DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 435, 441, and 483

[CMS–2418–P]

RIN 0938–AT95

Medicaid Program; Preadmission Screening and Resident Review

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modernize the requirements for Preadmission Screening and Resident Review (PASRR), currently referred to in regulation as Preadmission Screening and Annual Resident Review, by incorporating statutory changes, reflecting updates to diagnostic criteria for mental illness and intellectual disability, reducing duplicative requirements and other administrative burdens on State PASRR programs, and making the process more streamlined and person-centered.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 20, 2020.

ADDRESSES: In commenting, please refer to file code CMS–2418–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2418–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2418–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anne Blackfield, (410) 786–8518.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Preadmission Screening and Annual Resident Review (now referred to as Preadmission Screening and Resident Review, or PASRR) was created as part of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). The PASRR requirements, added to the statute as sections 1919(b)(3)(F) and 1919(e)(7) of the Social Security Act (the Act), required states to create a system to assess the needs of individuals with mental illness (MI) or intellectual disability (ID) applying to, or already residing in, Medicaid-certified nursing facilities (NFs), to ensure that individuals were not being placed in NFs unnecessarily or without adequate supports. These sections of the statute direct the state mental health authority (SMHA) or state intellectual disability authority (SIDA), as appropriate, to determine whether individuals with MI or ID who are applying to, or are living in, Medicaid-certified NFs require the level of services offered by a NF and whether they need additional (''specialized'') services for MI and ID beyond the services typically provided in a NF. (Note that section 1919(e)(7)(G)(i) of the Act explicitly excludes individuals with dementia or Alzheimer's disease or a related disorder from the definition of MI. The current and proposed definitions of MI and ID are discussed in the discussion of § 483.102 in this rule.)

When first enacted, sections 1919(b)(3)(F) and 1919(e)(7) of the Act set forth basic requirements for PASRR, including:

- Requirements for preadmission screening of NF applicants, which states were required to implement by January 1, 1989;
- Requirements for annual review of NF residents with MI or ID, which states were required to begin by April 1, 1990;
- Discharge procedures for short-term residents found to not need NF level of services;
- Options for long-term residents (who had lived in a nursing facility for 30 or more months) found to not need NF level of services, but to need specialized services;
- Basic rules for Federal Financial Participation (FFP), including when FFP could be withheld for failure to comply with PASRR requirements;
- A requirement for an appeals procedure, to allow individuals to appeal adverse outcomes resulting from PASRR determinations; and
- Basic definitions for MI, ID (referred to in statute as ''mental retardation''), and specialized services (originally called ''active treatment'').

We published initial criteria for the PASRR programs in the State Medicaid Manual (HCFA Pub. 45–4) in May 1989 (Transmittal No. 42). These criteria functioned as interim guidelines for states' PASRR programs, and formed the basis for the proposed rule, published in the **Federal Register** on March 23, 1990 (55 FR 10951). In the meantime, on November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508) was enacted. Section 4801(b) of OBRA '90 contained several revisions to the PASRR requirements in sections 1919(b)(3)(F) and 1919(e)(7) of the Act. Notable revisions included the addition of exemptions from Preadmission Screening for readmissions and certain hospital discharges to NFs, and adding the term ''specialized services'' in place of ''active treatment.'' We published the final PASRR rule on November 30, 1992 (57 FR 56540), which reflected the statutory changes to PASRR made by OBRA '90.

On October 19, 1996, Public Law 104–315 removed the requirement that Resident Review be performed annually, and provided instead at section 1919(e)(7)(B)(iii) of the Act that Resident Review should be performed upon a significant change in the resident's physical or mental condition. We have not issued additional regulations since the final rule in November 1992, so current regulations do not reflect this statutory change.

We have received feedback from stakeholders including states' Medicaid agencies, states' PASRR programs, clinicians, NFs, and NF resident advocates that portions of the current PASRR regulations are unclear, illogical, duplicative, or out of touch with current long-term care practices. While we have attempted to address some of the challenges presented by outdated regulations through technical assistance,

we believe updating and streamlining the regulations will provide the most effective method of improving implementation of PASRR nationwide. With this proposed rule, we seek to modernize PASRR requirements so that they may become an even more effective tool and resource for states, NFs, and individuals with MI or ID.

