

PASRR 101: Department of Justice Agreement & PTAC PASRR 101

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Department of Justice Letter to State of Louisiana December 2016

"We write to report the Department of Justice's findings from its investigation into Louisiana's delivery of services to people with serious mental illness who reside in nursing facilities across the State.

Our investigation assessed the State's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., which requires that individuals with disabilities receive services in the most integrated setting appropriate to their needs.

The Department of Justice is authorized to seek a remedy for violations of Title II of the ADA. 42 U.S.C. §§ 12133-12134; 28 C.F.R. §§ 35.170-174, 190(e)."

Department of Justice Investigation Findings Summary(2016)

- ▶ We conclude that Louisiana violates the ADA by unnecessarily relying on nursing facilities to serve people with serious mental illness, rather than providing services in the most integrated setting appropriate to their needs. The State's systemic failure to provide appropriate community services also places individuals who currently live in the community at serious risk of unnecessary institutionalization in nursing facilities.
- ▶ Louisiana has 258 nursing facilities that provide Medicaid-funded services. At any given time, roughly 25,000 Medicaid recipients live in these facilities, which, when compared to other states, house some of the largest numbers of Medicaid recipients on average. Louisiana's percentage of Medicaid certified nursing facilities with 100 beds or more is higher than any other state.
- ▶ And people younger than age 70, many of whom have serious mental illness, make up a sizable and growing percentage of these facilities' residents. In 2013, roughly 33% of the nursing facility population was under age 70, up from 22% in 1999.²
- ▶ Approximately 4,000 people with serious mental illness are currently institutionalized in costly Louisiana nursing facilities where they are isolated and segregated from their families, friends, and communities.
- ▶ On average, these individuals are younger and have fewer physical care needs than the broader nursing facility population. They often spend years in nursing facilities that provide minimal mental health services and apart from paid staff, they rarely interact with people who do not have disabilities.
- ▶ The State has failed to ensure that many nursing facility residents with serious mental illness were offered community-based services as an alternative to nursing facilities.
- ▶ These individuals live in more than 250 nursing facilities across Louisiana, but individuals with serious mental illness are frequently admitted to at least eight facilities that are well known placements for people with serious mental illness; and they predominantly house people with serious mental illness.

Department of Justice Investigation Findings Summary (2016) continued

- ▶ Most of these individuals could be appropriately served in their own homes and communities if they had the mental and physical healthcare services that Louisiana already provides to thousands of people who have similar needs. Serving individuals in the community is also consistent with Louisiana State law, which requires that individuals with disabilities be served in the least restrictive setting in their own communities. LA. REV. STAT. ANN. § 28:476. Nonetheless, the State continues to fund costly nursing facility placements when people could be served in their communities.

Department of Justice Identified Factors Contributing to Systematic Failure

- ▶ The State does not identify people with serious mental illness prior to nursing facility admission and divert them into effective, community-based alternatives;
- ▶ The State does not identify individuals with serious mental illness currently in nursing facilities, inform them about available options, and provide them with effective transition planning and the community services they need to successfully live in the community; and
- ▶ The State does not have a sufficient supply of community-based supports to serve people with serious mental illness who wish to transition from nursing facilities or who are at serious risk of placement in a nursing facility. Furthermore, the State does not make the existing supply of community-based supports adequately available to these individuals.

Louisiana's unnecessary reliance on nursing facilities violates the civil rights of people with serious mental illness. By contrast, community integration will permit the State to support these individuals in settings appropriate to their needs and in a cost-effective manner.

Department of Justice Investigation

On October 6, 2014, the Department of Justice notified the State of Louisiana that it was opening an ADA investigation into whether the State unnecessarily uses nursing facilities to serve individuals with serious mental illness.

- ▶ DOJ investigation focused on
 - ▶ whether these individuals in Louisiana nursing facilities are appropriate for community-based alternatives;
 - ▶ whether they oppose receiving mental and physical health supports in the community; and
 - ▶ whether placing them in appropriate, community-based services constitutes a reasonable modification to the State's service system.

Louisiana's Public Mental Health System

Louisiana Uses Nursing Facilities to House People with Serious Mental Illness

- ▶ Louisiana has 258 nursing facilities that provide Medicaid-funded services. At any given time, roughly 25,000 Medicaid recipients live in these facilities, which, when compared to other states, house some of the largest numbers of Medicaid recipients on average. Louisiana's percentage of Medicaid certified nursing facilities with 100 beds or more is higher than any other state. And people younger than age 70, many of whom have serious mental illness, make up a sizable and growing percentage of these facilities' residents. **In 2013, roughly 33% of the nursing facility population was under age 70, up from 22% in 1999.**²
- ▶ Nationally, Louisiana continues to have one of the highest percentages of nursing facility residents with serious mental illness. According to the State, **at least 3,856 individuals with serious mental illness—or 14.5% of Louisiana nursing facility residents—lived in Louisiana nursing facilities in October 2014 and roughly the same number continue to live in these facilities as of February 2016.**⁵
- ▶ The **additional cost to the State of serving individuals with mental illness in nursing facilities instead of the community can be as high as \$7,000 or more per person, per year.** And while the State provides community-based services to 20,000 individuals with serious mental illness, it is approving nursing facility admissions for these individuals at a rate of about 1,000 per year.
- ▶ **On average, people with serious mental illness in Louisiana's nursing facilities tend to be younger than the overall nursing facility population and have less intensive support needs.**
- ▶ They are institutionalized in nursing facilities by reason of their mental illness and may spend many years of their lives there. At least 73% have been institutionalized for more than a year.



Louisiana's Public Mental Health System

Although Louisiana Redesigned its Mental Health Service System to Provide More Community-Based Services to People with Serious Mental Illness, Services Are Still Inadequate.

