

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PREADMISSION SCREENING AND
RESIDENT REVIEW FOR
YOUNGER NURSING FACILITY
RESIDENTS WITH MENTAL
RETARDATION**



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OBJECTIVES

1. To examine the extent to which Preadmission Screening and Resident Review (PASRR) requirements were addressed for Medicaid nursing facility residents aged 22 to 64 with mental retardation within selected States and selected nursing facilities.
2. To assess Federal and State oversight of the PASRR process.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) mandated preadmission screening for individuals suspected of having serious mental illness and mental retardation to ensure that: (1) nursing facilities admit only individuals needing nursing facility care, (2) these individuals' needs for specialized services are determined, and (3) these individuals obtain the services identified through the preadmission screening. The PASRR is the primary mechanism used to meet these objectives. This report focuses exclusively on the PASRR as it relates to individuals with mental retardation. We concurrently conducted a separate review of the PASRR as it relates to individuals with serious mental illness.

All individuals who apply to or reside in Medicaid nursing facilities are required to receive a Level I PASRR screen to identify suspected mental retardation. Those suspected of having mental retardation must receive a Level II PASRR evaluation to confirm that they have mental retardation, to determine whether they require nursing facility services, and to determine whether they require specialized services.

To assess the PASRR, we reviewed nursing facility resident case files and randomly selected Level II PASRR evaluations from each selected State. We conducted structured interviews with the Centers for Medicare & Medicaid Services (CMS) staff, State officials, and administrators and staff from nursing facilities. We conducted our review in 5 States and 20 nursing facilities, resulting in a review of 101 resident case files and 121 Level II evaluations.

FINDINGS

While Level I screens were present in 88 percent of selected resident case files, one-fourth of these were completed late. Federal regulations require the State's PASRR program to identify all individuals

who are suspected of having mental retardation; this is termed a Level I screen. We found evidence of Level I screens in 89 of the 101 resident case files (88 percent). Of these 89 case files, 22 were not completed prior to or on the date of admission. These 22 Level I screens took place an average of 40 days after the resident was admitted to the nursing facility.

Fifty-two percent of selected resident case files contained neither a Level II evaluation nor a Level II determination. If mental retardation is suspected, the individual is referred for a Level II PASRR evaluation. In one selected State, none of the 24 case files from selected nursing facilities contained Level II evaluations. Of the 18 Level II evaluations that were in the case files reviewed in the other 4 States, 7 were not completed prior to or on the date of admission. These seven Level II evaluations were completed an average of 23 days after the resident had been admitted to the nursing facility. States must determine whether an individual with mental retardation requires a nursing facility level of services and whether specialized services are needed. Of the 101 selected case files, 56 lacked documented evidence of the Level II determination.

Twenty-two percent of sampled Level II evaluations did not contain evidence that the evaluator assessed whether the individual's total needs could be met in a community setting. In the remainder of the cases, evaluators documented their assessments of the individual's medical needs, mental status, and independent living skills to substantiate the most appropriate setting for the individual.

CMS and the survey and certification agencies in the five States that we reviewed conducted limited oversight. Only 2 of the 10 CMS regional offices have conducted onsite PASRR reviews in the past 3 years. One of the five selected States failed to track and maintain Level II evaluations as required. Survey and certification agencies in the five selected States conducted limited oversight of the PASRR processes in nursing facilities.

RECOMMENDATIONS

The OBRA 87 mandated preadmission screening to ensure that individuals with mental retardation are not inappropriately placed in Medicaid nursing facilities. The PASRR is the primary mechanism used to ensure that individuals with mental retardation require the level of services provided by a nursing facility and to determine whether the individual requires specialized services. As such, it is essential that all State PASRR systems work effectively.

We based our findings on selected case files and a random sample of Level II evaluations from five selected States. As such, we do not project our results. However, our findings identify deficiencies that should be addressed to ensure that individuals with mental retardation are appropriately placed and receive necessary mental retardation services.

We recommend that CMS hold State Medicaid agencies accountable for ensuring compliance with Federal requirements. Specifically, we recommend that:

- every nursing facility applicant receive a Level I screen prior to nursing facility admission, and
- all individuals with suspected mental retardation receive a Level II evaluation and determination prior to nursing facility admission and that all Level II PASRR documentation is shared with the admitting nursing facility.

We also recommend that CMS hold States accountable for considering community placements during the Level II PASRR process. Finally, we recommend that CMS revise survey and certification requirements to ensure that State surveyors sample residents with mental retardation and review the PASRR documentation for timely completion.

AGENCY COMMENTS

CMS concurred with all of our recommendations to ensure that States implement an effective and timely Level I and Level II process. CMS's comments did not warrant any revisions to the results of our review or to our recommendations.

