



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-07-003 ; or
- Expedited Rule Making--Proposed notice was filed as WSR: ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

Title of rule and other identifying information: (Describe Subject)

The department is amending the following section in chapter 388-97 WAC, Nursing Homes: WAC 388-97-2000, "Preadmission screening and resident review (PASRR) determination and appeal rights".

The department is repealing the following four sections in chapter 388-97 WAC, Nursing Homes: WAC 388-97-1920, "Preadmission screening – Level I", WAC 388-97-1940, "Advanced categorical determinations, not subject to preadmission screening - Level II", WAC 388-97-1960, "Preadmission screening - Level II", and WAC 388-97-1980, "Resident review".

The department is adding the following three new sections in chapter 388-97 WAC, Nursing Homes: WAC 388-97-1910, "Definitions related with PASRR", WAC 388-97-1915, "PASRR requirements prior to admission of new residents," and WAC 388-97-1975, "PASRR requirements after admission of a resident".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Date: July 7, 2015 Time: 10:00 a.m.

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185

by: 5:00 p.m. July 7, 2015

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by June 23, 2015
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than July 8, 2015
(Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is proposing these new, amended, and repealed rules to assure compliance with Federal standards regarding the Pre-Admission Screening and Resident Review (PASRR) process in accordance with 42 CFR §483.100-138.

Reasons supporting proposal:

This amendment will provide greater clarity regarding the PASRR process for nursing facilities.

Statutory authority for adoption:

Chapter 18.51 RCW and Chapter 74.42 RCW

Statute being implemented:

Chapter 18.51 RCW and Chapter 74.42 RCW

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:
42 CFR §483.100-138

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 02, 2015

TIME: 11:52 AM

WSR 15-12-096

DATE
May 26, 2015

NAME (type or print)
Katherine Vasquez

SIGNATURE

TITLE
DSHS Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Social and Health Services, , Aging and Long-Term Support Administration

Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Amy Abbott	P.O. Box 45600, Olympia WA 98513	360-725-2581
Implementation: Carl Walters	P.O. Box 45600, Olympia WA 98513	360-725-2400
Enforcement: Tim Hoekstra	P.O. Box 45600, Olympia WA 98513	360-725-3238

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone: ()

Fax: ()

e-mail

No. Explain why no statement was prepared.

Under RCW 19.85.025 (3), an SBEIS is not required for rules adopting or incorporating, by reference without material change, Washington State statutes or federal statutes or regulations.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone: ()

fax: ()

e-mail:

No: Please explain:

Under RCW 34.05.328 (5)(b)(iii), a CBA is not required for rules adopting or incorporating, by reference without material change, Washington State statutes or federal statutes or regulations.

NEW SECTION

WAC 388-97-1910 Definitions related with PASRR "AAA" means area agency on aging.

"Advance categorical determination" means a determination by a mental health or DDA PASRR evaluator that an individual may be admitted to a nursing facility on a temporary basis. The PASRR evaluator will do an abbreviated evaluation that is sufficient to determine that the individual has an intellectual disability or related condition and that the individual meets nursing facility level of care, but does not need specialized services at that time. The potential reasons are:

- (1) Protective services stay of not more than seven days;
- (2) Respite in a nursing facility for not more than thirty days;

and

(3) Delirium (full level II evaluation required when condition improves).

"DDA" means the developmental disabilities administration within the department.

"Exempted hospital discharge" means the process by which an individual who meets the criteria in WAC 388-97-1920(2)(a) through (c) may be admitted to a nursing facility without a PASRR level II evaluation, even though he or she may have a serious mental illness or an intellectual disability or related condition.

"HCS" means home and community services within the department.

"Intellectual disability or related condition" means a condition as defined in 42 CFR §483.102(b)(3) and 42 CFR §435.1010 or successor laws.