- ▶ Louisiana's mental health system has **historically relied on high-cost, institutional care to serve its citizens with serious mental illness**. This unnecessary reliance has had a **detrimental effect on the availability of community-based mental health services**, both in terms of the adequacy of funding for services and the numbers of individuals with serious mental illness who have access to care.
- ▶ The State again acknowledged in 2011:

Over the last two decades, Louisiana has remained dependent on psychiatric hospital levels of care. While other states were re-organizing their funding approach and moving to a greater proportion of high intensity community based programs, Louisiana continued to have greater fiscal resources directed toward inpatient care.⁷
- ▶ In **2011**, the State began **investing in community-based services and moving toward a statewide system of community-based care, rather than only having pockets of evidence-based practices available to people with serious mental illness**
- ▶ In **2012**, the State consolidated public behavioral health services under a single managed care entity, **Magellan Healthcare, Inc.** The State then changed course and in December **2015** transitioned all public behavioral health services to **Healthy Louisiana**, the State's existing network of Medicaid managed care organizations, with the intention of integrating physical and behavioral health services under the new plan.

DOJ Findings

Nearly 4,000 Louisianans with serious mental illness are confined in costly nursing facilities even though many of them can and want to live in the community and the State system can be reasonably modified to offer placement in the community. We therefore conclude that the State fails to provide services to individuals with serious mental illness in the most integrated settings appropriate to their needs, as required by the ADA.

Title II of the ADA Requires States to Serve Individuals with Disabilities in the Most Integrated Setting Appropriate.

- ▶ under the ADA, public entities are required to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). An integrated setting is one that “enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.” 28 C.F.R. Pt. 35, App. B, 690 (2015).
- ▶ *Olmstead v. L.C.*, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. 527 U.S. 581, 607. In so holding, the Court explained that unnecessary institutional placement “perpetuates unwarranted assumptions that **persons so isolated are incapable or unworthy of participating in community life.**” *Id.* at 600.

DOJ Findings

Nursing Facilities Are Segregated, Institutional Settings.

- ▶ **Nursing facilities in Louisiana are typically institutional in nature**, as evidenced by the physical environment, the **lack of privacy and autonomy**, and the **lack of integrated, adult activities for the residents**. Louisiana's nursing facilities congregate an average of 130 people with disabilities in a setting where they receive all of their services on-site in a way that forecloses the opportunity to interact with people who do not have disabilities or are not paid staff.
- ▶ Louisiana nursing facilities, as is common elsewhere, **afford almost no privacy to residents**, other than providing minimal storage spaces like a small closet in their bedrooms. Furthermore, most nursing facilities use security cameras to monitor residents' movements through the facility
- ▶ Many aspects of nursing facility life are characterized by **segregation from the broader community and a lack of autonomy**. For example, residents have no access to a kitchen where they can prepare their own food, and they are rarely permitted to do their own laundry. Nursing facilities also maintain control over the residents' money for their personal needs, which is usually less than \$40 of their state and federal benefits; and if residents want access to it, they must go to a staff member to get it.
- ▶ With the **lack of meaningful engagement**, some residents said they were often **bored, and they reported spending their days passing the time by watching television, sleeping, or smoking**. Activities are limited, repetitive, and conducted on nursing facility property, rather than in the community

DOJ Findings

Nursing Facility Residents with Serious Mental Illness Are Appropriate for Community Placement and Do Not Oppose it.

- ▶ significant number of nursing facility residents with serious mental illness throughout Louisiana **are appropriate for community placement and want to live in the community.**
- ▶ many Louisianans with serious mental illness who are in nursing facilities **could be served in the community with the help of the physical and mental health services and supports that already exist in Louisiana's service system.**
- ▶ There are individuals who live in the community and receive appropriate care, and they have the same mental health disabilities and needs as those in the nursing facilities-ACT Teams
- ▶ While many nursing facility residents with serious mental illness have low-care physical needs, our expert also concluded that those **nursing facility residents with serious mental illness who do have chronic health concerns may also be served in the community with the appropriate and properly coordinated mental and physical health services.**
- ▶ encountered **the common misconception that individuals with serious mental illness are particularly inappropriate for community-based treatment if they have chronic illnesses and physical disabilities**
- ▶ perception is undermined by Louisiana's own success with serving, in the community, nursing facility-eligible individuals with physical disabilities. There were 4,185 people with chronic health needs and physical disabilities on the Community Choices Waiver at the end of 2014 and about 23,000 individuals receive Medicaid personal care services
- ▶ The **misperception that people with serious mental illness are inappropriate for home- and community-based treatment is especially prevalent among nursing facility staff members, who operate from a nearly uniform assumption that institutionalization is the best option for residents with serious mental illness and have little familiarity with available community-based services.**
- ▶ In addition to being appropriate for the community, **most of the residents we spoke with expressed their desire to return home to their communities, while others were open to exploring the idea of transitioning to the community if appropriate services were available.**
- ▶ As a **consequence** of the foregoing, people who could and want to be served in community settings—if they had access to appropriate supports in the community—are instead **linguishing in institutions that do little to help them return to community life.**

DOJ Findings

Lack of Sufficient Capacity in Existing Community-Based Services and Supports Leads to Needless Nursing Facility Admissions.

- ▶ Community-based services, including Assertive Community Treatment, Community Psychiatric Support and Treatment, Permanent Supported Housing, peer support, supported employment, and community crisis services, are essential services for people with serious mental illness in the community
- ▶ At least 3,400 people throughout the State need Permanent Supported Housing, and according to the State, because these individuals do not have it, they are institutionalized, living in transitional housing, or homeless.
- ▶ Supported Employment, Crisis Services...
- ▶ The lack of community-based services has similarly delayed transitions from the State Hospital. One State Hospital staff member reported that the biggest obstacle to transition is a lack of resources to match the needs of the person.