II. Provisions of the Proposed Regulations

A. Parts 431, 433, 435, and 441

1. Basis and Scope (§ 431.200)

Section 431.200 sets out the basis for the regulations in part 431, subpart E, stating that the fair hearings process afforded to Medicaid beneficiaries and applicants is authorized by sections 1902(a)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act. Section 431.200(c) provides that regulations in part 431, subpart E implement section 1919(e)(7)(F) of the Act, which provides an appeal for any person who has been adversely affected by the PASRR process. We propose technical changes to § 431.200(c)(1). We propose to replace the word ''pre-admission'' with ''preadmission,'' so that the word ''preadmission'' conforms to how it appears in other regulations. We propose to remove the word ''annual'' before ''resident review.'' We also propose to add ''and further described in part 483, subpart C of this chapter'' after ''section 1919(e)(7) of the Act.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

2. Definitions (§ 431.201)

Section 431.201 contains definitions of terms used in part 431, subpart E. We propose a technical change to the definition of ''date of action,'' which includes a mention of PASRR, to remove the word ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

3. Informing Applicants and Beneficiaries (§ 431.206)

Section 431.206 contains requirements for when the state must notify Medicaid applicants and beneficiaries of their appeal rights. We propose a technical change to § 431.206(c)(4) to remove ''annual'' before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

4. Exceptions From Advance Notice (§ 431.213)

Section 431.213 contains exceptions to the advance notice requirements contained in § 431.211. Section 431.211 requires that the state Medicaid agency provide Medicaid applicants and beneficiaries with notice of appeal rights 10 days before the effective date of the action they wish to appeal. However, actions associated with PASRR are exempted from this requirement. Rather, per § 431.213(g), the state Medicaid agency may provide notice on the date of action—namely, the date the PASRR program issues the determinations required in sections 1919(e)(7)(A) and 1919(e)(7)(B) of the Act. We propose a technical correction to § 431.213(g), which states that the exception applies to notices involving adverse determinations made ''with regard to the preadmission screening requirements of section 1919(e)(7) of the Act.'' We propose to add ''and resident review'' after ''preadmission screening.'' Section 1919(e)(7) of the Act pertains to both preadmission screening and resident review requirements, and we propose to fix the omission of ''resident review'' in this provision. We also propose to replace ''of section 1919(e)(7) of the Act' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

5. When a Hearing Is Required (§ 431.220)

Section 431.220 lays out the circumstances when an individual may request a hearing, which includes when an individual believes the PASRR program has made an error in making the determinations required by section 1919(e)(7) of the Act. We propose a technical change to § 431.220(a)(3) to add ''screening'' after the word ''preadmission.'' We propose this change so that this mention of Preadmission Screening conforms to how it appears elsewhere in regulation—as ''preadmission screening,'' not just ''preadmission.'' We propose to remove ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

6. Matters To Be Considered at the Hearing (§ 431.241)

Section 431.241(c) addresses the matters that must be reviewed during the PASRR hearing. We propose a technical change to remove ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

7. Hearing Decisions (§ 431.244)

Section 431.244 sets out the requirements for the hearing decision, including how the decision may be reached and the appellant's access to the decision. We propose a technical change to § 431.244(f)(3)(i). We propose to add ''screening'' after the word ''preadmission.'' We propose this change so that this mention of Preadmission Screening conforms to how it appears (as ''preadmission screening,'' not just ''preadmission'') elsewhere in regulations. We propose to remove ''annual'' from before ''resident review.''

8. Federal Financial Participation (§ 431.250)

Section 431.250 discusses the availability of FFP for activities relating to hearings and hearing decisions. We propose a technical change to § 431.250(f)(4) to remove ''annual'' from before ''resident reviews.''

9. State Requirements for Nursing Facilities (§ 431.621)

Section 431.621 provides guidelines for the interagency agreement that the states' Medicaid agencies must execute with the SMHA and SIDA regarding the authorities' respective roles in implementing PASRR. We propose to make technical corrections in this section, including: removing ''PASARR'' and replacing it with ''PASRR''; removing the word ''annual'' before ''resident review''; correcting typos; and updating cross-references.

Additionally, we propose a modification to § 431.621(c)(6). The current provision specifies that determinations regarding NF level of services and specialized services must be consistent with criteria adopted by the State Medicaid Agency (SMA) under its approved State plan. We propose to remove the words ''under its approved State plan'' because State plan approval is not required for states to develop

state-specific PASRR criteria or NF admissions criteria.