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OBJECTIVES

1. To examine the extent to which Preadmission Screening and Resident Review (PASRR) requirements were addressed for Medicaid nursing facility residents aged 22 to 64 with mental retardation within selected States and selected nursing facilities.
2. To assess Federal and State oversight of the PASRR process.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) mandated preadmission screening for individuals suspected of having mental illness and mental retardation or related conditions¹ to ensure that: (1) nursing facilities admit only individuals needing nursing facility care, (2) these individuals' needs for specialized services are determined, and (3) these individuals obtain the services identified through the preadmission screening. The PASRR is the primary mechanism used to meet these objectives.

In the 1960s, a number of class action lawsuits revealed poor conditions and treatment of patients with mental retardation in large public institutions. During the 1970s, legal challenges sought to improve the conditions at these facilities and to eliminate unnecessary institutionalization of people with mental retardation capable of living in the community.²

In addition, in 1999, the Supreme Court held in Olmstead v. L.C. (Olmstead) that “the treatment, services, and habilitation for a person with developmental disabilities . . . should be provided in the setting that is least restrictive of the person’s personal liberty.”³ Olmstead held that States are required to provide community-based treatment for persons with mental disabilities when the State’s treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be

¹ Related conditions are defined by 42 CFR § 435.1009; cerebral palsy and epilepsy are examples of related conditions. Hereinafter, references to mental retardation include both mental retardation and related conditions.

² DeWayne Davis et al. “Deinstitutionalization of Persons with Developmental Disabilities: A Technical Assistance Report for Legislators.” Available online at <http://www.ncsl.org/programs/health/Forum/pub6683.htm>. Accessed March 7, 2006.

³ Olmstead v. L.C., 527 U.S. 581 (1999), 138 F.3d 893, affirmed in part, vacated in part, and remanded.

reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

In response to Olmstead, the Secretary of the Department of Health and Human Services issued guidance to States in the form of a letter to State Medicaid Directors. The letter states that “no one should have to live in an institution or a nursing facility if they can live in the community with the right support.”⁴ In addition, the President’s New Freedom Initiative, begun in 2001, aims to remove barriers to community living for persons with disabilities.⁵

The Office of Inspector General (OIG) and the Substance Abuse and Mental Health Services Administration have conducted studies on States’ implementation of the PASRR for persons with mental illness.⁶ Both agencies found a lack of compliance with Federal regulations related to the PASRR. To date, no study has been conducted specific to the PASRR for persons with mental retardation.

Preadmission Screening and Resident Review

Federal law requires that a nursing facility may not admit an applicant who is mentally retarded unless the State Mental Retardation Authority (SMRA) or its delegate has determined prior to admission that the individual requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental retardation.⁷ As a condition of the Centers for Medicare & Medicaid Services’ (CMS) approval of a Medicaid State plan, the State must operate a preadmission screening program that complies with Federal regulations.⁸ The intent of the PASRR is to ensure that individuals with mental retardation are appropriately screened, thoroughly evaluated, and placed in nursing facilities when appropriate, and that they receive all necessary services.

⁴ State Medicaid Director Letter, January 14, 2000.

⁵ Department of Health and Human Services, “The New Freedom Initiative.” Available online at <http://www.hhs.gov/newfreedom/init.html>. Accessed May 15, 2006.

⁶ 2001 OIG report, “Younger Nursing Facility Residents With Mental Illness: Preadmission Screening and Resident Review (PASRR) Implementation and Oversight” (OEI-05-99-00700); and U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “PASRR Screening for Mental Illness in Nursing Facility Applicants and Residents” (2005).

⁷ 42 U.S.C. § 1396r(b)(3)(F)(ii). SMRAs are generally responsible for the planning, policy development, and resource allocation of services for persons with mental retardation.

⁸ 42 CFR § 483.104.

Level I Screens. All individuals who apply to or reside in a Medicaid-certified nursing facility, regardless of payer, are required to receive a Level I PASRR screen to identify possible mental retardation.⁹ These screens typically consist of preprinted forms unique to each State and generally record demographic information and diagnoses. Level I screens are completed by hospital discharge planners and nursing facility personnel. Individuals suspected of having mental retardation must also receive a Level II PASRR evaluation.¹⁰

Level II Evaluations and Determinations. The Level II PASRR objectives are to confirm whether the applicant has mental retardation, assess the applicant's need for nursing facility services, and determine whether the applicant requires specialized services for mental retardation.¹¹ SMRA has responsibility for both the evaluation and the determination functions, but may delegate by subcontracting these responsibilities to another State agency (e.g., State department on aging).¹²