DOJ Findings

Lack of Sufficient Capacity in Existing Community-Based Services and Supports Leads to Needless Nursing Facility Admissions.

Act Teams

PSH Housing

Supported Employment

Crisis Services/Crisis Response Network

DOJ Findings

Louisiana Does Not Divert Individuals with Serious Mental Illness from Unnecessary Nursing Facility Placement.

- ▶ problem is exacerbated by the State's failure to identify individuals with serious mental illness who are referred for nursing facility admission and promptly connect them with community- based physical and mental health services
- ▶ Many individuals with serious mental illness are transferred to nursing facilities directly from private psychiatric hospitals or State Hospitals following a physical or mental health crisis, yet most could receive the kinds of community- based services that Louisiana knows how to provide, if these services were made available
- ▶ One of the most important tools to divert people from nursing facilities is the Pre- admission Screening and Resident Review process, known as PASRR. Congress enacted PASRR as part of the Nursing Home Reform Act of 1987, which "was passed specifically to end the practice of inappropriately institutionalizing individuals with mental illness . . . in nursing homes." *Joseph S. v. Hogan*, 561 F. Supp. 2d 280, 285 (E.D.N.Y. 2008).

DOJ Findings and PASRR

- ▶ An effective PASRR process identifies individuals with mental illness, intellectual and developmental disabilities, or related conditions and determines how those individuals' needs can be met in the community.²¹ See 42 U.S.C. § 1396r(e)(7)(A)(i), (G); 42 C.F.R. §§ 483.128(a); 483.130(l); 483.132(a)(1), (2); 483.134(b)(3), (5), (6); *Preadmission Screening and Resident Review (PASRR)*, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Institutional-Care/Preadmission-Screening-and-Resident-Review-PASRR.html>.
- ▶ The PASRR Level I screen should identify any individual who might have a mental illness or an intellectual disability. 42 C.F.R. § 483.128(a). If the PASRR Level I screen indicates that the individual may have a mental illness, an intellectual disability, or a related condition, the State must apply the more rigorous PASRR Level II evaluation, which is designed to determine (a) whether an individual's needs can be met in the community; or (b) whether, and what, specialized services can be provided in a nursing facility that will meet
- ▶ The PASRR Level II evaluation **requires a "functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community."** 42 C.F.R. § 483.134(b)(5). The assessment "must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that [nursing facility] placement is required." *Id.* **Essentially, every PASRR Level II evaluation should provide a plan for receiving services in the home and community, regardless of the perceived availability of services.**²³
- ▶ In the 2015 PASRR National Report, the federally-funded PASRR Technical Assistance Center stated, "PASRR requires that individuals with [serious mental illness] . . . not be admitted to Medicaid-certified nursing facilities . . . until a full assessment is made, community alternatives are identified, and person-centered services are recommended to meet the individual's medical and PASRR disability-related needs."

DOJ Findings and PASRR

- ▶ The report describes the **failure to use PASRR to connect individuals to community alternatives as “both a civil rights violation and a personal tragedy”** for those who are inappropriately placed in institutional settings. The report concludes, **“PASRR is not merely an administrative step in the nursing home admission process—a series of boxes to be checked. On the contrary, PASRR affects lives.”**
- ▶ In 2007, after finding a nursing facility approval rate of 85% in a five- state survey, the United States Department of Health and Human Services’ Office of Inspector General reported that **“the PASRR process does not appear to be used as a tool to systematically consider alternative placements to nursing facilities.”**²⁴ At an **86% approval rate**, Louisiana is unfortunately no exception.
- ▶ Of those individuals, the Office of Behavioral Health referred 4,595 (75%) for indefinite nursing facility placement and an additional 697 (11%) for temporary nursing facility placement. Only 14% were referred to community-based services.

DOJ Findings and PASRR

- ▶ **PASRR Level II evaluations must involve the participation of the individual and be comprehensive, individualized, and conducted by independent assessors.** 42 U.S.C. § (e)(7)(F); 42 C.F.R. §§ 483.128, 483.130, 483.134.
- ▶ Many of the 6,142 PASRR determinations between 2010 and 2014 were based almost exclusively on paperwork from hospitals seeking to discharge patients to other locations.²⁵ A mere 25 individuals out of 6,142 received an in-person evaluation by an entity other than the one referring the person to the nursing facility.²⁶
- ▶ **The regulations require comprehensive assessment of the individual's history and current supports, as well as functional assessments of the full range of activities of daily living, including grooming, self-care, managing finances, nutrition, medication management, and the supports needed to provide the necessary level of care in the community.** 42 C.F.R. § 483.134(b).

DOJ Findings

Louisiana Fails to Transition Nursing Facility Residents with Serious Mental Illness into the Community.

- ▶ Louisiana lacks an effective system to identify individuals with serious mental illness in nursing facilities who could be served in the community with appropriate supports. **It does not regularly educate and inform individuals about their community-based options, and it does not plan for and implement transitions for individuals admitted to nursing facilities.**
- ▶ once individuals with serious mental illness are admitted into nursing facilities, it is difficult for them to return to their communities, particularly after they have lost their housing and natural supports. As one community provider said, **“Once someone goes to a nursing facility, we typically never see them again.”**
- ▶ My Choice, OBH Transition Coordinators, OBH Peer In-Reach Program

DOJ Findings

Louisiana Can Reasonably Modify its Mental Health System to Serve People with Serious Mental Illness in Integrated Settings.