10. Rates of FFP for Administration (§ 433.15)

Section 433.15(b)(9) provides the FFP rate for PASRR administrative activities. We propose technical changes in this provision to replace ''PASARR'' with ''PASRR'' and to remove ''annual'' before ''resident review.''

11. Definitions Related to Institutional Status (§ 435.1010)

Section 435.1010 provides the definition for ''persons with related conditions.'' Related conditions, also commonly referred to as ''developmental disabilities,'' are considered a subset of ID for PASRR purposes (see discussion regarding § 483.102 in this proposed rule). The definition for PASRR ID at § 483.102(b)(3) contains a cross-reference to § 435.1010. Section 435.1010 contains one use of the outdated term ''mentally retarded persons,'' which we propose to replace with ''people with intellectual disabilities.''

12. Supporting Documentation Required (§ 441.303)

Section 441.303, which provides guidance on HCBS programs, make incidental reference to the PASRR process. We propose to make technical changes to paragraphs (f)(4) and (f)(9), including: replacing ''PASARR'' with ''PASRR''; removing ''annual'' before ''resident review''; correcting typos; and replacing the phrase ''developmentally disabled'' with ''individuals with developmental disabilities'' at 441.303(f)(4). We also propose to replace the word ''inpatients'' with ''residents'' to reflect language more commonly used to describe individuals who live in NFs or ICF/IIDs.

We also propose in § 441.303(f)(4) to clarify that in making estimates for annual per capita expenditures for a separate waiver program, the state may estimate costs for individuals with developmental disabilities who have been identified by PASRR, who are residents of NFs, or require the level of care provided by an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

B. Part 483, Subpart B

1. Resident Assessment (§ 483.20)

Section 483.20 provides instructions to NFs on resident assessments, as required by section 1919(b)(3) of the Act, which requires that NFs perform a comprehensive, standardized, reproducible assessment of each resident's functional capability. NFs must use an assessment tool known as the Resident Assessment Instrument to identify residents' strengths, needs, and preferences in key areas of functional abilities and activities of daily living. The minimum data set (MDS) is a component of the resident assessment, which contains a standardized set of essential clinical and functional status measures. Information gathered from the MDS is used to identify conditions that require additional evaluation, and the information gathered from these assessments is used to develop the individualized care plan required for each NF resident.

Despite certain superficial similarities between the resident assessments and PASRR evaluations, the two processes are distinct statutory requirements. Resident assessments are specifically intended to be the responsibility of the NF (per section 1919(b)(3)(A) of the Act), whereas PASRR evaluations are specifically the responsibility of the SMHA and SIDA, and cannot be delegated to the NF (in accordance with section 1919(b)(3)(F) of the Act). Unlike PASRR evaluations, resident assessments are performed for all NF residents, not just those with MI or ID. The timing for resident assessments and PASRR evaluations is also different. A comprehensive resident assessment must be performed initially within 14 days after NF admission and then every year until the resident's discharge from the NF (per section 1919(b)(3)(C) of the Act) with modified quarterly assessments performed in the intervals between the annual comprehensive resident assessments to ensure the information stays up-to-date (per § 483.20(c)). Additionally, when an individual experiences a ''significant change'' in physical or mental conditions, as defined in § 483.20(b)(2)(ii), the NF must perform a new comprehensive resident assessment within 14 days of the significant change (even if this significant change happens before the resident's scheduled annual comprehensive resident assessment). By comparison, Preadmission Screening evaluations for PASRR must be performed prior to NF admission (per section 1919(b)(3)(F) of the Act), and Resident Review evaluations must be done ''promptly'' after a NF has observed a significant change of physical or mental condition (per sections 1919(b)(3)(E) and 1919 (e)(7)(B)(iii) of the Act). Both resident assessments and PASRR evaluations involve reviewing the individual's medical history, cognitive and behavior patterns, psychosocial well-being, and long-term care goals (in accordance with § 483.20(b) for resident assessment and § 483.128 of this proposed rule for PASRR evaluations). However, the resident assessment is focused on the individual's needs while in the NF, while the PASRR evaluation considers whether the individual may be better served in a different setting other than a NF. As described in § 483.20(b), resident assessments focus on a broad range of functional needs—such as vision, dental, continence, and skin conditions—that may be out of scope for a PASRR evaluation, which focuses on only those needs directly related to the individual's MI or ID. PASRR evaluations will include recommendations for NF services and specialized services (which are discussed in greater detail in the discussions of §§ 483.120 and 483.128 later in this proposed rule). However, these differences notwithstanding, both resident assessments and PASRR evaluations are designed to assess needs of NF residents and provide information needed to identify residents' care needs while they are in the NF.

