

§ 483.130

42 CFR Ch. IV (10-1-00 Edition)

applicable, to a legal representative designated under State law.

(l) *Evaluation report.* The evaluator must send a copy of the evaluation report to the—

(1) Individual or resident and his or her legal representative;

(2) Appropriate State authority in sufficient time for the State authorities to meet the times identified in § 483.112(c) for PASs and § 483.114(c) for ARRs;

(3) Admitting or retaining NF;

(4) Individual's attending physician; and

(5) The discharging hospital if the individual is seeking NF admission from a hospital.

(m) The evaluation may be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated—

(1) Does not have MI or MR; or

(2) Has—

(i) A primary diagnosis of dementia (including Alzheimer's Disease or a related disorder); or

(ii) A non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.130 PASARR determination criteria.

(a) *Basis for determinations.* Determinations made by the State mental health or mental retardation authority as to whether NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual, as specified in paragraph (b) of this section.

(b) *Types of determinations.* Determinations may be—

(1) Advance group determinations, in accordance with this section, by category that take 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 NF is normally needed, or that the provision of specialized services is not normally needed; or

(2) Individualized determinations based on more extensive individualized evaluations as required in § 483.132,

§ 483.134, or § 483.136 (or, in the case of an individual having both MR and MI, §§ 483.134 and 483.136).

(c) *Group determinations by category.* Advance group determinations by category developed by the State mental health or mental retardation authorities may be made applicable to individuals by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the category established by the State authorities (see § 483.132(c)). Sources of existing data on the individual that could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records of community mental health centers or community mental retardation or developmental disability providers.

(d) *Examples of categories.* Examples of categories for which the State mental health or mental retardation authority may make an advance group determination that NF services are needed are—

(1) Convalescent care from an acute physical illness which—

(i) Required hospitalization; and

(ii) Does not meet all the criteria for an exempt hospital discharge, which is not subject to preadmission screening, as specified in § 483.106(b)(2).

(2) Terminal illness, as defined for hospice purposes in § 418.3 of this chapter;

(3) Severe physical illnesses such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services;

(4) Provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears;

(5) Provisional admissions pending further assessment in emergency situations requiring protective services,

with placement in a nursing facility not to exceed 7 days; and

(6) Very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or MR is expected to return following the brief NF stay.

(e) *Time limits.* The State may specify time limits for categorical determinations that NF services are needed and in the case of paragraphs (d)(4), (5) and (6) of this section, must specify a time limit which is appropriate for provisional admissions pending further assessment and for emergency situations and respite care. If an individual is later determined to need a longer stay than the State's limit allows, the individual must be subjected to an annual resident review before continuation of the stay may be permitted and payment made for days of NF care beyond the State's time limit.

(f) The State mental health and mental retardation authorities may make categorical determinations that specialized services are not needed in the provisional, emergency and respite admission situations identified in § 483.130(d)(4)–(6). In all other cases, except for § 483.130(h), a determination that specialized services are not needed must be based on a more extensive individualized evaluation under § 483.134 or § 483.136.

(g) *Categorical determinations: No positive specialized treatment determinations.* The State mental health and mental retardation authorities must not make categorical determinations that specialized services are needed. Such a determination must be based on a more extensive individualized evaluation under § 483.134 or § 483.136 to determine the exact nature of the specialized services that are needed.

(h) *Categorical determinations: Dementia and MR.* The State mental retardation authority may make categorical determinations that individuals with dementia, which exists in combination with mental retardation or a related condition, do not need specialized services.

(i) If a State mental health or mental retardation authority determines NF needs by category, it may not waive the specialized services determination. The appropriate State authority must

also determine whether specialized services are needed either by category (if permitted) or by individualized evaluations, as specified in § 483.134 or § 483.136.

(j) *Recording determinations.* All determinations made by the State mental health and mental retardation authority, regardless of how they are arrived at, must be recorded in the individual's record.

(k) *Notice of determination.* The State mental health or mental retardation authority must notify in writing the following entities of a determination made under this subpart:

(1) The evaluated individual and his or her legal representative;

(2) The admitting or retaining NF;

(3) The individual or resident's attending physician; and

(4) The discharging hospital, unless the individual is exempt from preadmission screening as provided for at § 483.106(b)(2).

(l) *Contents of notice.* Each notice of the determination made by the State mental health or mental retardation authority must include—

(1) Whether a NF level of services is needed;

(2) Whether specialized services are needed;

(3) The placement options that are available to the individual consistent with these determinations; and

(4) The rights of the individual to appeal the determination under subpart E of this part.

(m) *Placement options.* Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, the placement options and the required State actions are as follows:

(1) *Can be admitted to a NF.* Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate, as determined in § 483.126. If specialized services are also needed, the State is responsible for providing or arranging for the provision of the specialized services.

(2) *Cannot be admitted to a NF.* Any applicant for admission to a NF who

has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

(3) *Can be considered appropriate for continued placement in a NF.* Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate, as determined in § 483.126.

(4) *May choose to remain in the NF even though the placement would otherwise be inappropriate.* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

(5) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.12(a) to an appropriate setting where the State must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

(6) *Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents).* Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require

specialized services regardless of his or her length of stay, must be discharged in accordance with § 483.12(a). The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

(n) *Specialized services needed in a NF.* If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.

(o) *Record retention.* The State PASARR system must maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR; and

(p) *Tracking system.* The State PASARR system must establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

§ 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).

(a) *Basic rule.* For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether—

(1) The individual's total needs are such that his or her needs can be met in an appropriate community setting;

(2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;

(3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126; or