- ▶ The Louisiana Office of Behavioral Health has stated: “It is our conviction, that the community where the person chooses to live and work is an appropriate place to provide treatment, supports, and services.”³³
- ▶ Accordingly, the Office of Behavioral Health’s mission is “to lead the effort to build and provide a comprehensive, integrated, person-centered system of prevention and treatment services that promote recovery and resilience for all citizens of Louisiana.”³⁴
- ▶ Louisiana already provides many of the services and supports that are essential to helping people with serious mental illness live in their homes and communities, including Permanent Supported Housing, Assertive Community Treatment, Community Psychiatric Support and Treatment, Mobile Crisis services, and peer support.
- ▶ More generally, when compared to the estimated annual cost of roughly \$22,000 in State funding for a full year of nursing facility services,³⁶ community services for an individual with serious mental illness can generally be provided for \$15,000 to \$20,000 a year in State costs, even if the person requires the most intensive assistance from an Assertive Community Treatment team, a personal care attendant, and Permanent Supported Housing. This would save the State up to 30% of its nursing facility cost.

DOJ RECOMMENDED REMEDIAL MEASURES

- ▶ Improve the capacity of evidence-based community mental health services such as Assertive Community Treatment, Community Psychiatric Support and Treatment, peer support services, supportive employment, Mobile Crisis services, and Permanent Supported Housing
- ▶ Ensure coordination between local government entities and community mental health providers and hospitals, law enforcement, homeless shelters, and jails to avoid unnecessary institutionalization and criminal justice involvement
- ▶ Ensure the availability of sufficient home-based medical services and supports, including personal care assistance, home health, and nursing to meet both the needs of individuals with serious mental illness who want to transition to the community from nursing facilities and individuals who are at serious risk of nursing facility admission
- ▶ Ensure that necessary physical and mental health services are delivered in an integrated, coordinated fashion

DOJ RECOMMENDED REMEDIAL MEASURES

- ▶ Develop an effective system of identifying and diverting individuals with serious mental illness from nursing facility placement
 - ▶ State should at a minimum:
 - ▶ Identify people with serious mental illness who are referred for admission to nursing facilities;
 - ▶ Ensure that individuals with serious mental illness requesting admission are evaluated by an independent evaluator who is familiar with the available community-based services; and
 - ▶ Promptly arrange for necessary behavioral and primary healthcare services in the community where appropriate.
- ▶ State must develop a functioning **PASRR** system that includes comprehensive and meaningful independent assessments and community service planning for all individuals with serious mental illness referred to nursing facilities.
- ▶ State must implement effective, person-centered transition planning for all individuals with serious mental illness institutionalized or at risk of institutionalization in a nursing facility
- ▶ State must provide quality services in sufficient amount to ensure individuals with serious mental illness receive the services necessary to avoid institutionalization and are integrated in the community.

DOJ Compliance Guide 2018

- ▶ In 2014, the Department of Justice (DOJ) initiated an investigation of the state's mental health service system to assess compliance with Title II of the American with Disabilities Act (ADA). The DOJ published the findings of their investigation in 2016, in which they concluded that the State unnecessarily relies on nursing facilities to serve adults with serious mental illness instead of serving them in the most integrated setting appropriate to their needs as required by the ADA. **The Louisiana Department of Health (LDH) begin working with DOJ on a mitigation plan, and a formal agreement was entered into on June 6, 2018.** LDH and DOJ are committed to achieving compliance with Title II of the ADA, which requires that the State's services to individuals with mental illness be provided in the most integrated setting appropriate to their needs.

DOJ Agreement Definitions

- ▶ **At Risk Population:** The population with Serious Mental Illness and co-occurring physical health conditions who are at risk of nursing home placement. LDH is in the process of operationalizing this definition and this will be updated when finalized.
- ▶ **My Choice Louisiana:** Transition Coordination initiative operated through OBH and OAAS in which individuals who meet the target population of the DOJ agreement are transitioned into the community from nursing facilities.
- ▶ **Olmstead:** Olmstead v. L.C. is a ruling that requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.
- ▶ **Serious Mental Illness (“SMI”):** Is a major mental disorder as described in 42 CFR 483 Subpart C (i)- (iii). Application of this definition should also take into consideration the current Diagnostic and Statistical Manual of Mental Disorders (DSM) definitions such as Schizophrenia Spectrum Disorders, other Psychotic Disorders, Bipolar Related Disorders, Depressive Disorders, Anxiety Disorders, Personality Disorders, Trauma Related Disorders or other major mental disorders that result in functional limitations in major life activities, including within the 6 months prior to nursing facility application, are not a primary diagnosis of dementia or co-occurring with a primary diagnosis of dementia, and are not episodic or situational. Note: this definition is specific to this Agreement.
- ▶ **Transition Assessment:** Assessment developed by the Transition Coordinator as a precursor to the transition process. The assessment is developed in an effort to identify strengths, status, and needs for transition.
- ▶ **Transition Coordinator:** Employed by OBH or OAAS, the Transition Coordinator will work with individuals identified as being part of the DOJ Target Population residing in nursing facilities and facilitating transition activities including: conducting assessments, developing transition plans, and further providing ongoing follow up, ensuring the enrollee’s needs in the community are met.
- ▶ **Transition Plan:** Plan developed through the transition process led by the Transition Coordinator to facilitate and operationalize items needed to effectuate the enrollee’s transition into the community.

DOJ Agreement Goals

- ▶ (1) divert individuals with serious mental illness away from inappropriate nursing facility placements by requiring comprehensive evaluations and services designed to enable them to live in community-based settings; and
- ▶ (2) identify people with serious mental illness who have been admitted to nursing facilities but are able to and would like to transition to the community, and provide them with transition and discharge planning and community-based services sufficient to meet their needs
- ▶ LDH intends to achieve the goals of serving individuals with serious mental illness in the most integrated setting appropriate to their needs, to honor the principles of self-determination and choice, and to provide quality services in integrated settings to achieve these goals.

Length of DOJ Agreement

- ▶ The duration of the Agreement is for five (5) years, culminating on June 6, 2023. However, LDH must have implemented and demonstrated substantial compliance with the terms of the Agreement for at least one (1) year prior to its formal termination.

