

WYOMING MEDICAID RULES

CHAPTER 19

NURSING FACILITY PREADMISSION SCREENINGS

Section 1. Authority. This Chapter is promulgated by the Department of Health pursuant to the Medical Assistance and Services Act at W.S. § 42-4-101, *et seq.* and the Wyoming Administrative Procedure Act at W.S. § 16-3-101, *et seq.*

Section 2. Purpose and Applicability.

(a) This Chapter establishes methods and standards for preadmission screening of clients and prospective clients of nursing facilities. The requirements of this Chapter apply to all clients and prospective clients, regardless of payment source.

(b) The Department may issue manuals, bulletins, or both, to interpret the provisions of this Chapter. Such manuals and bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in manuals or bulletins shall be subordinate to the provisions of this Chapter.

(c) The incorporation by reference of any external standard is intended to be the incorporation of that standard as it is in effect on the effective date of this Chapter.

Section 3. Definitions. Except as otherwise specified in the Rules and Regulations of Wyoming Medicaid, Chapter 1, Definitions, the terminology used in this Chapter is the standard terminology and has the standard meaning used in healthcare, Medicaid, and Medicare.

Section 4. General Provisions. This rule is intended to be read in conjunction with the Rules and Regulations of Wyoming Medicaid, Chapter 22, Nursing Facility Long Term Care/Home/Community Based Evaluation, and 42 C.F.R., Ch. IV, Subch. G, Pt.483, Subpt. C.

Section 5. Admission of Persons Diagnosed as Mentally Ill or with an Intellectual Disability or Related Condition.

(a) Mentally ill individuals. Except as otherwise provided by this Section, a nursing facility shall not admit any mentally ill individual unless:

(i) Prior to admission, the state mental health authority (SMHA) has determined, based on a physical and mental evaluation performed by a person or entity other than the state mental health authority, that the individual requires nursing facility services because of his or her physical and mental condition; and

(ii) If the individual requires nursing facility services, the SMHA has also determined whether the individual requires specialized services.

(b) Individuals or persons with an intellectual disability or related conditions. Except as otherwise provided by this Section, a facility shall not admit any individual with an intellectual disability or related condition unless:

(i) Prior to admission, the state intellectual disability authority (SIDA) has determined, based on a physical and mental evaluation performed by a person or entity other than the SIDA, that the individual requires nursing facility services because of his or her physical and mental condition; and

(ii) If the individual requires nursing facility services, the SIDA has also determined whether the individual requires specialized services.

(c) Penalty for admission prior to screening. Any facility that admits any mentally ill individual or any individual with an intellectual disability or related condition prior to a determination of appropriate placement shall be subject to:

(i) Denial of Medicaid payment for a Medicaid-eligible individual; and

(ii) Regardless of the individual's payment source, the Department may impose any of the remedies specified in Chapter 5, using the procedures specified in Chapter 5.

Section 6. Level I Screening.

(a) Purpose. The Level I screening is performed by qualified staff of a nursing facility or hospital to determine whether an individual seeking admission to or residing in a facility needs further evaluation because of suspected mental illness, an intellectual disability or a related condition.

(b) Applicability. All individuals, regardless of payment source, who apply for admission to a facility on or after January 1, 1989, or who were clients in a facility on January 1, 1989, are subject to the requirements of this Section.

(c) Frequency of screening.

(i) Any individual who was a client in a facility before January 1, 1989, must be screened on or before April 1, 1990.

(ii) Any individual seeking admission to a facility as a new admission on or after January 1, 1989, must be screened before admission.

(iii) If the screening does not result in a referral to Level II, the individual need not be screened again unless there is a significant change in the individual's condition that indicates that a Level II screening is advisable.