SMRA or the contracted agency makes the final determination on whether a person requires nursing facility placement. SMRA may verbally convey Level II PASRR determinations to nursing facilities and individuals, but must subsequently confirm the determination in writing.¹³

Determinations made by SMRA as to whether nursing facility level of services and specialized services are needed must be based on a Level II evaluation. However, SMRA may make determinations for categories of persons likely to require nursing facility level of services or for whom specialized services are not normally needed (e.g., in cases of terminal illness or severe physical illnesses such as coma), which can be based on existing sources of data (e.g., hospital or physician's records) and do not require a Level II evaluation.¹⁴

⁹ 42 CFR §§ 483.106 and 483.128(a).

¹⁰ 42 CFR § 483.128(a).

¹¹ Ibid.

¹² 42 CFR § 483.106(e).

¹³ 42 CFR § 483.112(c)(2).

¹⁴ 42 CFR § 483.130.

Assessment of Individual Needs and Appropriate Placement. Federal regulations require evaluators to assess whether an individual's total needs can be met in a community setting or only on an inpatient basis (e.g., nursing facility, intermediate care facility for the mentally retarded, or waiver program).¹⁵ Level II determination notices must include the placement options that are available given the results of the evaluator's assessment.¹⁶ If an individual's needs can be met in the community, then nursing facility services are not needed.

Determining Services for Nursing Facility Residents With Mental Retardation. Level II PASRR evaluations must identify whether specialized services are necessary. For mental retardation, specialized services are the services specified by the State which, when combined with services provided by the nursing facility or other service providers, result in a continuous active treatment program.¹⁷ The purpose of the treatment program is to: (1) develop the behaviors necessary for the client to function with as much self-determination and independence as possible, and (2) prevent or decelerate regression or loss of current optimal functional status.¹⁸ The State must provide or arrange for the provision of specialized services to all nursing facility residents with mental retardation requiring continuous supervision, treatment, and training by qualified mental retardation professionals as identified in the Level II PASRR evaluations.¹⁹

When specialized services are not recommended, Level II PASRR evaluations must identify any specific services of lesser intensity that are required to meet the individual's mental retardation needs.²⁰ The nursing facility must provide mental retardation services of lesser intensity to all residents who need such services.²¹ Medicaid does not separately reimburse these services of lesser intensity; they are considered a condition of participation and must be paid by the nursing facility or under some other arrangement with the State.

¹⁵ 42 CFR § 483.132.

¹⁶ 42 CFR § 483.130(l)(3).

¹⁷ 42 CFR §§ 483.120(a)(2) and 483.136.

¹⁸ 42 CFR § 483.440(a).

¹⁹ 42 CFR § 483.120(b).

²⁰ 42 CFR § 483.128(i)(4).

²¹ 42 CFR § 483.120(c).

Level II Resident Reviews for Significant Changes in Condition. In addition to initial Level II PASRR evaluations and determinations, nursing facility residents may receive subsequent Level II PASRR evaluations and determinations during their nursing facility stay. Federal law requires resident reviews when there is a significant change in a resident's physical or mental condition.²²

Federal and State Oversight of the PASRR

The State Medicaid agencies and CMS share responsibility for enforcing PASRR requirements. State Medicaid agencies must deny Medicaid payments for nursing facility services provided to individuals who do not have a PASRR determination requiring these services.²³

CMS contracts with State Medicaid agencies to survey and certify nursing facilities to verify compliance with Federal requirements. Each nursing facility is subject to a standard, unannounced survey by a multidisciplinary team of professionals at least every 15 months.²⁴ For these surveys, a sample of resident records is selected for review. If sampled nursing facility residents have mental retardation, then surveyors must determine whether nursing facility services and specialized services were needed.²⁵ Surveyors cite noncompliance with Federal regulations using deficiency tags.

Concurrent Office of Inspector General Evaluation

Concurrent with this evaluation, OIG conducted an evaluation on "Preadmission Screening and Resident Review for Younger Nursing Facility Residents With Serious Mental Illness" (OEI-05-05-00220). These studies were produced separately because in many States the mental retardation service delivery system is distinct from the mental health service delivery system.

METHODOLOGY

We reviewed the PASRR process in five States (Connecticut, Missouri, Texas, Washington, and West Virginia). We used the 2004 Minimum Data Set (MDS) data to array all States from the highest to the lowest proportion of Medicaid nursing facility residents who are younger (aged

²² 42 U.S.C. § 1396r(b)(3)(C)(i)(II).

²³ 42 U.S.C. § 1396r (e)(7)(D).