DOJ Target Population

- ▶ Medicaid-eligible individuals over 18 with SMI currently residing in a nursing facility and those individuals who have transitioned from a nursing facility and are referred for case management by a My Choice Louisiana transition coordinator.
- ▶ Individuals over age 18 with SMI who are referred for a Pre-Admission Screening and Resident Review (PASRR) Level II evaluation of nursing facility placement during the course of this Agreement, or have been referred within two years prior to the effective date of this Agreement.
- ▶ Excludes those individuals with co-occurring SMI and dementia where dementia is the primary diagnosis

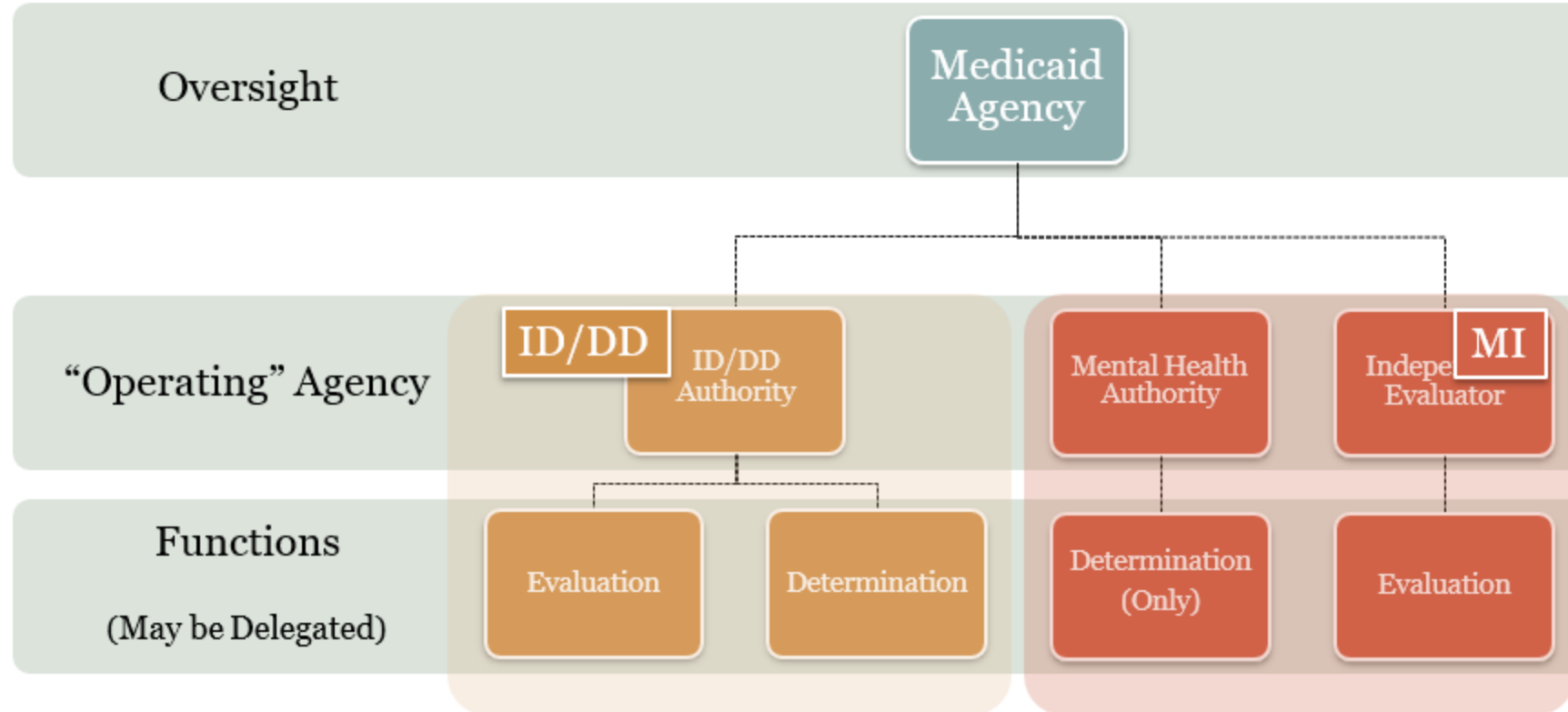
PASRR and MCO

- ▶ The MCO shall comply with all portions of the statement of work as they relate to implementation of PASRR activities. This includes requirements associated with staffing and completion of Independent Evaluations for PASRR Level II. Additionally, the MCO shall:
- ▶ Review all Level II evaluations prior to submission to OBH, ensuring the evaluations are accurate, thorough, and free from contradictory information, include all mandatory supporting documentation, include recommendations for nursing facility placement, and services.
- ▶ Ensure that PASRR Level II evaluators are familiar with the complete array of home and community-based services available to enrollees and offer community options in a meaningful way to enrollees, providing education about the services available to them as an alternate to nursing home placement.
- ▶ Through the Level II process, the MCO shall actively link the enrollee to alternate services individualized to their needs and necessary to maintain them in the community. This includes:
 - ▶ Those services needed to address the enrollee's physical and behavioral healthcare needs; and
 - ▶ Community resources necessary to ensure their social needs are met; and
 - ▶ Referrals to home and community-based supports intended to assist the enrollee with their activities for daily living (ADL) and instrumental activities for daily living (IADL) needs.
- ▶ For individuals denied nursing facility placement, and therefore considered part of the diverted population within the DOJ Agreement, the MCO shall ensure enrollees are referred for case management as a special healthcare needs population.
 - ▶ The MCO shall make a referral to case management within one (1) business day of referral from LDH.
- ▶ The MCO shall assist in linking with services and/or evaluations necessary to support the determination of SMI and/or an appropriate diagnosis related to an Alzheimer's or dementia-related disorder.
- ▶ The MCO shall have a process for collecting and tracking service referrals and service utilization for this population, reporting this information as directed by LDH.