Section 483.20(e) implements the requirement at section 1919(b)(3)(E) of the Act that NFs must coordinate Preadmission Screening with resident assessments to the greatest extent practicable. We propose a technical correction to § 483.20(e) to replace ''PASARR'' with ''PASRR.'' We also propose to change the term ''mental disorder'' to ''mental illness'' in this section to align with the language in part 483, subpart C, which uses ''mental illness'' rather than ''mental disorder.'' The term ''mental illness'' is more aligned with terminology used in the authorizing statute for PASRR at sections 1919(b)(3)(F) and 1919(e)(7) of the Act, which uses ''mentally ill'' and ''serious mental illness.'' Additionally, we note that the term ''mental disorder'' commonly denotes neurodevelopmental disorders (such as intellectual disability and developmental disability) and neurocognitive disorders (such as dementia and Alzheimer's or related conditions).[1] People with intellectual and developmental disabilities are identified in sections 1919(b)(3)(F)(ii) and 1919(e)(7)(B)(ii) of the Act as distinct from people with mental illness, who are addressed in sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i). Section 1919(e)(7)(G)(i) indicates that primary diagnoses of dementia and

[1] See, for example, World Health Organization, ''Mental Health Disorders.'' April 9, 2018. Available at *https://www.who.int/news-room/fact-sheets/detail/mental-disorders.* Last accessed: August 19, 2019.

Alzheimer's or related disorders cannot be included in the PASRR-specific definition of mental illness. Thus we propose to replace the broad term ''mental disorder'' with the narrower term ''mental illness'' in order to indicate mental disorders that do not include neurodevelopmental or neurocognitive disorders. Because there is much discussion in the behavioral health community about appropriate terminology, we solicit feedback on this proposal to use ''mental illness'' rather than ''mental disorder.''

We propose a change to the language § 483.20(e)(1), which requires that PASRR recommendations be incorporated into a resident's assessment, care planning, and transitions of care. We propose to remove the mention in § 483.20(e)(1) of care planning and transition planning because they are both out of scope for this section. Care planning requirements are addressed in § 483.21, whereas § 483.20 contains requirements for resident assessments. Additionally, paragraphs (a)(1)(ii)(F) and (b)(1)(iii) at § 483.21 both address the inclusion of PASRR recommendations in care planning, so including the same requirement in § 483.20(e)(1) is duplicative. We also propose in § 483.20(e)(1) to replace PASRR ''recommendations'' with PASRR ''findings.'' The word ''recommendations'' is not defined in this provision, but seems to refer to recommendations for NF services or specialized services—information that would be incorporated into a care plan, but would not be incorporated into the resident assessment. Rather, we propose using the word ''findings'' in its place because this more clearly refers to the data collected by the PASRR evaluator regarding the individual's medical history, psychosocial history, diagnosis of MI or ID, and functional needs—information that could be used to help complete the resident assessment.

We propose to make changes to § 483.20(e)(2), which requires that NFs refer all NF residents with known MI or ID (as determined by the PASRR program) and all residents with *possible* MI or ID to the PASRR program for Resident Review upon the completion of a significant change in status assessment. This requirement somewhat duplicates the requirement at § 483.20(k)(4) that NFs promptly refer all NF residents with known MI or ID (as determined by the PASRR program) for a Resident Review upon a significant change in physical or mental condition. One key difference between these provisions is the timing of when the referral must be made. Section 483.20(e)(2) specifies that the referral must happen upon a significant change in status assessment. Significant change in status assessments, per § 483.20(b)(2) must be completed within 14 days of the significant change, so it appears that § 483.20(e)(2) currently allows NFs to wait at least 14 days before making a referral for Resident Review. This conflicts with the requirement in § 483.20(k)(4) (which more closely mirrors the language in section 1919(b)(3)(E) of the Act), requiring referrals for Resident Review to be made ''promptly after a significant change.'' Another key difference between the two provisions is that § 483.20(e)(2) addresses the needs of residents with ''newly evident or possible'' MI or ID—meaning residents who had not been previously identified by the PASRR program as having MI or ID. Section 483.20(k)(4) only refers to residents with MI or ID—presumably residents who have already been identified by the PASRR program as having MI or ID.