²⁴ 42 U.S.C. § 1396r(g)(2)(A)(iii).

²⁵ CMS State Operations Manual, Appendix PP, § 483.20(m).

22 to 64) and identified as having mental retardation.²⁶ From the States with a higher proportion of our target population, we purposively selected five States to achieve diversity in areas that included geographic location and size of State. We chose different States from the concurrent OIG evaluation to reduce the burden on States participating in our reviews.

Data Collection

We collected data from six sources for this inspection: (1) case file reviews of selected Medicaid nursing facility residents aged 22 to 64 with mental retardation; (2) structured interviews with agency officials from selected States; (3) structured interviews with administrators and staff from selected nursing facilities; (4) structured interviews with CMS staff; (5) review of oversight documentation from selected State agencies and CMS; and (6) review of randomly selected Level II PASRR evaluations from each selected State.

Case File Reviews of Nursing Facility Residents

Within each selected State, we used the same 2004 MDS data to select four nursing facilities in the vicinity of the State’s capitol city with a high prevalence of our target population. We selected 10 current residents from each nursing facility meeting our criteria. If 10 or fewer residents met our criteria, we selected all residents meeting our criteria. We reviewed a total of 101 case files. As shown in Table 1, the number of files reviewed in each State ranges from 10 to 32.

Federal law requires nursing facilities to maintain the results of any preadmission screening.²⁷ We sought Level I screens and Level II evaluations and determinations in each resident’s file. We were able to discern the difference between Level II evaluations and determinations; therefore, we analyzed each document separately. We asked

State	Number of Case Files Reviewed
1	32
2	20
3	24
4	15
5	10
Total	101

Source: OIG, 2005.

²⁶ Our criteria are based on residents with diagnoses of mental retardation or related condition (e.g., epilepsy, cerebral palsy), as indicated in items 9 and 10 of Section AB of the MDS. Many selected residents also had co-occurring diagnoses of mental illness. Residents with such co-occurring diagnoses were included in our review.

²⁷ 42 U.S.C. § 1396r(b)(6)(C).

nursing facility administrators to produce the PASRR documentation when it was not found in the resident's file. We also reviewed residents' files to determine whether Level II PASRR evaluations identified specialized mental retardation services to be provided by the State and services of lesser intensity to be provided by the nursing facility. We then reviewed the resident's treatment plan to determine whether identified specialized services and services of lesser intensity were included. We did not verify whether these services were provided, nor did we conduct a medical review to determine the necessity of these services.

Structured Interviews and Documentation Review

In each of our five selected States, we interviewed representatives from the State Medicaid agency, SMRA, State survey and certification agency, and Level II PASRR evaluators. We asked questions regarding the PASRR processes and oversight. We also collected States' Level I PASRR forms, Level II PASRR evaluation forms, PASRR-related guidance sent to nursing facilities, and PASRR policy documents.

At each of the 20 selected nursing facilities, we interviewed the nursing facility administrator and other nursing facility staff responsible for the PASRR process and the coordination and provision of mental retardation services. We asked questions regarding the PASRR processes, its oversight, and its use in care planning.

We interviewed the PASRR staff from CMS headquarters and each regional office regarding PASRR oversight. We also collected documentation of CMS oversight activities, including draft guidance.

Review of Level II PASRR Evaluations

To systematically review Level II evaluations, we requested data on the total number of Level II PASRR evaluations conducted in 2004 and the resulting placements from each of the five States. We reviewed 30 randomly selected Level II PASRR evaluations conducted in 2004 from each of 4 States but received only 1 from the fifth State, for a total of 121 Level II evaluations.

Scope

Our review of the PASRR is limited to Medicaid nursing facility residents aged 22 to 64 with mental retardation in five selected States. We purposively selected States and the nursing facilities within those States. As such, we do not project our results to the universe of States, individual States, nursing facilities, or nursing facility residents.

I N T R O D U C T I O N

Standards

This study was conducted in accordance with “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency.

► FINDINGS

While Level I screens were present in 88 percent of selected resident case files, one-fourth of these were completed late

Federal law requires preadmission screening of all individuals with mental retardation or mental illness who apply to or reside in Medicaid-certified nursing facilities regardless of the source of payment.²⁸ This report focuses exclusively on the PASRR as it relates to individuals with mental retardation. These results are not projectable to the universe of States, individual States, nursing facilities, or nursing facility residents.

Federal regulations require the State's PASRR program to identify all individuals who are suspected of having mental retardation; this is termed a Level I screen.²⁹ We found evidence of Level I screens in 89 of the 101 resident case files. Of these 89 case files, 22 were not completed prior to or on the date of admission. These 22 Level I screens took place an average of 40 days after the resident was admitted to the nursing facility.

