

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: February 15, 2019

The proposed policy is a Permanent Rule. The proposed policy was presented at the January 8, 2019 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for February 20, 2019. This proposal is scheduled to be presented to the Medical Advisory Committee on March 14, 2019 and to the OHCA Board of Directors on March 21, 2019.

Reference: APA WF #18-07A

SUMMARY:

Preadmission Screening and Resident Review (PASRR) revisions – The proposed revisions will incorporate new language to clarify that the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) will be used for diagnostic purposes in Medicaid-certified nursing facility admissions. Revisions will also involve limited rewriting aimed at clarifying text, eliminating redundancies, and updating outdated terminology.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 Code of Federal Regulations, Sec. 483.102

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA

OKLAHOMA HEALTH CARE AUTHORITY

TO: Nicole Nantois
Legal Services

FROM: Vanessa Andrade
Federal and State Authorities

SUBJECT: Rule Impact Statement

A. Brief description of the purpose of the rule:

The proposed revisions will incorporate new language to clarify that the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) will be used for diagnostic purposes of a major mental illness in Medicaid-certified nursing facility admissions. Revisions will also involve limited rewriting aimed at clarifying text, eliminating redundancies, and updating outdated terminology.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

No classes of person will be affected by the proposed rule.

C. A description of the classes of persons who will benefit from the proposed rule:

The proposed rule will ensure the safety of members by utilizing the most current DSM edition for diagnosing major mental disorders during admissions to a Medicaid-certified nursing facility.

D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

There are no probable costs or benefits to the agency or to any other agency for the implementation and enforcement of the proposed rule.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule will not have an economic impact on any political subdivision nor will it require the cooperation of any political subdivision in implementing or enforcing the rule.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule will not have an adverse impact on small business.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no adverse effect on the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

OHCA does not believe there is a detrimental effect on the public health and safety if the rule is not passed.

K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: November 7, 2018.

Modified: December 12, 2018

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG-TERM CARE FACILITIES

317:30-5-123. Member certification for ~~long term~~long-term care

(a) **Medical eligibility.** Initial approval of medical eligibility for long-term care is determined by the Oklahoma Department of Human Services (~~OKDHS~~)(DHS) area nurse, or nurse designee. The certification is obtained by the facility at the time of admission.

(1) ~~Pre-admission~~**Preadmission screening.** Federal regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) for individuals with mental illness and intellectual disability. ~~PASRR applies to the screening or reviewing of all individuals for mental illness or intellectual disability or related conditions who apply to or reside in Title XIX certified nursing facilities regardless of the source of payment for the nursing facility (NF) services and regardless of the individual's or resident's known diagnoses. PASRR applies to the screening or reviewing of all individuals for mental illness, intellectual disability, or related conditions who apply to or reside in a Title XIX certified nursing facility (NF), regardless of the source of payment for the NF services and/or the individual's or resident's known diagnoses. Individuals referred for admission to a NF must be screened for a major mental disorder, diagnosable under the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). The NF must independently evaluate the Level I PASRR Screenscreen regardless of who completes the form and determine whether or not to admit an individual to the facility. Nursing facilities which inappropriately admit a person without a PASRR Screenscreen are subject to recoupment of funds. PASRR is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR~~

requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(2) PASRR Level I screen.

(A) Form LTC-300R, Nursing Facility Level of Care Assessment, must be completed by an authorized NF official or designee. An authorized NF official or designee must consist of one (1) of the following:

- (i) The NF administrator or co-administrator;
- (ii) A licensed nurse, social service director, or social worker from the NF; or
- (iii) A licensed nurse, social service director, or social worker from the hospital.

(B) Prior to admission, the authorized NF official must evaluate the properly completed ~~OHCA~~Oklahoma Health Care Authority (OHCA) Form LTC-300R and the Minimum Data Set (MDS), if available. Any other readily available medical and social information is also used to determine if there currently exists any indication of mental illness, an intellectual disability, or other related condition, or if such condition existed in the applicant's past history. Form LTC-300R constitutes the Level I PASRR ~~Screen~~screen and is utilized in determining whether or not a Level II ~~Assessment~~assessment is necessary prior to allowing the member to be admitted. The NF is also responsible for consulting with the Level of Care Evaluation Unit (LOCEU) regarding any ~~mental illness, or an intellectual disability related condition information that becomes known either from completion of the MDS or throughout the resident's stay.~~information on a mental illness, intellectual disability or related condition that becomes known either from completion of the MDS or throughout the resident's stay.

