

New Subchapter Governing

Nursing Facility Responsibilities Related to Preadmission Screen and Resident Review (PASRR)

Chapter 19, Subchapter BB

EFFECTIVE DATE: July 7, 2015

DADS maintains the formatted version of HCS Program rules on its website to enhance public access to information concerning the programs. The *Texas Register* and the Texas Administrative Code remain the official sources for all DADS rules.

Overview of New Subchapter

The new Subchapter BB in Chapter 19 requires a Medicaid-certified nursing facility to comply with provisions related to the preadmission screening and resident review (PASRR) process and nursing facility specialized services for an individual seeking admission to a nursing facility or an individual residing in a nursing facility. PASRR is a federal requirement described in Code of Federal Regulations, Title 42, Part 483, Subpart C. A nursing facility must not admit an individual before a Level I screening for suspected mental illness (MI), intellectual disability (ID), or developmental disability (DD) is conducted. If an individual is suspected of having MI, ID, or DD, the local intellectual and developmental disability authority (LIDDA) conducts a PASRR Level II evaluation (PE) to determine if the individual has MI, ID, or DD and, if so, to determine if the individual needs nursing facility care and specialized services. The rules governing the LIDDA are in new Chapter 17 published as adopted in this issue of the *Texas Register*. Generally, the PE must be completed before admission, but the adopted subchapter explains when a nursing facility can admit an individual before the PE is complete. The new subchapter includes requirements for information a nursing facility must enter in the long term care (LTC) Online Portal, for cooperation with the LIDDA and the local mental health authority, and for an interdisciplinary team meeting to identify specialized services needed by an individual. The new subchapter requires a nursing facility to include

nursing facility specialized services in the comprehensive care plan and to provide those specialized services. The new subchapter also describes the responsibility of a nursing facility for participating in service planning and transition planning for certain residents.

The new subchapter requires a nursing facility, nursing facility contractor, or nursing facility specialized services provider to report to the LIDDA the identity of certain residents who express an interest in moving to the community. The subchapter allows the LIDDA service coordinator access to a resident's records during visits and allows LIDDA staff, presenters, community providers, and advocates to speak with certain nursing facility residents about community options. The subchapter also requires a nursing facility to report incidents and complaints, including abuse and neglect, to a resident's service coordinator or local mental health authority (LMHA) representative, as appropriate.

Process

The new subchapter was proposed for public comment in the April 3, 2015, issue of the *Texas Register*. The adoption is published in the July 3, 2015, issue of the *Texas Register*.

Questions

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**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 19, SUBCHAPTER BB
NURSING FACILITY RESPONSIBILITIES RELATED TO PREADMISSION SCREEN AND RESIDENT REVIEW
(PASRR)**

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§19.2701. Purpose.

Effective: July 7, 2015

The purpose of this subchapter is to:

(1) describe the requirements of a nursing facility related to preadmission screening and resident review (PASRR), which is a federal requirement in Code of Federal Regulations, Title 42, Part 483, Subpart C to ensure that:

(A) an individual seeking admission to a Medicaid-certified nursing facility and a resident of a nursing facility receives a PASRR Level I screening (PL1) to identify whether the individual or resident is suspected of having mental illness (MI), an intellectual disability (ID), or a developmental disability (DD); and

(B) an individual or resident suspected of having MI, ID, or DD receives a PASRR Level II evaluation (PE) to confirm MI, ID, or DD and, if confirmed, to evaluate whether the individual or resident needs nursing facility care and specialized services; and

(2) describe the requirements of a nursing facility related to a designated resident who receives service planning and transition planning.

§19.2702. Limitation on Charges for Nursing Facility Services.

Effective: July 7, 2015

A nursing facility must comply with this subchapter to receive payment for services provided to a Medicaid-eligible resident.

§19.2703. Definitions.

Effective: July 7, 2015

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) **Alternate placement assistance** -- Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meet the resident's basic needs in a setting other than a nursing facility. Assistance includes the identification of specific services and supports available through alternate resources for which the resident may be eligible and an explanation of the possible benefits and consequences of selecting a setting other than a nursing facility.

(2) **Coma** -- A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(3) **Comprehensive care plan** -- A plan, defined in §19.101 of this chapter (relating to Definitions), that includes, for a designated resident, nursing facility specialized services and nursing facility PASRR support activities.

(4) **Convalescent care** -- A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(5) **DADS** -- Department of Aging and Disability Services. For purposes of the PASRR process, DADS is the state authority for intellectual and developmental disabilities.