(d) Screening. All screening shall be performed by a qualified staff member of the facility. A qualified staff member is a member of a nursing facility's or hospital's staff that is qualified, by education, professional status or administrative authority, to discern the possibility or probability of mental illness, intellectual disability, or related condition by reviewing medical records, observation of presenting evidence, or other sources. The screener uses the following criteria:

(i) Mental illness. The screener shall consider whether:

(A) The individual is diagnosed with a serious mental illness, as defined by 42 C.F.R. § 483.102. This diagnosis shall not include individuals experiencing temporary anxiety or depressive reactions to a terminal or chronic debilitating condition for which specialized services would not be appropriate, but for which mental health services of a lesser intensity than specialized services may be required based on evaluation and recommendation by a physician or a qualified mental health professional;

(B) The individual has a history of mental illness requiring treatment more intensive than out treatment; or

(C) There is presenting evidence of a serious mental illness, including possible disturbances in orientation, affect or mood that is not attributable to dementia or other medical diagnosis or treatment.

(ii) Intellectual Disability. The screener shall consider whether:

(A) A physician or qualified intellectual disability professional has given the individual a primary or secondary diagnosis of mental retardation or related condition;

(B) The individual has a history of an intellectual disability or related condition;

(C) There are cognition or behavior deficits indicating an intellectual disability or related condition; or

(D) The individual was referred by an agency that serves persons with an intellectual disability or related condition, and the individual was eligible for that agency's services.

(e) Recommendation. Upon completion of the Level I screening, the screener

shall make a recommendation as to whether the individual should be referred for a Level II screening:

(i) If the recommendation is that a Level II screening is not necessary, the individual may be admitted to the facility; or

(ii) If the recommendation is that a Level II screening is necessary, the provisions of Section 7 of this Chapter apply.

(f) Notice. The nursing facility must provide written notice to the individual or client, or his or her legal representative, if the individual is suspected of having mental illness, an intellectual disability or related condition, and is being referred to the SMHA or SIDA for Level II screening. This notice is required for first time Level II identifications only.

(g) Documentation requirements. The facility shall complete documentation in the format specified by the Department.

Section 7. Level II Screening.

(a) Purpose. To determine whether an individual with a mental illness has an intellectual disability or related condition which requires, because of the individual's physical and mental condition, the level of services provided by a nursing facility and whether the individual requires specialized services.

(b) Applicability. All individuals who apply for admission to a facility on or after January 1, 1989, or who were clients in a facility on January 1, 1989, are subject to the requirements of this Section if the Level I screening indicates the possibility of mental illness, intellectual disability or related condition. No facility shall admit any individual for whom the Level I screening indicates a reason to refer the individual for a Level II screening until the Level II screening is completed and a determination of appropriate placement rendered.

(c) Change in condition. If there has been a previous Level II and the resident has a change in physical or mental functioning, a new Level II must be requested promptly by the nursing facility. This will be done by completing a new Level I form and submitting it through established procedures. The facility must indicate on the Level I form that a new Level II is being requested because a significant change in the person's physical or mental functioning.

(d) Failure to timely comply with Professional Activities Survey (PAS) requirements.

(i) PAS. Medicaid reimbursement shall be disallowed for nursing facility services furnished to a client before the Level II screening is completed and a

determination of appropriate placement in a nursing facility is made.

(ii) Non-Medicaid individuals. For failure to timely comply with PAS requirements for non-Medicaid eligible individuals, the Department may impose any of the remedies specified in the Rules and Regulations of Wyoming Medicaid, Chapter 5, Long Term Care Facility Remedies, Terminations, using the procedures specified in Chapter 5.

(e) Categorical determinations. A categorical determination takes into account that certain diagnoses, levels of severity of illness, or need for a particular service clearly indicate that admission to or residence in a nursing facility are appropriate without the need for a Level II review and determination. An individual with mental illness, an intellectual disability or related condition who meets the criteria for any category in this section shall be deemed appropriate for nursing home placement.

(i) Terminal illness. A diagnosis of terminal illness constitutes a Level II determination of appropriate placement, and specialized services not required.