(C) The NF is responsible for determining from the evaluation whether or not the member can be admitted to the facility. A "yes" response to any question from Form LTC-300R, Section E, will require the facility to contact the LOCEU for a consultation to determine if a Level II ~~Assessment~~assessment is needed. If there is any question as to whether or not there is evidence of mental illness, an intellectual disability, or related condition, LOCEU should be contacted prior to admission. The original Form LTC-300R must be submitted electronically or by mail to the LOCEU within ~~10~~ten (10) days of the resident admission. SoonerCare payment may

not be made for a resident whose LTC-300R requirements have not been satisfied in a timely manner.

(D) Upon receipt and review of the Form LTC-300R, the LOCEU may, in coordination with the ~~OKDHS~~SDHS area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II ~~Assessment~~assessment is not required, the process of determining medical eligibility continues. If a Level II is required, a medical decision is not made until the results of the Level II ~~Assessment~~assessment are known.

(3) Level II Assessment for PASRR.

(A) Any one of the following three (3) circumstances will allow a member to enter the NF without being subjected to a Level II PASRR ~~Assessment~~assessment.

(i) The member has no current indication of mental illness, ~~or~~ intellectual disability, or other related condition and there is no history of such condition in the member's past.

(ii) The member does not have a diagnosis of intellectual disability or related condition.

(iii) An individual may be admitted to an NF if he/she has indications of mental illness ~~or an~~, intellectual disability, or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (~~Exempted Hospital Discharge~~exempted hospital discharge). If an individual is admitted to ~~ana~~ NF based on ~~Exempted Hospital Discharge~~exempted hospital discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. ~~Exempted Hospital Discharge~~Exempted hospital discharge is allowed only if all three (3) of the following conditions are met:

(I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(II) The individual must require NF services for the condition for which he/she received care in the hospital; and

(III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than ~~30~~thirty (30) days of NF services. The NF will be required to furnish this documentation to OHCA upon request.

(B) If the member has current indications of mental illness ~~or~~, intellectual disability, or other related condition, or if there is a history of such condition in the member's past, the member cannot be admitted to the NF until the LOCEU is contacted for consultation to determine if a Level II PASRR ~~Assessment~~assessment must be performed. Results of any Level II PASRR ~~Assessment~~assessment ordered must indicate that NF care is appropriate prior to allowing the member to be admitted.

(C) The OHCA LOCEU authorizes ~~Advance~~Group ~~Determinations~~advance group determinations for the mental illness and intellectual disability authorities in the following categories listed in (i) through (iii) of this subparagraph. Preliminary screening by the LOCEU may indicate eligibility for NF level of care prior to consideration of the provisional admission.

(i) **Provisional admission in cases of delirium.** Any person with mental illness, intellectual disability, or related condition that is not a danger to self and/or others, may be admitted to a Title XIX certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(I) A Level II evaluation is completed immediately after the delirium clears. The LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(II) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(ii) **Provisional admission in emergency situations.** ~~Any person with a mental illness, an intellectual disability~~
Any person with mental illness, intellectual disability, or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified NF for a period not to exceed seven (7) days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer

stay is anticipated. The LOCEU must be provided with written documentation from ~~OKDHS~~DHS Adult Protective Services which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(iii) **Respite care admission.** Any person with mental illness, ~~an~~ intellectual disability, or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified NF to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to ~~15~~fifteen (15) consecutive days per stay, not to exceed ~~30~~thirty (30) days per calendar year.

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow ~~30~~thirty (30) consecutive days of respite care. However, in no instance can respite care exceed ~~30~~thirty (30) days per calendar year.

(II) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(4) Resident Review.

(A) The facility's routine resident assessment will identify those individuals previously undiagnosed as intellectually disabled or mentally ill. A new condition of intellectual disability or mental illness must be referred to LOCEU by the NF for determination of the need for the Level II ~~Assessment~~assessment. The facility's failure to refer such individuals for a Level II ~~Assessment~~assessment may result in recoupment of funds.