(6) **DD** -- Developmental disability. A disability that meets the criteria ~~conditions~~ described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42, §435.1010.

(7) **Delirium** -- A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(8) **Designated resident** -- A Medicaid recipient with ID or DD who is 21 years of age or older and who is a resident.

(9) **DSHS** -- Department of State Health Services. For purposes of the PASRR process,

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DSHS is the state mental health authority.

(10) **Emergency protective services** -- Services that are furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(11) **Exempted hospital discharge** -- A category of nursing facility admission that occurs when a physician has certified that an individual who is being discharged from a hospital is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(12) **Expedited admission** -- A category of nursing facility admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(13) **ID** -- Intellectual disability. Mental retardation, as described in CFR Title 42, §483.102(b)(3)(i).

(14) **IDT** -- Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) a registered nurse from the nursing facility with responsibility for the resident;

(D) a representative of a LIDDA or LMHA, or if the resident has MI and DD or MI and ID, a representative of the LIDDA and LMHA; and

(E) other persons, as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) a person specified by the resident or LAR, nursing facility, or LIDDA or LMHA, as applicable, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(15) **Individual** -- A person seeking admission to a nursing facility.

(16) **ISP** -- Individual service plan. A service plan developed by the service planning team for a designated resident in accordance with §17.502(2) of this title (relating to Service Planning Team (SPT) Responsibilities for a Designated Resident).

(17) **LAR** -- Legally authorized representative. A person authorized by law to act on behalf of an individual or resident with regard to a matter described by this subchapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(18) **LIDDA** -- Local intellectual and developmental disabilities authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035.

(19) **LIDDA specialized services** -- Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has ID or DD. LIDDA specialized services are:

(A) service coordination, which includes alternate placement assistance;

(B) employment assistance;

(C) supported employment;

(D) day habilitation;

(E) independent living skills training;

and

(F) behavioral support.

(20) **LMHA** -- Local mental health authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035. For the purposes of this subchapter, LMHA includes an entity designated by the Department of State Health Services as the entity to perform PASRR functions.

(21) **LMHA specialized services** -- Support services, other than nursing facility services, that are identified through the PE or

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resident review and may be provided to a resident who has MI. LMHA specialized services are defined in 25 TAC Chapter 412, Subchapter I (relating to MH Case Management), including alternate placement, and 25 TAC Chapter 416, Subchapter A (relating to Mental Health Rehabilitative Services).

(22) **LTC Online Portal** -- Long Term Care Online Portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and the long term services and supports Medicaid identification section of the MDS assessment.

(23) **MDS assessment** -- Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed nursing facility in Texas is required to submit for a resident admitted into the facility.

(24) **MI** -- Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(25) **Nursing facility** -- A Medicaid-certified facility that is licensed in accordance with Texas Health and Safety Code, Chapter 242.

(26) **Nursing facility PASRR support activities** -- Actions a nursing facility takes in coordination with a LIDDA or LMHA to facilitate the successful provision of LIDDA specialized services or LMHA specialized services, including:

(A) arranging transportation for a nursing facility resident to participate in a LIDDA specialized service or a LMHA specialized service outside the facility;

(B) sending a resident to a scheduled LIDDA specialized service or a LMHA specialized service with food and medications required by the resident; and

(C) including in the comprehensive care plan an agreement to avoid, when possible, scheduling nursing facility services at times that conflict with LIDDA specialized services or LMHA specialized services.

(27) **Nursing facility specialized services** -- Support services, other than nursing facility services, that are identified through the PE

and may be provided to a resident who has ID or DD. Nursing facility specialized services are:

(A) physical therapy, occupational therapy, and speech therapy;

(B) customized manual wheelchair; and

(C) durable medical equipment, which consists of:

(i) a gait trainer;

(ii) a standing board;

(iii) a special needs car seat or travel restraint;

(iv) a specialized or treated pressure-reducing support surface mattress;

(v) a positioning wedge;

(vi) a prosthetic device; and

(vii) an orthotic device.

(28) **PASRR** -- Preadmission screening and resident review.

(29) **PASRR determination** -- A decision made by DADS, DSHS, or their designee regarding an individual's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services, based on information in the PE; and, in accordance with Subchapter Y of this chapter (relating to Medical Necessity Determinations), whether the individual requires the level of care provided in a nursing facility. A report documenting the determination is sent to the individual and LAR.

(30) **PE** -- PASRR Level II evaluation. A face-to-face evaluation of an individual suspected of having MI, ID, or DD performed by a LIDDA or an LMHA to determine if the individual has MI, ID, or DD, and if so to:

(A) assess the individual's need for care in a nursing facility;

(B) assess the individual's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(C) identify alternate placement options.