If mental retardation is suspected, the individual is referred for a Level II PASRR evaluation.

Fifty-two percent of selected resident case files contained neither a Level II evaluation nor a Level II determination

Eighty-one percent of selected resident case files did not contain Level II evaluations, and 55 percent did not contain Level II determinations. Only 18 resident case files contained evaluations (7 of which were completed late), and 45 resident case files contained determinations.

Level II evaluations were either missing or late

Federal regulations provide certain circumstances in which SMRA may make determinations for categories of persons likely to require nursing facility level of services (e.g., in cases of terminal illness or severe physical illnesses such as coma) that can be based on existing sources of data and do not require a Level II evaluation.³⁰ In the 101 resident case files that we reviewed, 5 contained documentation indicating that they met these circumstances and did not require a Level II evaluation.

²⁸ 42 U.S.C. § 1396r(e)(7)(A)(1).

²⁹ 42 CFR § 483.128(a).

³⁰ 42 CFR §§ 483.128(m) and 483.130(b).

F I N D I N G S

Of the remaining 96 resident case files, 78 lacked evidence of a Level II evaluation. In 1 selected State, none of the 24 selected case files contained Level II evaluations. Administrators of the four selected nursing facilities in the State indicated that all they received was a form with a signature indicating that the individual met medical necessity criteria for nursing facility placement. These forms lacked other information, such as cognitive tests, that nursing facility staff might use in developing a plan of care for the individual.

Of the 18 Level II evaluations that were in the resident case files, 7 were not completed prior to or on the date of admission. These seven Level II evaluations were completed an average of 23 days after the resident had been admitted to the nursing facility. For another five residents, SMRA deemed that a Level II evaluation was not required, but the case file lacked documentation justifying that decision. During our review of selected resident case files in 20 nursing facilities, we collected data on the content required by Federal regulations (e.g., summary of medical and social history, whether specialized services are recommended). We also sought the treatment plans in resident case files to determine whether recommended services were included. However, since only 11 resident case files contained timely Level II evaluations, a meaningful review of Level II evaluation content was not possible.

Level II determinations were missing

Of the 101 selected resident case files, 56 lacked documented evidence of the Level II determination. SMRA must determine whether an individual with mental retardation requires a nursing facility level of services and whether specialized services are needed.³¹ This determination may be conveyed to the nursing facility verbally at first, but SMRA must confirm the determination in writing.³² Inasmuch as Level II determinations typically are based on Level II evaluations, the 45 selected resident case files containing evidence of a Level II determination suggest that more than 18 residents may have received a Level II evaluation. However, given the lack of Level II evaluations in selected case files, we could not ascertain whether these evaluations were simply missing or whether the residents did not require such an evaluation.

³¹ 42 CFR § 483.130(l)(1)-(2).

³² 42 CFR § 483.112(c)(2).

FINDINGS

Twenty-two percent of sampled Level II evaluations did not contain evidence that the evaluator assessed whether the individual's total needs could be met in a community setting

The selected resident case files from nursing facilities we visited contained evidence of only 18 Level II evaluations. To allow for a more thorough review of Level II evaluations, we randomly selected

Level II evaluations from SMRAs that were completed in 2004 and reviewed a total of 121 Level II evaluations from the 5 selected States.

Federal regulations require evaluators to assess whether an individual's total needs can be met in a community setting or only on an inpatient basis.³³ If an inpatient setting is determined to be the most appropriate, then such settings may include intermediate care facilities for the mentally retarded, nursing facilities, or waiver programs. If an individual's needs can be met in the community, then nursing facility services are not needed. Twenty-two percent (27 of 121) of sampled Level II evaluations did not contain evidence that the evaluator assessed whether the individual's total needs could be met in a community setting; instead, these evaluations contained evidence that the evaluator assessed solely whether such needs could be met in a nursing facility. In the remaining 78 percent (94 of 121) of the sampled cases, evaluators documented their assessments of the individual's medical needs, mental status, and independent living skills to substantiate the most appropriate setting for the individual.

During our structured interviews, officials from two States described practices other than PASRR that may address placement and provision of services for persons with mental retardation. These practices are described in Appendix A.

CMS and the survey and certification agencies in the five States that we reviewed conducted limited oversight

Limited oversight of preadmission screening processes occurred at both the Federal and State levels. Only one of the five selected States reported specific oversight

practices aimed at ensuring compliance with the PASRR. These practices are described in Appendix B.

³³ 42 CFR § 483.132.

