

(2) Nurse aides who have an offer of employment from a facility;

(3) Nurse aides who become employed by a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program; or

(4) Nurse aides who receive an offer of employment from a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Annual Resident Review (PASARR) Determinations

SOURCE: 57 FR 56514, Nov. 30, 1992, unless otherwise noted.

§ 483.200 Statutory basis.

This subpart is based on sections 1819(e)(3) and (f)(3) and 1919(e)(3) and (f)(3) of the Act, which require States to make available, to individuals who are discharged or transferred from SNFs or NFs, an appeals process that complies with guidelines issued by the Secretary.

[60 FR 50443, Sept. 29, 1995]

§ 483.202 Definitions.

For purposes of this subpart and subparts B and C—

Discharge means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility, or a Medicaid certified distinct part to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

Individual means an individual or any legal representative of the individual.

Resident means a resident of a SNF or NF or any legal representative of the resident.

Transfer means movement from an entity that participates in Medicare as a skilled nursing facility, a Medicare certified distinct part, an entity that participates in Medicaid as a nursing

facility or a Medicaid certified distinct part to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

§ 483.204 Provision of a hearing and appeal system.

(a) Each State must provide a system for:

(1) A resident of a SNF or a NF to appeal a notice from the SNF or NF of intent to discharge or transfer the resident; and

(2) An individual who has been adversely affected by any PASARR determination made by the State in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination.

(b) The State must provide an appeals system that meets the requirements of this subpart, § 483.12 of this part, and part 431 subpart E of this chapter.

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

§ 483.206 Transfers, discharges and relocations subject to appeal.

(a) “Facility” means a certified entity, either a Medicare SNF or a Medicaid NF (see §§ 483.5 and 483.12(a)(1)).

(b) A resident has appeal rights when he or she is transferred from—

(1) A certified bed into a noncertified bed; and

(2) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(c) A resident has no appeal rights when he or she is moved from one bed in the certified entity to another bed in the same certified entity.

Subpart F—Requirements That Must be Met by States and State Agencies, Resident Assessment

§ 483.315 Specification of resident assessment instrument.

(a) *Statutory basis.* Sections 1819(e)(5) and 1919(e)(5) of the Act require that a State specify the resident assessment instrument (RAI) to be used by long

term care facilities in the State when conducting initial and periodic assessments of each resident's functional capacity, in accordance with § 483.20.

(b) *State options in specifying an RAI.* The RAI that the State specifies must be one of the following:

(1) The instrument designated by CMS.

(2) An alternate instrument specified by the State and approved by CMS, using the criteria specified in the State Operations Manual issued by CMS (CMS Pub. 7) which is available for purchase through the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151.

(c) *State requirements in specifying an RAI.*

(1) Within 30 days after CMS notifies the State of the CMS-designated RAI or changes to it, the State must do one of the following:

(i) Specify the CMS-designated RAI.

(ii) Notify CMS of its intent to specify an alternate instrument.

(2) Within 60 days after receiving CMS approval of an alternate RAI, the State must specify the RAI for use by all long term care facilities participating in the Medicare and Medicaid programs.

(3) After specifying an instrument, the State must provide periodic educational programs for facility staff to assist with implementation of the RAI.

(4) A State must audit implementation of the RAI through the survey process.

(5) A State must obtain approval from CMS before making any modifications to its RAI.

(6) A State must adopt revisions to the RAI that are specified by CMS.

(d) *CMS-designated RAI.* The CMS-designated RAI is published in the State Operations Manual issued by CMS (CMS Pub. 7), as updated periodically, and consists of the following:

(1) The minimum data set (MDS) and common definitions.

(2) The resident assessment protocols (RAPs) and triggers that are necessary to accurately assess residents, established by CMS.

(3) The quarterly review, based on a subset of the MDS specified by CMS.

(4) The requirements for use of the RAI that appear at § 483.20.

(e) *Minimum data set (MDS).* The MDS includes assessment in the following areas:

(1) Identification and demographic information, which includes information to identify the resident and facility, the resident's residential history, education, the reason for the assessment, guardianship status and information regarding advance directives, and information regarding mental health history.

(2) Customary routine, which includes the resident's lifestyle prior to admission to the facility.

(3) Cognitive patterns, which include memory, decision making, consciousness, behavioral measures of delirium, and stability of condition.

(4) Communication, which includes scales for measuring hearing and communication skills, information on how the resident expresses himself or herself, and stability of communicative ability.

(5) Vision pattern, which includes a scale for measuring vision and vision problems.

(6) Mood and behavior patterns, which include scales for measuring behavioral indicators and symptoms, and stability of condition.

(7) Psychosocial well-being, which includes the resident's interpersonal relationships and adjustment factors.

(8) Physical functioning and structural problems, which contains scales for measuring activities of daily living, mobility, potential for improvement, and stability of functioning.

(9) Continence, which includes assessment scales for bowel and bladder incontinence, continence patterns, interventions, and stability of continence status.

(10) Disease diagnoses and health conditions, which includes active medical diagnoses, physical problems, pain assessment, and stability of condition.

(11) Dental and nutritional status, which includes information on height and weight, nutritional problems and accommodations, oral care and problems, and measure of nutritional intake.

(12) Skin condition, which includes current and historical assessment of skin problems, treatments, and information regarding foot care.

(13) Activity pursuit, which gathers information on the resident's activity preferences and the amount of time spent participating in activities.

(14) Medications, which contains information on the types and numbers of medications the resident receives.