(31) **PL1** -- PASRR Level I screening. The process of screening an individual to identify whether the individual is suspected of having MI,

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ID, or DD.

(32) **Pre-admission** -- A category of nursing facility admission from a community setting that is not an expedited admission or an exempted hospital discharge.

(33) **Referring entity** -- The entity that refers an individual to a nursing facility, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(34) **Resident** -- An individual who resides in a Medicaid-certified nursing facility and receives services provided by professional nursing personnel of the facility.

(35) **Resident review** -- A face-to-face evaluation of a resident performed by a LIDDA or LMHA:

(A) for a resident with MI, ID, or DD who experienced a significant change in status, to:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(iii) identify alternate placement options.

(36) **Respite** -- Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(37) **Service coordination** -- As defined in §2.553 of this title (relating to Definitions), assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the person and LAR on the individual's behalf.

(38) **Service coordinator** -- An employee of a LIDDA who provides service coordination.

(39) **Severe physical illness** -- An illness resulting in ventilator dependence or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from nursing facility specialized services, LIDDA specialized services and LMHA specialized services.

(40) **SPT** -- Service planning team. A team that develops, reviews, and revises the ISP for a designated resident.

(A) The SPT always includes:

(i) the designated resident;

(ii) the designated resident's LAR,

if any;

(iii) the service coordinator;

(iv) nursing facility staff familiar with the designated resident's needs;

(v) persons providing nursing facility specialized services and LIDDA specialized services for the designated resident;

(vi) a representative from a community provider, if one has been selected; and

(vii) a representative from the LMHA, if the designated resident has MI.

(B) Other participants on the SPT may include:

(i) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(ii) at the discretion of the LIDDA, a person who is directly involved in the delivery of services to people with ID or DD.

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(41) **Surrogate decision maker** -- An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the resident.

(42) **Terminal illness** -- A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course, which is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

(43) **Transition plan** -- A plan developed by the SPT that describes the activities, timetable, responsibilities, services, and supports involved in assisting a designated resident to transition from the nursing facility to the community.

§19.2704. Nursing Facility Responsibilities Related to PASRR.

Effective: July 7, 2015

(a) If an individual seeks admission to a nursing facility, the nursing facility:

(1) must coordinate with the referring entity to ensure the referring entity conducts a PL1; and

(2) may provide assistance in completing the PL1, if the referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source and requests assistance in completing the PL1.

(b) A nursing facility must not admit an individual who has not had a PL1 conducted before the individual is admitted to the facility.

(c) If an individual's PL1 indicates the individual is not suspected of having MI, ID, or DD, a nursing facility must enter the PL1 from the referring entity into the LTC Online Portal. The nursing facility may admit the individual into the facility through the routine admission process.

(d) For an individual whose PL1 indicates the individual is suspected of having MI, ID, or DD, a nursing facility:

(1) must enter the PL1 into the LTC

Online Portal if the individual's admission category is:

(A) expedited admission; or

(B) exempted hospital discharge; and

(2) must not enter the PL1 into the LTC Online Portal if the individual's admission category is pre-admission.

(e) Except as provided by subsection (f) of this section, a nursing facility must not admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination.

(f) A nursing facility may admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination only if the individual:

(1) is admitted as an expedited admission;

(2) is admitted as an exempted hospital discharge; or

(3) has not had an interruption in continuous nursing facility residence other than for acute care lasting fewer than 30 days and is returning to the same nursing facility.

(g) A nursing facility must check the LTC Online Portal daily for messages related to admissions and directives related to the PASRR process.

(h) Within seven calendar days after the LIDDA or LMHA has entered a PE or resident review into the LTC Online Portal for an individual or resident who has MI, ID, or DD, a nursing facility must:

(1) review the recommended list of nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(2) certify in the LTC Online Portal whether the individual's or resident's needs can be met in the nursing facility.

(i) After an individual or resident who is determined to have MI, ID, or DD from a PE or resident review has been admitted to a nursing facility, the facility must:

(1) contact the LIDDA or LMHA within two calendar days after the individual's admission or, for a resident, within two calendar days after

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the LTC Online Portal generated an automated notification to the LIDDA or LMHA, to schedule an IDT meeting to discuss nursing facility specialized services, LIDDA specialized services, and LMHA specialized services;

(2) convene the IDT meeting within 14 calendar days after admission or, for a resident review, within 14 calendar days after the LTC Online Portal generated an automated notification to the LIDDA or LMHA;

(3) participate in the IDT meeting to:

(A) identify which of the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive; and

(B) determine whether the resident is best served in a facility or community setting.

