



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

May 19, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2418-P
B.O. Box 8016
Baltimore, MD 21244-8016

Re: Comments on Proposed Rule: Preadmission Screening and Resident Review
CMS-2418-P

Dear Administrator Verma,

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. CCD's Long Term Services and Supports Task Force advocates for federal policies to expand access to Home and Community-Based Services (HCBS), recognizing that these services are critical to ensuring the civil rights of people with disabilities and older adults to live, be included and fully participate in their communities.

We write to comment on CMS' proposed rule regarding Preadmission Screening and Resident Review (PASRR). PASRR is an important tool to prevent people with disabilities from being unnecessarily placed in Medicaid-funded nursing facilities and to help nursing facility residents transition back to the community. Strong diversion and transition requirements are necessary to help ensure states comply with the Americans with Disabilities Act (ADA) and the Supreme Court's *Olmstead* decision.

Strong PASRR requirements are always critical, but are especially now, with nursing homes across the country facing severe outbreaks of COVID-19 and deaths of residents. Yet CMS' proposed rule would weaken PASRR, making it easier for states to admit people to nursing facilities and harder for people to transition back to the community from those facilities, even as those very facilities face outbreaks of COVID-19. We urge CMS to please reconsider and revise the proposed rule in light of the current pandemic and reissue it for public comment.

We have serious concerns with three major changes in the proposed rules that we believe undermine the goals of the PASRR program and contravene the requirements of the ADA and *Olmstead*:

First, the proposed rule weakens PASRR's diversion goals. The proposed rule allows states to bypass preadmission screening and evaluation of community options for individuals prior to admission to a nursing facility if those admissions are readmissions, nursing facility transfers, acute hospital discharges, and a new category, called "provisional admissions." This last category is particularly troubling since it includes admissions for respite, crisis or protective services, and convalescent care. In many states, this would exclude the majority of people covered by PASRR from any preadmission screening. Moreover, the proposed rule would allow states to bypass preadmission evaluation as the default for each type of provisional admission, versus the current rules which require states to affirmatively request the currently allowable exclusions. For example, in Texas, which has adopted all the currently allowable exclusions, the state's own data indicates that 97% of all admissions of individuals with intellectual and developmental disabilities were not subject to preadmission evaluation, either because they were categorical admissions like convalescent care (90%) or exempt admissions (7%). Data from other states, like Illinois, is almost as dramatic. Once admitted to a nursing facility, individuals are much less likely to return to their community and are at significantly higher risk of long-term institutionalization.

Second, the proposed rule also weakens the process for transitioning nursing home residents back to the community. The proposed rule would allow states to stop working on the transition of a person back to the community if the person does not have a community option currently available – even if everyone agrees the person could be best served in the community – instead of requiring the person's case manager to continue to work to identify community options. Moreover, the proposed rule does not ensure that nursing home residents have enough information to make an informed choice about community placement. It would only require that states provide individuals (or guardians) with "information about community options" without any specification of the type, amount, or frequency of such information. The rule does not require that nursing home residents be provided opportunities to speak with potential community providers, visit potential community placements, or speak with peers who have

transitioned. Guidance from the Department of Justice has made clear that this type of information is required to ensure that people are able to make an informed choice.¹

Third, the proposed rule would limit the services that nursing facilities have to provide once an individual is admitted. Without these specialized services, people will lose basic skills and be denied the opportunity to work on skills that would make it easier for them to transition back to the community. The proposed rule limits these services in two ways. The current regulation's requirement for an assessment of the need for specialized services in a broad array of social, vocational, educational, and communication areas would be replaced by assessments that focus almost exclusively on activities of daily living (ADL) and instrumental activities of daily living (IADL). In addition, the proposed rule would eliminate any standard for determining what services must be provided and instead would allow states to drastically limit the type of specialized services they provide.

While we appreciate CMS' attempt to modernize the regulations in other ways, we strongly oppose the changes discussed above that will lead to more people with disabilities unnecessarily entering and getting stuck in nursing homes. We are particularly concerned about these changes as people with disabilities are particularly at risk as COVID-19 spreads across the country, particularly in congregate settings like nursing facilities. To mitigate the risk for people with disabilities during this crisis, CMS must be doing all it can to minimize the number of people admitted into and remaining in those facilities. The changes to PASRR proposed by this rule would have the opposite effect, endangering the health and safety of people with disabilities by making unnecessary admission to and continued placement in nursing facilities more likely. We urge you to reconsider the proposed rule, substantially revise it to remove its decided institutional bias, and revise it to align with the goals of PASRR, *Olmstead*, and professional standards. If you have any questions, feel free to contact Alison Barkoff (abarkoff@cpr-us.org).

Sincerely,

Long-Term Services and Supports Co-Chairs

Alison Barkoff
Center for Public Representation

Julia Bascom
Autistic Self Advocacy Network

¹ See "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*," at question 5, available online at https://www.ada.gov/olmstead/q&a_olmstead.htm.

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