PASRR Law and Rule

- Social Security Act §1919(e)(7)
- Final Rule Published 1992: 57 FR 230
- 42 CFR 483.100-138

Roles & Responsibilities [483.106(e)]



- Delegation may not be made to a NF or affiliated entity [483.106(e)(1)(iii) and (e)(3)]

Scope of the Problem

- Just over 1.4 million residents were living in US nursing homes on December 31, 2014

(CMS Nursing Home Compendium 2015 Edition, “Nursing Home Residents” – page 2)

- Roughly equal to the number of persons receiving home and community-based services (HCBS)
- Unclear how many individuals might have Mental Illness (MI) or Intellectual Disability/Related Condition (ID/RC), but from PTAC analysis, number could be as high as:
 - 3 percent for ID and RC (upper bound)
 - 70 percent for MI (upper bound); 20 percent for serious MI

Program Purpose

- No individual can be admitted to a NF until PASRR has been completed.
- Special protections granted to individuals with mental illness (MI), intellectual disability (ID), or a related condition (RC): to receive long term services and supports (LTSS) in the most integrated setting.
- Resident Reviews required to identify changes in LTSS needs; recommend community alternatives to continued stays in NFs; and coordinate transition planning back to the community.

Definitions of PASRR Disabilities

- **Categories defined in CFR, with incorporation by reference of two key documents:**
 - Mental illness: DSM III-R (1987) [483.102(b)(1)(i)] except in cases of primary dementia: 483.102(b)(1)(i)(B)
 - Intellectual disability: Manual of American Association for Mental Deficiencies (AAMD, 1983)(now AAIDD) [483.102(b)(3)(i)]
 - Related conditions: A term of art unique to PASRR, stated diagnostically – conditions related to ID because they create similar needs [435.101].

Three Purposes of PASRR

1. To ensure that individuals are evaluated for evidence of possible MI, ID, or RC.
2. To see that they are placed appropriately, in the least restrictive setting possible.
3. To recommend that they receive the services they need, wherever they are placed.
 - If admitted to a NF, the services that are unique to their MI, ID, or RC, and that are beyond what the NF would be expected to provide as part of their per diem, are considered “Specialized Services”.

NF is Not Housing

Medicaid and state agencies must not admit a person with MI or ID to a NF unless evaluated to require NF, and unless MI or ID needs will be met.

The state's choices:

- Don't admit the person to NF, but still evaluate them for need for specialized services.
- Provide services as required to attain the highest practicable physical, mental, and psychosocial well-being, including any specialized services identified through the Level II evaluation.
- See 438.130(m) and 483.132.

Design of PASRR



LEVEL I SCREENS AND LEVEL II EVALUATIONS



Timeframe for Preadmission Process

- **Must be completed within an annual average of 7-9 working days [483.112(c)(1)].**

Exempted Hospital Discharge (EHD) 483.106(b)

- **The only true exemption from PASRR.**
- **Requirements:**
 - Admitted to a NF directly from a hospital after receiving acute care [483.106(2)(i)(A)]
 - For the condition that required hospitalization [483.106(2)(i)(B)]
 - Provided the attending physician has certified that the individual will reside in the NF for less than 30 days [483.106(2)(i)(C)]
- **If an individual's stay exceeds 30 days, a Resident Review must be conducted within 40 calendar days of admission [483.106(2)(ii)]**

Design of PASRR: Level I

- PASRR is required before any admission to a Medicaid-certified nursing facility (NF), regardless of payment source (Medicaid, Medicare, or private pay).
- Level I = Rough screen for possible serious MI, ID, or RC.
 - CFR says only this: “The State’s PAS[A]RR program must identify all individuals who are suspected of having MI or ID as defined in §483.102.” [483.128(a)]
- Called an “identification function” [483.128(a)]
- Must issue written notice of a positive Level I to individual and his/her legal guardian, with referral to relevant authority for Level II [483.128(a)]
- CFR leaves open personnel requirements for Level I: In practice, often hospital discharge planners; also NF staff (for residents).

Design of PASRR: Level II

- **Level II = Comprehensive evaluation of needed services and appropriate placement.**
- **Two components of assessment:**
 1. Need for NF services and NF level of care [483.132]
 2. Assessment of disability
 - MI [483.134]
 - ID/RC [483.136]
- **Determination of need for specialized services (SS)[483.120]:**
 - “Individualized plan of care” [483.120(a)]
 - The State must “provide or arrange for the provision of specialized services” [483.120(b)]

Level II Data Requirements: Need for NF

- **Need for NF [483.132(c)]**
 - Evaluation of physical status
 - Evaluation of mental status
 - Functional assessment (ADLs)
- **Placement: “In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.” [483.132(b)]**

Level II Data & Determination: MI

- **A detailed list [483.134(b)], including:**
 - Medical history
 - Psychosocial history
 - Drug history
 - Psychiatric evaluation
 - Functional assessment
- **Data interpretation & personnel requirements [483.134(c)]:**
 - Medical history: physician completes or physician reviews
 - Otherwise, as specified by the state
 - For determination of MI and need for SS: “qualified mental health professional, as designated by the State” [483.134(d)]

Level II Data & Determination: ID/RC

- **A detailed list [483.136(b)], including:**
 - Medication history
 - Sensorimotor function
 - Communication development
 - Independent living skills
- **Data interpretation and personnel requirements [483.136(c)]:**
 - If a test of intellectual functioning is administered, a licensed psychologist is required [483.136(c)(1)]. “Licensed psychologist” is up to the State.
 - Multifaceted data elements go into interpretation [483.136(c)(2)], including inability to:
 - Understand simple commands
 - Take care of personal needs
 - Demonstrate appropriate behaviors without direct supervision

