Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.**, §512)

PROPOSED

PUBLIC NOTICE

Long-Term Care Program – Pre-Admission Screening and Resident Review

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending Long-Term Care program policies in the Division of Social Services Manual (DSSM) regarding *Pre-Admission Screening and Resident Review*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by January 31, 2011.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care Program, specifically, *Pre-Admission Screening and Resident Review*.

Statutory Authority

- The Omnibus Budget Reconciliation Act of 1987
- Social Security Act §1919(e)(7), *State requirements for preadmission screening and resident review*.
- 42 CFR §§483.100 – 483.116, *Preadmission Screening and Annual review of Mentally Ill and Mentally Retarded Individuals*

Background

The Omnibus Reconciliation Act of 1987 (OBRA) and P.L. 100-203, Section 4211(c)(7), and OBRA 1990 contain provisions with major implications for persons with mental illness or mental retardation who are applying to or residing in a nursing facility. The provisions were designed to eliminate the practice of inappropriately placing persons with mental illness, mental retardation and related conditions in Medicaid-certified nursing facilities.

Specifically, the PASRR program must ensure that the following conditions are met.

- That no person may be admitted to a Medicaid-certified nursing facility without first being screened for mental illness and mental retardation. This provision applies to the source of nursing facility placement.
- That as a result of this preadmission screening, referred to as the Level I, persons who appear to have a mental illness, mental retardation or related condition will undergo additional screening, referred to as the Level II, to determine if their needs can be met safely in a Medicaid certified nursing facility, with or without specialized services.

Public Law 104-315, signed into law on October 19, 1996, amends Title XIX of the Social Security Act to repeal the requirement for an annual resident review. The amendment requires nursing facilities to notify the state mental health or mental retardation authority, as applicable, of a significant change in the physical or mental condition of a resident who has a serious mental illness or mental retardation. The change in condition must affect either the resident's need for continued nursing facility placement or for specialized services. A review and determination under Section 1919(e)(7) of the Act must be done promptly after the nursing facility notifies the state mental health or mental retardation authority of the significant change in condition.

Summary of Proposed Change

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend DSSM 20102 to add language at new **DSSM 20102.3**, *Pre-Admission Screening and Resident Review Overview* and new **DSSM 20102.3.1**, *Pre-Admission Screening and Resident Reviews* to reflect current Medicaid policy regarding preadmission screening and resident review (PASRR) for all persons applying for admission to or residing in a nursing facility. The addition of this new rule is consistent with current PASRR evaluation policy and procedures that determines whether (1) the person requires nursing facility level

of care and, if so, (2) whether the person also requires specialized services (active treatment).

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #10-55
REVISION:

PAS POL 20102.3 PRE-ADMISSION SCREENING AND RESIDENT REVIEWS (PASRR) OVERVIEW

By Federal mandate, all individuals applying for placement in a Medicaid certified nursing facility, regardless of pay source, must have a Level I Pre-Admission Screening and Resident Review (PASRR) for Mental Illness (MI) or Mental Retardation (MR).

Based on results of a Level I PASRR Screening, the PAS RN may determine that further screening, a Level II PASRR, is warranted. A Level II PASRR evaluates clients with MI and MR and determines if nursing home placement, either with or without specialized services, is appropriate. In addition to the PAS RN, an Independent Contracted Psychiatrist also makes placement recommendations. However, the final decision on appropriate placement for individuals with MI or MR is made by the State Mental Health Authority for MI or the Division of Developmental Disabilities Services for MR.

PAS POL 20102.3.1 PRE-ADMISSION SCREENING AND RESIDENT REVIEWS (PASRR)

This applies to all nursing home applicants or residents of a Medicaid certified nursing facility (NF) regardless of payment source or diagnoses.

1. **DMMA is Responsible for PASRR Oversight**
   DMMA will assure PASRR program operates in accordance with federal regulations.

2. **A Level I PASRR Screening is completed on all residents or potential residents of a Medicaid certified Nursing home.**
   A Level I screening is the process of identifying individuals who are suspected of having a mental illness or mental retardation or if categorical determinations are met.
   The Nursing Facility is responsible for completing the Level I screening for non-Medicaid individuals.
   The Division of Medicaid and Medical Assistance is responsible for completing the Level I screening for Medicaid and potential Medicaid individuals when notified.

3. **Determination is made regarding the need for a Level II PASRR screening.**
   Based on the Level I screening, the individual will meet one of three categories:
   - No indication of mental illness/mental retardation/related condition – nursing home admission/ continued stay is appropriate - No further evaluation is needed.
   - There are indicators of mental illness/mental retardation/related condition however individual meets any of the following Physician's Exemption Criteria:
     - Primary Diagnosis of Dementia or related disorder.
     - Convalescent Care not to exceed 30 days - PAS nurses will track this exemption and initiate Level II PASRR evaluation prior to expiration if continued NF stay is warranted.
     - Terminal Illness – a life expectancy of 6 months or less if the illness runs its normal course.
     - Medical dependency with a severe physical illness.

   No further evaluation is needed at this time.
   - There are indicators of mental illness, mental retardation/related conditions – Needs complete PASRR Assessment (Level II).

4. **DMMA will coordinate the Level II screening for all Medicaid and non-Medicaid individuals.**
   DMMA PAS nurse will gather data for Level II PASRR screening.
   Data is reviewed with DMMA Nurse Supervisor for approval to continue with the Level II screening.

5. **The individual and/or legal representatives must receive written notice that further evaluation is needed.**

The notice must inform them that the individual is being referred for Level II Evaluation to DSAMH due to mental illness indicators or to DDDS due to mental retardation.

6. An Independent Psychiatric Consultant (IPC) will complete the Level II Evaluation for those with mental illness/indicators.

The IPC will assess individual and review documentation to verify whether or not there is a serious MI.

The Level II evaluation may be terminated at any time if the evaluator determines that no Mental Illness is present.

7. DDDS will complete the Level II Evaluation for those with mental retardation/indicators.

The Level II evaluation may be terminated at any time if the evaluator determines that no Mental Retardation is present.

8. DSAMH or DDDS Determines Need For Specialized Services and /or NF Services.

DSAMH will review IPC's recommendations and determine need for Specialized Services and/or NF services.

9. DMMA is notified by DSAMH/DDDS of final determination.

10. DMMA will send final determination letter to:

- Individual/applicant;
- Legal Representative;
- Admitting or retaining NF;
- Attending Physician;
- Discharging hospital – if exemption is not applicable.

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