(ii) Severe medical condition. A diagnosis of severe medical condition constitutes a Level II determination of appropriate placement. The individual must meet the following condition: An individual is mentally ill, has an intellectual disability or related condition meets the criteria for "severe medical condition" if he or she is comatose, ventilator dependent, or functioning at the brain stem level, or has been diagnosed by a physician as having chronic obstructive pulmonary disease, severe Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, congestive heart failure, severe cardiovascular accident (CVA), quadriplegia, advanced multiple sclerosis, end stage renal disease, severe diabetic neuropathy, or refractory anemia. The illness must result in a level of impairment so severe that the individual could not be expected to benefit from specialized services for mental illness, intellectual disability or related condition.

(iii) Convalescent care. The individual that is mentally ill has an intellectual disability or related condition and requires a medically prescribed nursing facility stay of no more than one hundred twenty (120) days. After that time, the facility must refer the individual for a Level II. The individual is mentally ill, has an intellectual disability or related condition and has an acute physical illness which:

(A) Required hospitalization; and

(B) Does not meet the criteria for an exempt hospital discharge as defined in 42 C.F.R. § 483.106.

(iv) Provisional placement. The individual requires a nursing facility stay of no more than fourteen (14) days. After that time, the facility must refer the individual for a Level II. The individual is mentally ill, intellectually disabled or related

condition and requires admission for:

(A) Delirium, where an accurate diagnosis cannot be made until the delirium clears; or

(B) Respite care.

(v) Emergency admissions. The individual is mentally ill, intellectually disabled or a related condition and requires a nursing facility stay of no more than seven (7) days for his or her protection. After that time, the facility must refer the individual for a Level II.

(f) Criteria for Level II screening.

(i) Determination of medical necessity. Each client referred for a Level II screening, regardless of payment source, must be evaluated for medical necessity pursuant to Chapter 22.

(ii) Level II screening shall be performed using the minimum criteria specified by CMS in §§ 4251 through 4253 of the State Medicaid Manual (SMM), as appropriate for a specific individual. The SMM is published by CMS and is available from CMS or the Department.

(iii) Determination of appropriate placement. The SMHA or SIDA (as applicable) shall review the mental and physical evaluations and the determinations of medical necessity and determine whether, based on the individual's physical and mental condition, the individual requires the level of services provided by the nursing facility (NF) into which the individual seeks admission.

(iv) Determination of need for specialized services.

(A) Mentally ill persons. The need for specialized services for mentally ill persons shall be determined using the procedures and protocols of the SMHA. The procedures and protocols of the SMHA are available from the SMHA or the Department.

(B) Persons with an intellectual disability. The need for specialized services for persons with an intellectual disability shall be determined using the procedures and protocols of the SIDA. The procedures and protocols are available from SIDA or the Department.

(g) Results of Level II screening. The Level II screening will result in a determination of the appropriateness of nursing facility placement and the need for specialized services. The following outcomes are possible:

(i) Individual requires nursing facility services, but does not require specialized services.

(A) Nursing facility placement is appropriate; and

(B) Mental health services of a lesser intensity than specialized services may be recommended.

(ii) Individual requires nursing facility services and specialized services provided in the nursing facility.

(A) Nursing facility placement is appropriate;

(B) The State must arrange for provision of specialized services; and

(C) Persons who do not require nursing facility services but require specialized services and choose to remain in the nursing facility under the thirty (30)-month rule are deemed to require nursing facility services.

(iii) Individual does not require nursing facility services or specialized services.

(A) Nursing facility placement is not appropriate or authorized, admission is denied; or

(B) If the client is already admitted, nursing facility must arrange for orderly discharge, including preparation and orientation of for discharge.

(iv) Individual does not require nursing facility services but does require specialized services that cannot be provided in the facility.

(A) Nursing facility placement is not appropriate or authorized, admission is denied; or

(B) If the client is already admitted, facility must arrange for orderly discharge, including preparation and orientation of for discharge.

(v) No evidence of serious mental illness and no evidence of an intellectual disability or related condition. Nursing facility placement is authorized.

(vi) Individual has a primary or secondary diagnosis of dementia without an accompanying condition of an intellectual disability or related condition (if the individual has a diagnosis of an intellectual disability or related condition with dementia, placement is authorized.) Nursing facility placement is authorized.