Only two CMS regional offices have conducted onsite PASRR reviews in the past 3 years

Staff from 2 of the 10 CMS regional offices conducted onsite State reviews of the PASRR during 2002 through 2005. An official from one regional office indicated that it was “just getting started” again with the PASRR oversight. Beginning in June 2005, staff from this CMS regional office identified the PASRR contact persons in each State in its region, developed a survey inquiring about States’ PASRR processes, outlined State responsibilities in initial telephone calls to States, and planned to continue telephone calls with States on a quarterly basis. Officials from 7 of the 10 CMS regional offices reported that they have not conducted oversight related to the PASRR in the past 3 years.

One of the five selected States failed to track and maintain Level II evaluations as required

When we requested a list of all Level II PASRR evaluations and determinations conducted in 2004, one State responded that it “do[es] not currently have a system for tracking when these [PASRR Level II evaluations] are requested or completed other than by looking in the [individual’s] case file.” As a result, the State agency submitted a list of 43 individuals admitted to nursing facilities in 2004. For these individuals, the State reported that only one Level II evaluation was completed in 2004. The State identified 4 deceased individuals for whom the PASRR status was unknown, and 12 individuals for whom there was no record of a completed Level II evaluation. Therefore, this State was not in compliance with Federal regulations for establishing and maintaining a tracking system for individuals with mental retardation residing in nursing facilities.³⁴

Survey and certification agencies in the five selected States conducted limited oversight of the PASRR processes in nursing facilities

Surveyors from four States indicated that they would assess PASRR compliance if a person with mental retardation appeared in the sample or as part of an extended survey.³⁵ A surveyor from the fifth State reported that a complaint or hotline referral would prompt further investigation into whether the nursing facility was meeting the overall care needs of residents with mental retardation.

³⁴ 42 CFR § 483.130(p).

³⁵ An extended survey occurs when a facility is found to have furnished substandard quality of care during a standard survey.

F I N D I N G S

If surveyors identified noncompliance with Federal regulations concerning the PASRR, a deficiency tag (F285) was cited.³⁶ In 2004, surveyors cited 101 instances of F285 in approximately 16,000 nursing facilities nationwide. While survey and certification officials from all five States indicated that they monitor nursing facility compliance with PASRR requirements, one State surveyor concluded, “PASRR is underlooked, not overlooked.”

³⁶ CMS State Operations Manual, Appendix PP, § 483.20(m).



R E C O M M E N D A T I O N S

The PASRR process was created to ensure that individuals with mental retardation are not inappropriately placed in Medicaid nursing facilities. The PASRR is the primary mechanism to ensure that individuals with mental retardation are screened, evaluated, and placed in nursing facilities when appropriate, and receive identified needed services. It is essential that all State PASRR systems work effectively.

This evaluation of the PASRR found that while 88 percent of selected resident case files contained Level I screens, only 8 percent met all Level II PASRR requirements. In addition, 22 percent of sampled Level II evaluations did not contain evidence that the evaluator assessed whether the individual's total needs could be met in a community setting. Finally, CMS and the survey and certification agencies in the five States that we reviewed conducted limited oversight of the PASRR.

We based our findings on selected case files and a random sample of Level II evaluations from five selected States. As such, we do not project our results. However, the findings identify deficiencies that should be addressed to ensure that individuals with mental retardation are appropriately placed and receive necessary mental retardation services. We therefore recommend the following to CMS:

Hold State Medicaid agencies accountable for ensuring compliance with Federal requirements. Specifically, we recommend that:

- every nursing facility applicant receive a Level I PASRR screen prior to nursing facility admission, and
- all individuals with suspected mental retardation receive a Level II evaluation and determination prior to nursing facility admission and all Level II PASRR documentation is shared with the admitting nursing facility.

To address the above recommendations, we have several specific suggestions for CMS to consider. First, CMS could require that State Medicaid agencies provide data to CMS regarding the number of completed Level I PASRR screens and the number of expected and completed Level II evaluations and determinations, and nursing facility confirmation of receipts of the PASRR documentation. Alternatively, as part of CMS's current efforts to modify the MDS, CMS could consider adding a data element to indicate whether a Level I PASRR screen and Level II evaluation and determination have been completed. Finally, we suggest that CMS distribute both its draft State self-assessment

R E C O M M E N D A T I O N S

form and its draft regional office assessment form as tools to regularly collect information about each State's PASRR processes.

Hold States accountable for considering community placements during the Level II PASRR process

Revise survey and certification requirements to ensure that State surveyors:

- o sample residents with mental retardation, and
- o review all PASRR documentation for timely completion.