We propose to resolve the duplications and misalignment between § 483.20(e)(2) and (k)(4) by striking the current language in § 483.20(e)(2) and replacing it with proposed language that would clarify that NFs would be required to refer residents with newly evident or possible MI or ID to the PASRR program for a Resident Review within 72 hours of when the NF identifies conditions indicating the person has possible MI or ID. (See discussion of § 483.126 in this proposed rule for proposed criteria for ''possible'' MI and ID.) We believe it is critical for NFs to refer such individuals to the PASRR program, since any resident of a Medicaid-certified NF with possible MI or ID falls within PASRR's purview—including individuals who had been misidentified at admission, or developed MI post-admission. While the NF would be expected to complete a Level I identification screen (discussed in detail in the discussion of § 483.126 of this proposed rule), we do not propose to require that a NF first complete a significant change in status assessment to make the referral. In some instances the NF's discovery of an overlooked MI or ID identification may occur during the initial comprehensive resident assessment performed at admission (in which case, the NF's discovery of the possible MI or ID would not be the result of a resident experiencing a significant change in physical or mental condition). We also do not propose that a NF first complete a significant change in status assessment before making the referral for Resident Review. This would apply even if the newly evident or possible MI or ID is discovered by the NF as a result of a significant change in the resident's condition; rather, we propose that the referral for Resident Review be made first, so that the evaluations performed as part of the Resident Review could be used to help the NF complete the significant change in status assessment, if one ultimately needs to be performed. We propose in the amended § 483.20(e)(2) that the referral for Resident Review be made within 72 hours after the facility identifies evidence indicating the individual has possible mental illness, intellectual disability, or related conditions, to align with the timeframe for Resident Review referral we propose to add to § 483.20(k)(4), discussed below.

Section 483.20(k) is currently titled ''Preadmission screening for individuals with a mental disorder and individuals with an intellectual disability.'' We propose to retitle this provision ''Preadmission screening and resident review for individuals with mental illness and individuals with an intellectual disability.'' We propose this change because § 483.20(k) addresses both Preadmission Screening and Resident Review requirements. Additionally, we propose to change ''mental disorder'' to ''mental illness'' to align § 483.20(k) with PASRR requirements in part 483, subpart C that use ''mental illness'' rather than ''mental disorder.'' Similarly, we propose at § 483.20(k)(1)(i) to change ''mental disorder'' to ''mental illness.'' (See discussion of rationale for this change in the discussion of § 483.20(e) above.)

Section 483.20(k)(2) describes exceptions to Preadmission Screening requirements. We propose to add language to § 483.20(k)(2)(i) to clarify that neither new Level I identification screens, nor new preadmission Level II evaluation and determinations, are required for readmissions. We propose this clarification because, as will be discussed at greater length in the discussion of Preadmission Screening in § 483.112, we propose to resolve confusion about what constitutes ''Preadmission Screening'' and what PASRR activities are required to be completed prior to admission.

We propose to add language at § 483.20(k)(2)(ii), which implements the statutory Preadmission Screening exemption for individuals who have been admitted to a NF from a hospital under certain circumstances. We propose to add language that would clarify that a resident admitted under an exempted hospital discharge (as in, meeting the criteria listed in

§ 483.20(k)(2)(ii)) would not be required to receive a Level II evaluation and determination prior to admission, but would still be expected to have received a Level I identification screen prior to admission. This added language would align § 483.20(k)(2)(ii) with proposed changes to § 483.112 that would require Level I identification screens for all NF applicants, including applicants eligible for an exempted hospital discharge. These proposed changes are discussed further in the discussion of § 483.112 in this proposed rule.

We propose a new section 483.20(k)(2)(iii) that would add an additional exception to the requirement that residents not be admitted until they have received a Level II evaluation and determination. This proposed provision would specify that individuals who are admitted to the NF under a provisional admission (which is described in the discussion of proposed § 483.112(b)(3) of this rule) would be required to receive Level I identification screens, but would not be required to receive a Level II evaluation and determination prior to admission. This would align the requirements for NF admissions of individuals eligible for provisional admission with proposed requirements regarding provisional admissions in § 483.112(b)(3).

We propose a technical change in §§ 483.20(k)(3)(i) and (k)(4) to change ''mental disorder'' to ''mental illness'', for the reasons already discussed in this section.