(4) provide staff from the LIDDA and LMHA access to the resident and the resident's clinical facility records upon request from the LIDDA or LMHA;

(5) enter into the LTC Online Portal within 3 business days after the IDT meeting for a resident:

(A) the date of the IDT meeting;

(B) the name of the persons who participated in the IDT meeting;

(C) the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services that were agreed to in the IDT meeting; and

(D) the determination of whether the resident is best served in a facility or community setting;

(6) include in the comprehensive care plan:

(A) the nursing facility specialized services agreed to by the resident or LAR; and

(B) the nursing facility PASRR support activities;

(7) if Medicaid or other funding is available:

(A) initiate nursing facility specialized services within 30 days after the date that the services are agreed to in the IDT meeting; and

(B) provide nursing facility specialized services agreed to in the IDT meeting to the resident; and

(8) for a resident who is a Medicaid recipient, annually document in the LTC Online Portal all nursing facility specialized services, LIDDA specialized services, and LMHA specialized services currently being provided to a resident.

§19.2705. Nursing Facility Responsibilities Related to the Fair Hearing Process.

Effective: July 7, 2015

PASRR determination that the individual does or does not require a nursing facility level of care may request a fair hearing to appeal the determination in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(1) If the hearing officer finds that the individual requires a nursing facility level of care, a nursing facility may admit the individual immediately. The individual must meet other eligibility requirements for the facility to receive payment for services provided to the individual.

(2) If the hearing officer finds that the individual does not require a nursing facility level of care, the nursing facility must not admit the individual.

§19.2706. Nursing Facility Responsibilities Related to a Designated Resident.

Effective: July 7, 2015

(a) A nursing facility employee, nursing facility contractor, or nursing facility specialized services provider must report to the LIDDA the identity of any designated resident who expresses an interest in transitioning to the community.

(b) For a designated resident, a nursing facility must designate staff and necessary contractors to be members of the resident's SPT.

(c) A nursing facility must ensure its staff and contractors who are members of a designated resident's SPT:

(1) attend and participate in a designated resident's SPT meetings as scheduled and convened by the service coordinator;

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(2) contribute to the development of a designated resident's ISP; and

(3) assist the SPT by:

(A) monitoring all nursing facility specialized services, LIDDA specialized services and LMHA specialized services, if applicable, provided to the resident to ensure the resident's needs are being met;

(B) making timely referrals, service changes, and amendments to the ISP as needed;

(C) ensuring that the resident's ISP, including nursing facility specialized services, nursing facility PASRR support activities, and LIDDA specialized services, is coordinated with the nursing facility's comprehensive care plan;

(D) developing a transition plan for a resident who has expressed interest in community living and, if no transition plan is recommended due to identified barriers, participating to identify the action the SPT will take to address concerns and remove the barriers; and

(E) reviewing and discussing the information included in the ISP and transition plan with key nursing facility staff who work with the resident.

(d) A nursing facility must allow a service coordinator access to:

(1) a designated resident on a monthly basis, or more frequently if needed; and

(2) the designated resident's clinical facility records.

§19.2707. Transition Activities Related to Designated Residents.

Effective: July 7, 2015

(a) A nursing facility must participate in implementing the transition plan developed by an SPT for a designated resident.

(b) A nursing facility must document in the comprehensive care plan for a designated resident any nursing facility responsibilities to support the implementation of the resident's transition plan.

§19.2708. Educational and Informational Activities for Residents.

Effective: July 7, 2015

A nursing facility must:

(1) allow access to residents by representatives of the Office of the State Long Term Care Ombudsman and Disability Rights Texas to educate and inform them of their rights and options related to PASRR;

(2) allow access to designated residents to support educational activities about community living options arranged by the LIDDA; and

(3) provide a designated resident with adequate notice and assistance to be prepared for and participate in scheduled community visits.

§19.2709. Incident and Complaint Reporting.

Effective: July 7, 2015

In addition to reporting incidents and complaints, including abuse and neglect, to DADS as required by §19.602 of this chapter (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities) and §19.2006 of this chapter (relating to Reporting Incidents and Complaints), a nursing facility must report the information by making a telephone report immediately after learning of the incident or complaint:

(1) to the service coordinator, if it involves a designated resident; and

(2) to the LMHA representative, if it involves a resident with MI receiving LMHA specialized services.