Required Level II Notification Requirements

- **Who gets notified [483.130(k)]**
 - The evaluated individual and his or her legal representative [483.130(k)(1)]
 - The admitting or retaining NF [483.130(k)(2)]
 - The individual or the resident's attending physician [483.130(k)(3)]
 - The discharging hospital, unless the individual is exempt [483.130(k)(4)]
- **Contents of notice [483.130(l)]**
 - Whether a NF level of care is needed [483.130(l)(1)]
 - Whether specialized services are needed [483.130(l)(2)]
 - The placement options available to the individual "consistent with these determinations" [483.130(l)(3)]
 - The rights of the individual to appeal the determination [483.130(l)(4)]

Placement Options [483.130(m)]

- Can be admitted to a NF: meets NF level of care, independent of specialized services [483.130(m)(1)]
- Cannot be admitted to a NF: Does not require NF level of care, independent of specialized services [483.130(m)(2)]
- Can be considered appropriate for continued placement in a NF: continues to meet NF level of care independent of specialized services [483.130(m)(3)]
- May choose to remain in NF: Absent NF level of care, an individual can stay if they need specialized services and have resided in the NF for at least 30 months; or they may receive services in an alternate appropriate setting [483.130(m)(4)]

Placement Options (continued)

- **Cannot remain in the NF:**
 - Does not meet NF level of care but does need specialized services, and has resided in NF for less than 30 months. Determination notice must indicate how and where the individual will continue to receive specialized services [483.130(m)(5)]
 - Does not meet NF level of care *and* does not need specialized services [483.130(m)(6)]

Specialized Services: Assurances [483.130(n)]

- “If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.”

Final Rule: Significant Change Definition

- The manual notes that a “significant change” is a major decline or improvement in a resident’s status that:
 - Will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, the decline is not considered “self-limiting”;
 - Impacts more than one area of the resident’s health status; and
 - Requires interdisciplinary review and/or revision of the care plan.

Readmission & Transfer: 483.106(b)

- ***Readmissions:***

- Readmission to a facility from a hospital to which he or she was transferred for the purpose of receiving care.
- Readmissions subject to Resident Review.

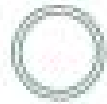
- ***Interfacility transfers:***

- Occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay.
- Subject to Resident Review.
- Whether transfer is to NF or to hospital, transferring NF must ensure that copies of the most recent Level II evaluation and determination (preadmission or Resident Review) go with the individual.

PASRR Requirements for Long-Term Care Facilities

- Final Rule published November 2016: 80 FR 42168
- NFs must notify SMHA or SIDA promptly after significant change in status [483.20(k)(4)]
- Resident care plans must include Specialized Services or Specialized Rehabilitative Services the NF will provide as a result of PASRR. If NF disagrees, it must indicate its rationale in the resident's medical record [483.21(a)]

Categorical Determinations



**SPECIAL CASES OF ABBREVIATED LEVEL I IS AND D
ETERMINATIONS**



Categorical Determinations

483.130

- **Purpose:** Allow a State to skip the individual NF evaluation and in some cases the SS evaluation based on existing documentation
- Two basic types:
 1. Advance group determinations [483.130(b)(1)]: These “take into account that certain diagnoses, levels of severity, or need for a particular service” mean that NF admission is “normally needed” or that specialized services are “not normally needed” (emphasis added).
 2. Group determinations by category [483.130(c)]: Can be applied by Level I screener if “existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator to determine that the individual fits into the category established by the State authorities.”

Category types

- Convalescent care from an acute illness requiring hospitalization but not otherwise eligible for EHD [483.130(d)(1)]
- Terminal illness as defined in 418.3 [483.130(d)(2)]
- Illnesses severe enough to make it unlikely the individual would benefit from specialized services [483.130(d)(3)]:
 - Coma
 - Ventilator dependence
 - Parkinson's disease
 - Huntington's disease
 - ALS
 - Congestive heart failure

Category Types (continued)

- **Provisional admissions:**
 - “pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears” [483.130(d)(4)]
 - “pending further assessment in emergency situations requiring protective services, with placement in a nursing facility not to exceed 7 days” [483.130(d)(5)]
- **Brief admissions for respite:** “very brief and finite stays up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or ID” will return [483.130(d)(5)]
- **Dementia and ID:** Possible for individuals who have a combination of ID and dementia and don’t need specialized services [483.130(h)(1)]

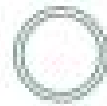
Time Limits on Categoricals [483.130(e)]

- **Optional for:**
 - Convalescent care [483.130(d)(1)]
 - Terminal illnesses [483.130(d)(2)]
 - Severe illnesses [483.130(d)(3)]
 - Dementia and ID [483.130(d)(h)] – but likely not needed
- **Required for:**
 - Delirium [483.130(d)(4)]
 - Protective services [483.130(d)(5)]
 - Respite [483.130(d)(6)]
- **Longer stays require a Resident Review**

Important Properties of Categoricals

- **Determination of Need for Specialized Services [483.130(g)]:**
 - Not permitted to make categorical determinations that specialized services are needed.
 - If they are needed, the individual must have an individualized evaluation of the sort described in 483.134 and 483.136.
- **Specialized Services determinations can *never* be waived [483.130(i)]:**
 - “If a State mental health or intellectual disability authority determines NF needs by category, it may not waive the specialized services determination. The appropriate State authority must also determine whether specialized services are needed either by category (if permitted) or by individualized evaluations”

Specialized Services



CREATING OPPORTUNITIES FOR TRANSITION



Defining Specialized Services

“Specialized Services” means any service or support recommended by an individualized Level II determination that a particular nursing facility resident requires due to mental illness, intellectual disability or related condition, that supplements the scope of services that the facility must provide under reimbursement as nursing facility services.

In other words – Specialized Services are over and above what the NF would be expected to provide under their daily per diem.