(vii) Individual is categorically appropriate due to terminal illness, as described in 42 C.F.R. § 418.3, or severe medical condition. Nursing facility placement is authorized.

(viii) Evaluation not completed due to death or discharge. PAS not complete. Medicaid reimbursement for nursing facility services will not be authorized.

(h) Notice of Level II determination.

(i) Notice to facility. The Department shall notify the facility, in writing, of the results of each Level II determination; and

(ii) Notice to individual. The Department shall notify the individual, in writing, of a Level II determination that nursing facility placement is not appropriate. The individual may request a reconsideration regarding the decision that such placement is not appropriate pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 16, Medicaid Program Integrity.

(i) If a client who has had a Level II within one (1) year is transferred from one nursing facility to another, the transferring facility must copy the Level II documentation and send it with the client as part of the transfer documentation. The admitting facility does not need to complete a Level I or II screening if the client's Level II was completed less than one (1) year before the transfer.

Section 8. Medicaid Reimbursement.

(a) Completion of screening. No facility shall receive Medicaid reimbursement for nursing facility services furnished to a client until:

(i) The completion of the Level I screening which indicates that there is no need for Level II screening or, if the Level I screening indicates the need for Level II screening, the completion of the Level II screening and a determination that nursing facility services are appropriate; and

(ii) The completion of the evaluation of medical necessity pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 22, Nursing Facility Long Term Care/Home/Community Based Evaluation, which indicates that nursing facility services are medically necessary.

(b) Retroactive payments.

(i) For clients that do not require Level II screening, Medicaid reimbursement shall commence upon receipt by the Department of the results of the Level I screening indicating that there is no need for a Level II screening.

Reimbursement shall be retroactive to the date of the completion of the Level I screening, provided there was an evaluation of medical necessity pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 22, Nursing Facility Long Term Care/Home/Community Based Evaluation.

(ii) For clients that require Level II screening, Medicaid reimbursement shall commence upon the completion of the Level II screening which indicates that nursing facility services are appropriate, except as specified in Section 7 of this Chapter. Reimbursement shall be retroactive to the date of the completion of the Level II screening, provided there was an evaluation of medical necessity pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 22, Nursing Facility Long Term Care/Home/Community Based Evaluation. Payments for residents permitted to continue to reside in a facility pursuant to the thirty (30)-month rule, as defined in 42 C.F.R. § 483.130, are subject to the provisions of this paragraph, except that such payments shall be contingent upon the completion of a Level II screening, regardless of whether the screening indicates that nursing facility services are appropriate.

Section 9. Recovery of Overpayments. The Department shall recover overpayments pursuant to the provisions of the Rules and Regulations of Wyoming Medicaid, Chapter 16, Medicaid Program Integrity.

Section 10. Reconsideration. A provider may request reconsideration of the decision to recover overpayments pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 16, Medicaid Program Integrity.

Section 11. Administrative Hearing.

(a) A provider may request an administrative hearing regarding the final decision pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 4, Administrative Hearings, of these rules.

(b) An applicant or client may request an administrative hearing pursuant to the Rules and Regulations of Wyoming Medicaid, Chapter 4, Administrative Hearings, regarding the Level II determination of appropriate placement.

Section 12. Delegation of Duties. The Department may delegate any of its duties under this rule to the Wyoming Attorney General, HHS, any other agency of the Federal, State or local government, or a private entity which is capable of performing such functions, provided that the Department shall retain the authority to impose sanctions, recover overpayments or take any other final action authorized by this Chapter.

Section 13. Interpretation of Chapter.

(a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other

provision.

- (b) The text of this Chapter shall control the titles of its various provisions.

Section 14. Superseding Effect. This Chapter supersedes all prior rules or policy statements issued by the Department, including manuals and bulletins, which are inconsistent with this Chapter.

Section 15. Severability. If any portion of these rules is found invalid or unenforceable, the remainder shall continue in effect.