

**Delaware Health and Social Services
Division of Developmental Disabilities Services**

Title: Nursing Home Reform Act
(OBRA) Level II Process

Approved By: 
Division Director

Written/Revised By: Policy & Record Review
Committee

Date of Origin: June 1990

Revision Date: February 2010

I. Purpose

To establish procedures to make an initial Level II determination referred to the Division of Developmental Disabilities Services (DDDS) by Division of Medicaid & Medical Assistance (DMMA) or the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and for conducting Annual Resident Reviews as required by the Federal Nursing Home Reform Act, in accordance with the Omnibus Budget Reconciliation Act of 1987 (OBRA).

II. Policy

All nursing home residents and applicants identified by the Division of Medicaid & Medical Assistance and Division of Services for Aging and Adults with Physical Disabilities (Level I screening) as possibly being an individual with mental retardation and/or a related condition must be evaluated by the Division of Developmental Disabilities Services to determine whether they meet the criteria for mental retardation and/or a related condition and to assess the need for nursing home care and specialized services.

III. Application

Division Director
Administrative Staff
Director of Applicant Services
(OBRA) Specialized Services Unit
DDDS Residential and Family Support Case Managers

IV. Definitions

- A. Director of Applicant Services- Person responsible for coordinating the Level II eligibility process and communicating the determination outcome to all appropriate persons.
- B. Level I Screening- This screening is for the purpose of identifying people who may have a diagnosis of mental illness or mental retardation. It is completed by the State's PASARR, operated by DDDS, prior to a nursing home admission.
- C. Level II Screening- This screening involves evaluating and determining if the person identified with mental illness or mental retardation has a need for nursing facility services and specialized services. The screening is completed by either the Division of Substance Abuse and Mental Health (DSAMH) or Division of Developmental Disabilities Services (DDDS), as appropriate, prior to a nursing home admission. Consideration must be given for individual's appropriateness for a community placement.

- D. Mental Retardation- Refers to a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of eighteen (18), as described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) or a related condition defined by §435.1009.
- E. Nursing Facility: "An institution which is primarily engaged in providing to residents skilled nursing care/rehabilitation services, or on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities." Section 1919(a)(1)(C) Federal Register.
- F. Nursing Home Reform Act (OBRA): A federally mandated program to determine whether persons with mental illness/mental retardation and/or a related condition are appropriate for admission to or continued residence in Medicaid certified nursing facilities and whether the identified people with mental illness or mental retardation require specialized services.
- G. (OBRA) Determination: The result of a formal review by the Director of Applicant Services and licensed psychologist to determine (a) a diagnosis of mental retardation and/or a related condition, (b) whether an individual's medical needs require long term care in a nursing facility, and (c) whether the individual requires specialized services.
- H. (OBRA) Review: Process of evaluating comprehensive assessments to make the required OBRA determinations. Assessments consist of Medicaid Level I Data, Psychological Evaluation, Nursing and Social Assessments and other information as appropriate.
- I. (OBRA) Specialized Services Unit: That unit within the DDDS which is responsible for procuring specialized services to each permanent (not convalescent admission) nursing home resident determined to need specialized services.
- J. PASARR: Pre-Admission Screening and Resident Review.
- K. Related Conditions: Individuals who have a severe, chronic disability that meet the following conditions:
 - a) It is attributable to
 - 1. Cerebral Palsy or Epilepsy; or
 - 2. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.
 - b) It is manifested before the person reaches age 22.
 - c) It is likely to continue indefinitely.
 - d) It results in substantial functional limitations in three or more of the following areas of major life activity:
 - 1. Self care

2. Understanding and use of language
3. Learning
4. Mobility
5. Self direction
6. Capacity for independent living

L. Specialized Services: Those services which are above and beyond services ordinarily provided by a nursing home which may include but are not limited to: QMRP (Qualified Mental Retardation Professional) case management, pre-vocational, supported employment, educational, counseling, day habilitation/rehabilitation programs, behavior support, and adaptive behavior training.