Important Developments in Last 2 Years

- **CMS, HHS, DOJ have emphasized:**
 - Level II must recommend community alternatives.
 - PASRR is about diversion and transition.
- **CMS has clarified that past debates on defining “Specialized Services” must not block NF residents with MI/ID from needed services:**
 - PASRR is about individualized support for NF residents.
- **CMS has clarified funding options for SS, including:**
 - Use of add-on payments to NFs to pay for SS

PASRR Supports Transition

- To be good candidates for transition, individuals who enter NFs should receive services that preserve and improve function.
- For individuals with MI, ID, or RC, those services are Specialized Services.

Specialized Services – A State’s Obligation

If...a resident or applicant for admission requires both a NF level of services and Specialized Services for the mental illness or intellectual disability...The State must provide or arrange for the provision of the Specialized Services needed by the individual while he or she resides in the NF.

[42 CFR 483.116(b)]

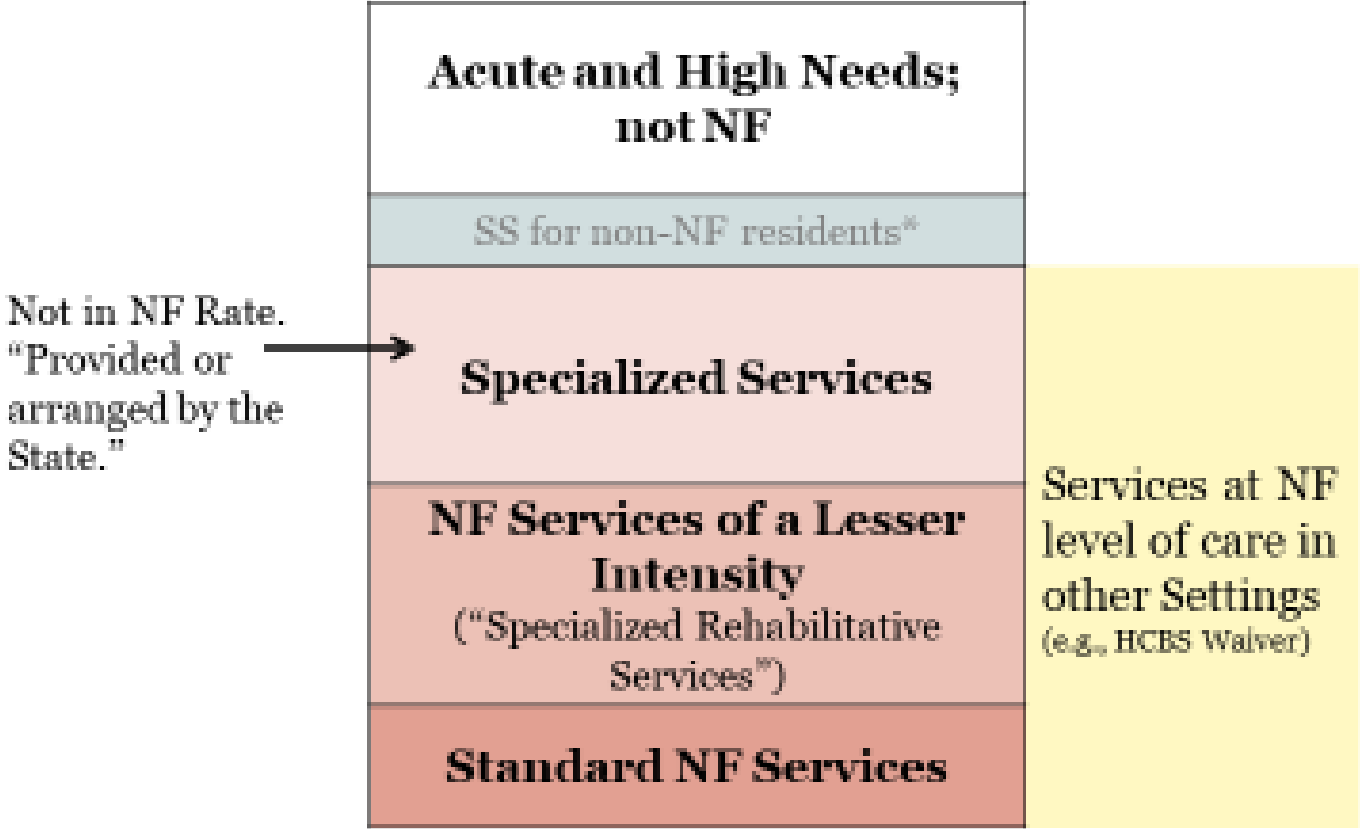
Meaning: PASRR determines if the NF resident needs anything special for his or her MI or ID/RC.

If so, the state must see that it is provided.

Specialized Services Are Defined for Each Person

- “Specialized Services” is the CFR term for whatever a *particular person* needs above NF services and NF specialized rehabilitative services.
 - SS are “defined” person by person.
 - All determinations that SS needed are individualized.
- Specialized Services is *not* the name for a finite list of services the state offers persons identified at Level II.
 - However: states may define some frequently used services as Specialized Services (e.g., for Medicaid reimbursement.)

Hierarchy of Services



*SS required for certain discharged NF Residents. State option for others.

Payment Sources: Example for equivalent needs, varying eligibility and payer

Needs are the same. Each receives needed services, whatever they are called and however reimbursed.

Specialized Services

Specialized Rehabilitative Services

NF Services

Medicaid Resident
Service A – NF supplemental pymnt Service B – Medicaid State Plan Support C – MH Agency, State \$
Medicaid Nursing Facility Benefit

Dually Eligible Resident
Service A – Medicare Service B – Medicaid State Plan
Support C – SNF SRS
Medicare Skilled Nursing Facility Benefit

Private Pay Resident
Service A – Insurance Service B – Private Pay Support C – MH Agency, State \$
Private Pay Nursing Home Services

QUESTIONS?