"Preadmission screening and resident review process" or **"PASRR process"** means the process required by federal law to determine if placement in a nursing facility is appropriate for an individual who has a serious mental illness, an intellectual disability or related condition, or both, and if so, to determine whether specialized services are necessary. The PASRR process includes the following steps:

(1) A "PASRR level I" screening is conducted by a referring provider, such as a hospital or physician, or by designated HCS, AAA or DDA staff, to identify whether an individual may have a mental illness, an intellectual disability or related condition, or both. Under the limited circumstances described in this chapter, a nursing facility may conduct the screening. The standardized form and guidelines developed by the department's PASRR program must be used to conduct the Level 1 screening.

(2) A "PASRR level II" evaluation is conducted by the DDA or mental health PASRR evaluator, or both, as appropriate. This evaluation is performed with individuals who, based upon the PASRR level I screening, are suspected of having a mental illness, an intellectual disability or related condition, or both. The level II evaluator determines:

(a) Whether the individual has a serious mental illness and/or an intellectual disability or related condition;

(b) If so, whether nursing facility placement is appropriate; and

(c) If so, whether the individual requires specialized services while residing at the nursing facility.

"Resident review" means a PASRR level II evaluation of a resident with serious mental illness and/or intellectual disability or related condition after that resident has experienced a significant change in physical or mental condition, as defined in this section.

"Serious mental illness" means a condition as defined in 42 CFR §483.102(b)(1) or successor laws.

"Significant change in physical or mental condition" for PASRR purpose means a deterioration or improvement in the physical or mental condition of a resident with serious mental illness or intellectual disability or related condition such that:

(1) The resident may reasonably require new, different, or fewer specialized services than the resident had been receiving; or

(2) Community placement is a reasonable consideration for the resident.

"Specialized services" are services provided or arranged for by the department as described in 42 CFR §483.120 or successor laws, which are additional to services the nursing facility is required to provide. The PASRR level II evaluation identifies the specialized services needed by the resident.

NEW SECTION

WAC 388-97-1915 PASRR requirements prior to admission of new residents Prior to every admission of a new resident, the nursing facility must:

(1) Verify that a PASRR level I screening has been completed, and deny admission until that screening has been completed.

(2) Verify that a PASRR level II evaluation has been completed when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:

(a) The individual is admitted directly from a hospital after receiving acute inpatient care;

(b) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and

(c) The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services.

(3) Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.

(4) Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

NEW SECTION

WAC 388-97-1975 PASRR requirements after admission of a resident Following a resident's admission, the nursing facility must:

(1) Review the all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was

incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

(5) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.

(6) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

(7) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

(8) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

(9) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

(10) Provide services and interventions that complement, reinforce and are consistent with any specialized services recommended by

the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

(11) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights. (1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) ~~((In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.~~

~~(3) An individual applying for admission to a nursing facility or~~
a) A nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination that the individual is:

(a) Not in need of nursing facility care as defined under WAC 388-106-0350 through 388-106-0360;

(b) Not in need of specialized services as defined under WAC ~~((388-97-1960))~~ 388-97-1910; or

(c) Need for specialized services as defined under WAC ~~((388-97-1960))~~ 388-97-1910.

~~((4))~~ (3) The nursing facility must assist ~~((the individual applying for admission or))~~ a resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

~~((5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:~~

~~(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;~~

~~(b) Attach a hearing request form to the transfer or discharge notice;~~

~~(c) Inform the resident, in writing in a language and manner the resident can understand, that:~~

~~(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;~~

~~(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and~~

~~(iii) The resident will be ineligible for medicaid nursing facility payment;~~

~~(A) Thirty days after the receipt of written notice of transfer or discharge; or~~

~~(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.~~

~~(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.~~

~~(7) The department will:~~

~~(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;~~

~~(b) Suspend transfer or discharge;~~

~~(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and~~

~~(ii) Until the office of appeals makes a determination; and~~

~~(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.~~

~~(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail.)~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1920	Preadmission screening—Level I.
WAC 388-97-1940	Advanced categorical determinations, not subject to preadmission screening—Level II.
WAC 388-97-1960	Preadmission screening—Level II.
WAC 388-97-1980	Resident review.