(B) A Level II ~~Resident Review~~resident review may be conducted the following year for each resident of a NF who was found to experience a serious mental illness with no primary diagnosis of dementia on his or her ~~pre-admission~~preadmission Level II, to determine whether, because of the resident's physical and mental condition, the resident requires the level of services provided by a NF and whether the resident requires specialized services.

(C) A significant change in a resident's mental condition could trigger a Level II ~~Resident Review~~ resident review. If such a change should occur in a resident's condition, it is the responsibility of the NF to notify the LOCEU of the need to conduct a resident review.

(5) **Results of Level II ~~Pre-Admission~~ Preadmission Assessment and Resident Review.** Through contractual arrangements between the OHCA and the mental illness or intellectual disability authorities, individualized assessments are conducted and findings presented in written evaluations. The evaluations determine if NF services are needed, if specialized services or less than specialized services are needed, and if the individual meets the federal PASRR definition of mental illness ~~or~~, intellectual disability, or related conditions. Evaluations are delivered to the LOCEU to process formal, written notification to member, guardian, NF, and interested parties.

(6) **Readmissions and interfacility transfers.** The ~~Preadmission Screening~~ preadmission screening process does not apply to readmission of an individual to a NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the NF for the hospitalization. ~~Inter-facility~~ Interfacility transfers are also subject to preadmission screening. In the case of transfer of a resident from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent LTC-300R and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated LTC-300R that reflects the resident's current status to LOCEU within ten (10) days of the transfer. Failure to do so could result in possible recoupment of funds. LOCEU should also be contacted prior to admitting out-of-state NF applicants with mental illness ~~or~~, intellectual disability, or related condition, so that PASRR needs can be ascertained. Any PASRR evaluations previously completed by the referring state should be forwarded to LOCEU as part of this PASRR consultation.

(7) **PASRR appeals process.**

(A) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county ~~OKDHS~~ DHS office to discuss a hearing. Forms for requesting a fair hearing (~~OKDHS~~ DHS Form 13MP001E, Request for a Fair Hearing), as

well as assistance in completing the forms, can be obtained at the local county ~~OKDHS~~SDHS office. Any request for a hearing must be ~~made no later than 20 days following the date of written notice received by OHCA within thirty (30) days of the date of written notice.~~ Appeals of these decisions are available under ~~OAC~~Oklahoma Administrative Code (OAC) 317:2-1-2. All individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(B) When the individual is found to experience mental illness, an intellectual disability, or related condition through the Level II ~~Assessment~~assessment, the PASRR determination made by the mental illness or intellectual disability authorities cannot be countermanded by the OHCA, either in the claims process or through other utilization control/review processes, or by the State Department of Health. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the mental illness or intellectual disability authorities.

(b) **Determination of Title XIX medical eligibility for ~~long term~~long-term care.** The determination of medical eligibility for care in a NF is made by the ~~OKDHS~~SDHS area nurse, or nurse designee. The procedures for determining NF program medical eligibility are found in OAC 317:35-19. Determination of ICF/IID medical eligibility is made by LOCEU. The procedures for obtaining and submitting information required for a decision are outlined below.

(1) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/IID care is based on results of a current comprehensive psychological evaluation by a licensed psychologist or state staff psychologist, documentation of intellectual disability or related condition prior to age ~~22~~twenty-two (22), and the need for active treatment according to federal standards. Pre-approval is made by LOCEU analysts.

(2) **Medical eligibility for ICF/IID services.** Within ~~30~~thirty (30) calendar days after services begin, the facility must submit the original of the Nursing Facility Level of Care Assessment (~~Form LTC-300R~~)(Form LTC 300) to LOCEU. Required attachments include current (within ~~90~~ninety (90) days of requested approval date) medical information signed by a physician, a current (within ~~12~~twelve (12) months of requested approval date) psychological evaluation, a copy of the pertinent section of the ~~Individual Developmental Plan~~individual development plan or other appropriate documentation relative to discharge planning and the need for

ICF/IID level of care, and a statement that the member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on ~~MEDATS~~ Medical Eligibility Determination Application Tracking System (MEDATS).

(3) **Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship to disability has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances, LOCEU will render a decision on categorical relationship using the same definition as used by the Social Security Administration (SSA). A follow-up is required by the ~~OKDHS~~ SDHS worker with SSA to be sure that their disability decision agrees with the decision of LOCEU.