AGENCY COMMENTS

CMS concurred with all of our recommendations. CMS intends to remind States of their obligation to implement effective and timely Level I and Level II processes, clarifying for States all of the Level II elements required by Federal regulation. In addition, CMS intends to review State claims, if necessary, to ensure that States recoup Federal Financial Participation from nursing facilities for any days claimed prior to the completion of all PASRR documentation. CMS intends to review the forms and tools used by each State for the PASRR Level II evaluation and determination to assess whether they include consideration of community placement. To address our final recommendation regarding revising survey and certification requirements to ensure oversight of PASRR, CMS stated it will ensure that a resident requiring a Level II PASRR is included in the resident sample during a nursing facility survey. CMS's comments did not warrant any revisions to the results of our review or to our recommendations. For the full text of CMS's comments, see Appendix C.

Examples of State Practices Other Than PASRR That May Address Placement and Provision of Services

Through our evaluation, we identified a significant level of missing or late PASRR documentation. However, during structured interviews with officials from five States, respondents described a few examples of efforts to address placement and provision of services for individuals with mental retardation through processes other than the PASRR. For example, State Medicaid agencies define level-of-care criteria for nursing facility placement, which can include such things as amount of assistance an individual requires with mobility, diet, or personal care. We found that this process either preceded or was combined with the PASRR Level I screens in the five States.

Instances in which States employed processes other than the PASRR to address placement and/or provision of services for nursing facility residents with mental retardation include the following:

- Officials in Washington used a decision tree when considering placement of persons with mental retardation. This process considered all other residential settings, such as personal care services provided in the home, adult family home services, group homes, supported living, and shared living, with nursing facility placement as a last resort.
- Officials in Connecticut described significant involvement by the case managers of SMRA in the placement and care planning process for nursing facility residents with mental retardation. In that State, individuals with mental retardation may be placed in nursing facilities for 30 days based on a medical diagnosis. A Department of Mental Retardation employee monitors the resident during the 30-day period and determines whether additional time in the nursing facility is needed. The nursing facility staff that we interviewed in Connecticut confirmed that case managers are involved in quarterly care planning meetings. If a nursing facility resident experiences a significant change of condition while in the nursing facility, the case manager is contacted and changes to the care plan are discussed. Finally, the case manager ensures that the nursing facility resident receives any recommended specialized services financed by the State.

PASRR Oversight Practices in One State

One selected State implemented two oversight mechanisms aimed at ensuring that nursing facilities comply with Federal regulations concerning the PASRR. In West Virginia, the Department of Health and Human Resources sends a memorandum outlining the PASRR process to the nursing facility each time a prospective resident is referred for a Level II evaluation. The memorandum delineates the steps that the nursing facility must take to arrange for the initial Level II evaluation, the circumstances in which a subsequent Level II evaluation is required as a result of significant change in the resident's condition, and how the nursing facility should notify the State that a Level II evaluation will not be completed after referral. State officials indicated that this practice has been helpful in communicating PASRR requirements to nursing facility staff, which may experience frequent turnover. In addition, West Virginia conducts annual followup on the status of Level II evaluations that have been referred, but not conducted. If a nursing facility resident never received a Level II evaluation, State officials direct the nursing facility to arrange for one.

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Centers for Medicare & Medicaid Services' Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

DEC 13 2006

Administrator
Washington, DC 20201

DATE:

TO: Daniel R. Levinson
Inspector General
Office of Inspector General

FROM: Leslie V. Norwalk, Esq.
Acting Administrator

A handwritten signature in black ink, appearing to read "Leslie V. Norwalk", is written over the printed name and title of the Acting Administrator.

SUBJECT: Office of Inspector General (OIG) Draft Report: "Preadmission Screening and Resident Review for Younger Nursing Facility Residents With Mental Retardation" (OEI-07-05-00230)

Thank you for submitting the subject OIG draft report. We appreciate the opportunity to provide comments on the report, which are indicated below. Section 1919(e)(7) of the Social Security Act has required, since 1987, that Medicaid certified nursing facilities neither admit nor retain any individual with serious mental illness or mental retardation unless a thorough evaluation indicates that such placement is appropriate and adequate services will be provided. The OIG report found that this important protection for vulnerable individuals is not being adequately implemented in the studied States, and that Federal and State oversight should be improved. The report confirms problems of which the Centers for Medicare & Medicaid Services (CMS) is aware, and provides new information helpful for technical assistance and oversight.

