PAS nurses will track this exemption and initiate Level II PASRR evaluation prior to expiration if continued NF stay is warranted.

ii. Terminal Illness; a life expectancy of 6 months or less if the illness runs its normal course.

iii. Medical dependency with a severe physical illness. Medical Dependence;

iv. Delirium;

v. Emergency Situations;

vi. Respite;

vii. Dementia/Intellectual Disability (ID)/Developmental Disability (DD)

~~No further evaluation is needed at this time.~~

c. There are indicators of mental illness, ~~mental retardation~~ intellectual disability/developmental disability/related conditions – Needs complete PASRR Assessment (Level II).

4. DMMA will coordinate the Level II screening for all Medicaid and non-Medicaid individuals.

DMMA Preadmission Screening (PAS) nurse will gather available data for Level II PASRR screening and forward it to the MI or ID/DD authority.

~~Data is reviewed with DMMA Nurse Supervisor for approval to continue with the Level II screening.~~

5. The individual and/or legal representatives must receive written notice that further evaluation is needed.

The notice must inform them that the individual is being referred for Level II Evaluation to ~~DSAMH~~ the Division of Substance Abuse and Mental Health (DSAMH) due to mental illness indicators or to ~~DDDS~~ the Division of Developmental Disabilities Services (DDDS) due to ~~mental retardation~~ intellectual disability/developmental disability/related condition.

6. An Independent Psychiatric Consultant (IPC) will complete the Level II Evaluation for those with mental illness/indicators.

The IPC will assess individual and review documentation to verify whether or not there is a serious ~~MI~~ mental illness.

~~DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of mental retardation or related conditions are met.~~

The Level II evaluation may be terminated at any time if the evaluator determines that no ~~Mental Illness~~ mental illness is present.

7. DDDS will complete the Level II Evaluation for those with ~~mental retardation~~ intellectual or developmental disabilities indicators.

DDDS will assess individual and review documentation to verify whether or not diagnostic criteria of ~~mental retardation~~ intellectual or developmental disabilities or related conditions are met.

The Level II evaluation may be terminated at any time if the evaluator determines that no ~~Mental Retardation~~ intellectual or developmental disability [or related conditions] is ~~are~~ present.

8. DSAMH or DDDS Determines Need For Specialized Services and/or Nursing Facility (NF) Services.

DSAMH will review IPC's recommendations and determine need for Specialized Services and/or NF services.

9. ~~DMMA is notified by DSAMH/DDDS~~ notifies DMMA of the final determination.

10. DMMA will send the final determination letter to:

- Individual/~~applicant~~ Applicant;
- Legal Representative;
- Admitting or ~~retaining-NF~~ Retaining Nursing Facility (NF);
- Attending Physician;
- Discharging ~~hospital~~ Hospital - if exemption is not applicable.

Final PASRR determinations will be issued by DMMA.

18 DE Reg. 106 (08/01/14) (Prop.)