(15) Special treatments and procedures, which includes measurements of therapies, assessment of rehabilitation/restorative care, special programs and interventions, and information on hospital visits and physician involvement.

(16) Discharge potential, which assesses the possibility of discharging the resident and discharge status.

(17) Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.

(18) Documentation of participation in assessment.

(f) *Resident assessment protocols (RAPs)*. At a minimum, the RAPs address the following domains:

- (1) Delirium.
- (2) Cognitive loss.
- (3) Visual function.
- (4) Communication.
- (5) ADL functional/rehabilitation potential.
- (6) Urinary incontinence and indwelling catheter.
- (7) Psychosocial well-being.
- (8) Mood state.
- (9) Behavioral symptoms.
- (10) Activities.
- (11) Falls.
- (12) Nutritional status.
- (13) Feeding tubes.
- (14) Dehydration/fluid maintenance.
- (15) Dental care.
- (16) Pressure ulcers.
- (17) Psychotropic drug use.
- (18) Physical restraints.

(g) *Criteria for CMS approval of alternate instrument*. To receive CMS approval, a State's alternate instrument must use the standardized format, organization, item labels and definitions, and instructions specified by CMS in the latest issuance of the State Operations Manual issued by CMS (CMS Pub. 7).

(h) *State MDS collection and data base requirements*. (1) As part of facility survey responsibilities, the State must establish and maintain an MDS Database, and must do the following:

(i) Use a system to collect, store, and analyze data that is developed or approved by CMS.

(ii) Obtain CMS approval before modifying any parts of the CMS standard system other than those listed in paragraph (h)(2) of this section (which may not be modified).

(iii) Specify to a facility the method of transmission of data to the State, and instruct the facility on this method.

(iv) Upon receipt of data from a facility, edit the data, as specified by CMS, and ensure that a facility resolves errors.

(v) At least monthly, transmit to CMS all edited MDS records received during that period, according to formats specified by CMS, and correct and retransmit rejected data as needed.

(vi) Analyze data and generate reports, as specified by CMS.

(2) The State may not modify any aspect of the standard system that pertains to the following:

(i) Standard approvable RAI criteria specified in the State Operations Manual issued by CMS (CMS Pub. 7) (MDS item labels and definitions, RAPs and utilization guidelines).

(ii) Standardized record formats and validation edits specified in the State Operations Manual issued by CMS (CMS Pub. 7).

(iii) Standard facility encoding and transmission methods specified in the State Operations Manual issued by CMS (CMS Pub. 7).

(i) *State identification of agency that collects RAI data*. The State must identify the component agency that collects RAI data, and ensure that this agency restricts access to the data except for the following:

(1) Reports that contain no resident-identifiable data.

(2) Transmission of data and reports to CMS.

(3) Transmission of data and reports to the State agency that conducts surveys to ensure compliance with Medicare and Medicaid participation requirements, for purposes related to this function.

(4) Transmission of data and reports to the State Medicaid agency for purposes directly related to the administration of the State Medicaid plan.

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(5) Transmission of data and reports to other entities only when authorized as a routine use by CMS.

(j) *Resident-identifiable data.* (1) The State may not release information that is resident-identifiable to the public.

(2) The State may not release RAI data that is resident-identifiable except in accordance with a written agreement under which the recipient agrees to be bound by the restrictions described in paragraph (i) of this section.

[62 FR 67212, Dec. 23, 1997]

Subpart G—Condition of Participation for the Use of Restraint or Seclusion in Psychiatric Residential Treatment Facilities Providing Inpatient Psychiatric Services for Individuals Under Age 21

SOURCE: 66 FR 7161, Jan. 22, 2001, unless otherwise noted.

§ 483.350 Basis and scope.

(a) *Statutory basis.* Sections 1905(a)(16) and (h) of the Act provide that inpatient psychiatric services for individuals under age 21 include only inpatient services that are provided in an institution (or distinct part thereof) that is a psychiatric hospital as defined in section 1861(f) of the Act or in another inpatient setting that the Secretary has specified in regulations. Additionally, the Children's Health Act of 2000 (Pub. L. 106-310) imposes procedural reporting and training requirements regarding the use of restraints and involuntary seclusion in facilities, specifically including facilities that provide inpatient psychiatric services for children under the age of 21 as defined by sections 1905(a)(16) and (h) of the Act.

(b) *Scope.* This subpart imposes requirements regarding the use of restraint or seclusion in psychiatric residential treatment facilities, that are not hospitals, providing inpatient psychiatric services to individuals under age 21.

§ 483.352 Definitions.

For purposes of this subpart, the following definitions apply:

Drug used as a restraint means any drug that—

(1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(2) Has the temporary effect of restricting the resident's freedom of movement; and

(3) Is not a standard treatment for the resident's medical or psychiatric condition.

Emergency safety intervention means the use of restraint or seclusion as an immediate response to an emergency safety situation.

Emergency safety situation means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.

Mechanical restraint means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

Minor means a minor as defined under State law and, for the purpose of this subpart, includes a resident who has been declared legally incompetent by the applicable State court.

Personal restraint means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort him or her, or holding a resident's hand to safely escort a resident from one area to another.

Psychiatric Residential Treatment Facility means a facility other than a hospital, that provides psychiatric services, as described in subpart D of part 441 of this chapter, to individuals under age 21, in an inpatient setting.

Restraint means a "personal restraint," "mechanical restraint," or "drug used as a restraint" as defined in this section.

Seclusion means the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.