In June of 2005, CMS convened an expert panel of many Preadmission Screening and Resident Review (PASRR) stakeholders, and set a course for more proactive Federal oversight of the program. Since that time, we have provided technical guidance in the form of presented papers and discussion with relevant associations, developed and released a draft comprehensive compliance assessment for States, worked with professionals in the field in support of an association for PASRR professionals, initiated monthly regional/central office PASRR conference calls, verified contact with each State PASRR coordinator in preparation for periodic technical assistance bulletins, and taken other actions. We welcome the specific recommendations from OIG to strengthen our effort to ensure that individuals with mental retardation or a related condition are served in the most appropriate manner.

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OIG Recommendation

Hold State Medicaid agencies accountable for ensuring compliance with Federal requirements.

- *Every nursing facility applicant receives a Level I screen prior to nursing facility admission, and*
- *All individuals with suspected mental retardation receive a Level II evaluation and determination prior to nursing facility admission and that all Level II PASRR documentation is shared with the admitting nursing facility.*

CMS Response

The CMS concurs with the recommendations, with some clarifications. The State Medicaid agencies are responsible for the State PASRR program, and should be accountable to CMS for compliance. Over the years, CMS has emphasized to States that every nursing facility applicant must receive a Level I screen and that all individuals who are found to have mental illness or mental retardation must receive a Level II evaluation and determination prior to nursing facility admission.

Based on the findings of the OIG review, CMS intends to remind States of their obligation to implement an effective and timely Level I process. We also intend to send further guidance and, if necessary, review State claims to ensure that States recoup Federal Financial Participation (FFP) from nursing facilities (NFs) for any days claimed prior to proper PASRR documentation.

In light of the findings in the OIG review, CMS intends to remind States of their obligation to implement an effective and timely Level II process. We also intend to send further guidance and, if necessary, review State claims to ensure that States recoup FFP from NFs for any days claimed prior to the completion of all proper PASRR documentation, including all required Level II PASRR documentation. We also intend to clarify for States that we interpret "all Level II PASRR documentation" (as we indicated in our response to the 2001 OIG PASRR report "Younger Nursing Facility Residents with Mental Illness: Preadmission Screening and Resident Review (PASRR) Implementation and Oversight" OEI-05-99-00700) to mean the Level II evaluation report (or categorical determination report), with the elements required by Federal regulations at 42 CFR section 483.128. This guidance would also be consistent with the OIG's use in the present study of the criteria in Federal regulations at 42 CFR section 483.128 to assess whether Level II PASRR reports included the required elements.

The OIG suggests several quantitative data elements that would indicate compliance with Federal requirements. In addition to State quality measures, CMS intends to examine existing and potential data sources, and possible data elements, to determine the best

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indicators of State PASRR system compliance. We are piloting a new PASRR question on the Minimum Data Set.

The CMS has released the State self-assessment form as a draft for comment. Comments from the States and others are the basis for current revision of the tool. The State self-assessment form and the activities described in these comments replace the draft regional office assessment tool, which was based on a now outdated field survey model.

OIG Recommendation

Hold States accountable for considering community placements during the Level II PASRR process.

CMS Response

The CMS has in the past year developed materials and given presentations emphasizing the Federal requirement that PASRR evaluations and determinations consider community-based alternatives to nursing facility placement. We intend to review the forms and tools used by each State for PASRR Level II evaluation and determination to be certain that they include consideration of community placements.

OIG Recommendation

Revise survey and certification requirements to ensure that State surveyors:

- *sample residents with mental retardation, and*
- *review all PASRR documentation for timely completion.*

CMS Response

We concur with the recommendation. When the Quality Indicator Survey (QIS) process is implemented, PASRR Level I and II documentation will be included in the selected sample of residents. The purpose of the documentation review will be to determine the nursing facility's compliance with PASRR requirements.

Once again, we thank you for the opportunity to review and comment on this draft report. The data and recommendations in this report help CMS improve oversight of the PASRR program. With the exception of annual reporting from States, we have been issuing guidance as suggested in the first recommendation; we will additionally make more formal notice to States. Annual reporting will be a key enhancement to our oversight role. Similarly, we have been issuing guidance relevant to the second OIG recommendation, and will now, in addition, review each State protocol. Regarding survey and certification, surveyors currently review nursing facility compliance with

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PASRR requirements if PASRR documentation is found in the selected resident sample. We will strengthen PASRR oversight in accord with the final OIG recommendation by ensuring that a resident requiring Level II PASRR evaluation is included in the resident sample. In addition to compliance with specific Federal requirements, CMS is committed to the overall purpose of the PASRR program. We will work with States to implement effective quality management of their PASRR programs, and report annually on measures of their progress.



A C K N O W L E D G M E N T S

This report was prepared under the direction of Brian T. Pattison, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office, and Gina C. Maree, Deputy Regional Inspector General. Other principal Office of Evaluation and Inspections staff who contributed include:

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