V. Standards

- A. The Director of Applicant Services will receive a referral packet, from the DMMA, for each individual to be assessed. With the exception of those individuals already known to or receiving services from the DDDS, referral packets shall be forwarded to a private contractor for individual assessments to be completed within nine (9) working days.
- B. Applicants applying for the Medicaid Elderly and Disabled or the Assisted Living Waivers, Assisted Living Medicaid Waiver Program and the Acquired Brain Injury Medicaid Waiver Program administered through the DSAAPD and suspected of being individuals with mental retardation or a related condition shall also be evaluated to determine the presence of mental retardation or a related condition and their need for nursing home admission and specialized services in order to access other Medicaid waiver programs.
- C. Those individuals already known to the DDDS shall be assessed using current information from their Client Oriented Record (COR) and/or records stored electronically with Therap Services, if sufficient and appropriate, and through information provided by the applicant, his/her friends, family, case manager and other knowledgeable staff as needed.
- D. The Director of Applicant Services and a licensed psychologist shall be responsible for reviewing all assessments:
 - (1) Determine appropriateness for long term care in a nursing facility;
 - (2) Make appropriate recommendation for specialized service(s);
 - (3) Evaluate applicant's appropriateness to live in a community based residential setting;
 - (3) Evaluate applicant's appropriateness for community placement;
 - (4) Consult with other professionals and non-professionals and request additional information as appropriate.
- E. The licensed psychologist shall make all determinations regarding an individual's mental retardation and/or related condition diagnosis.

- F. Signed minutes of each review shall be the official record of activity and shall be prepared and maintained by the Director of Applicant Services. Official minutes shall be sent to the DMMA and the person assessed.
- G. Confidentiality of all information shall be maintained at all times in accordance with the Delaware Health and Social Services (DHSS) Policy Memorandum #5.

VI. Procedures

<u>Responsibility</u>	<u>Action</u>
Director of Applicant Services	<ul style="list-style-type: none">1. Coordinates the Level II screening process.2. Receives referral packet from the DMMA for nursing home applicants or DSAAPD for individuals seeking approval for other Medicaid Waiver programs and forwards to contractor(s) within nine (9) working days.3. Monitors for completion of assessments.4. Contacts the applicant, his/her friends, family, case manager and other knowledgeable staff as appropriate to obtain current information on known individuals applying for nursing facility admission.5. Schedules a review with the licensed psychologist to determine if a qualifying diagnosis exists.6. Writes and signs all minutes.7. Maintains appropriate records and files.8. Notifies Medicaid/DSAAPD of all determinations as appropriate.9. Ensures that each applicant, the applicant's guardian of person or caregiver, and the referral source are sent a letter of eligibility determination, a copy of the review minutes and an explanation of his/her rights to file for a Division of Social Services fair hearing. The letter shall explain the process for requesting a fair hearing.
Licensed Psychologist	<ul style="list-style-type: none">10. Reviews psychological evaluation for validity and provides a diagnosis.
Director of Applicant Services	<ul style="list-style-type: none">11. Reviews and authorizes all bills for Level II assessment submitted by the Contractor for validation of services and payment by DSS (Medicaid) fiscal office.

Specialized Services Unit

12. Refers all individuals with mental retardation or a related condition determined appropriate for long term care in a nursing facility and needing specialized services to the Specialized Services Unit, after permanent placement in a nursing facility.
13. Monitors the coordination and delivery of services to residents of nursing facilities with qualifying diagnosis and completes individual's annual resident review.

VII. References

Manual on Classification in Mental Retardation (1983); American Association on Mental Retardation, Washington, D.C.

Omnibus Budget Reconciliation Act of 1987, (P.L. 100-203), Subtitle C of title IV.

Federal Register, Vol. 57, No. 230, Monday, November 30, 1992, Rules and Regulations (Health Care Financing Administration, Final Rules, effective 1-29-93).

Memorandum of Understanding Between the Division of Social Services and The Division of Developmental Disabilities Services, February 2004.

Memorandum of Understanding Between the Division of Services for Aging and Adults With Physical Disabilities and the Division of Developmental Disabilities Services, February 2005

VIII. Exhibits

None