We are also proposing an additional change to § 483.20(k)(4). Section 483.20(k)(4), like the current § 483.20(e)(2), addresses NFs' obligations to make referrals to Resident Review. As noted in the discussion of proposed § 483.20(e)(2), we propose to remove the requirement in § 483.20(e)(2) that a Resident Referral must be made after a resident with known MI or ID experiences a significant change (instead proposing to focus § 483.20(e)(2) on the needs of residents who have newly evident or possible MI or ID). We propose to retain § 483.20(k)(4) (with some rewording for clarity), as it implements a critical component of section 1919(b)(3)(E) of the Act, which requires that NFs refer residents with known MI or ID (as in, previously identified by the Level II process) to the PASRR program for Resident Review ''promptly after a significant change in physical or mental condition.'' We propose to add language to § 483.20(k)(4) to specify that ''promptly'' means within 72 hours of the significant change in condition. We also propose to add a cross-reference to paragraph (b)(2)(ii) of this section to provide a definition of ''significant change in physical or mental condition.''

2. Comprehensive Person-Centered Care Planning (§ 483.21)

Section 483.21 contains requirements for person-centered care planning, which includes services recommended through the PASRR process. We propose to make technical changes to this section to replace ''PASARR'' with ''PASRR.'' We propose to amend language at paragraph (b)(1)(iii), which indicates that PASRR recommendations of specialized services or specialized rehabilitative services must be part of the care plan. This provision currently provides that the care plan must include any specialized services or specialized rehabilitative services that the nursing facility will provide as a result of PASRR recommendations. We propose to amend this language to clarify that the state, not the NF, is responsible for providing specialized services (as is discussed in the discussion of § 483.120 in this proposed rule). We also propose changes to the second sentence of this provision, which currently states that if a facility disagrees with the PASRR findings, it must indicate its rationale in the resident's medical record. We propose to replace the word ''findings'' with ''recommendation'' in order to promote consistency in the use of those terms. As noted in the discussion of proposed changes to § 483.20(e)(1), we believe that ''findings'' connotes conclusions about the individual's diagnosis and functional abilities, whereas ''recommendations'' refers to the NF services and specialized services recommended by the PASRR program. We also seek to amend this provision to specify that NFs cannot unilaterally disregard PASRR recommendations without communication with the PASRR program. We would specify that changes to the PASRR recommendations in a plan of care would need to be made as part of the PASRR Level II determination process (as described in the discussion of § 483.130 below).

C. Part 483, Subpart C

1. Preadmission Screening and Resident Review for Individuals With Mental Illness or Intellectual Disability (Part 483, Subpart C)

The current title of part 483, subpart C is ''Preadmission Screening and Annual Resident Review of Mentally Ill and Mentally Retarded Individuals.'' We propose to change this title to ''Preadmission Screening and Resident Review for Individuals with Mental Illness or Intellectual Disability.''

2. Basis (§ 483.100)

Section 483.100 provides the authority for PASRR, which lies primarily in section 1919(e)(7) of the Act. We propose to revise this section by removing ''annual'' before ''resident review,'' and replacing the acronym ''PASARR'' with ''PASRR,'' to reflect the statutory change made in 1996 (by Pub. L. 104–315) that removed the ''annual'' requirement for Resident Review.

3. Applicability and Definitions (§ 483.102)

Section 483.102(a) explains that part 483, subpart C applies to all individuals with MI or ID who apply to or reside in a Medicaid-certified NF, regardless of the individuals' source of payment to the NF or known prior diagnoses. We note that this provision means that PASRR applies to all individuals who enter a facility that is Medicaid-certified, including individuals whose stays are covered by Medicare, the Department of Veterans Affairs, private insurance, or the individual out of his or her own funds. PASRR also applies to individuals who are entering a facility that is dually-certified for Medicare and Medicaid beneficiaries, unless the facility has distinct parts for Medicaid and Medicare beneficiaries as defined in § 483.5 (in which case, PASRR would only apply to those entering the Medicaid distinct part). We do not propose to make changes to § 483.102(a).

Section 483.102(b) provides PASRR-specific definitions of MI, dementia, and ID, all of which we propose to revise.

a. Mental Illness

Section 1919(e)(7)(G)(i) of the Act indicates that an individual is considered to have MI for PASRR purposes if the individual has a ''serious mental illness'' as defined by the Secretary in consultation with the National Institute of Mental Health (NIMH); the statutory definition states that the MI must be serious and that the individual may not have a primary diagnosis of dementia. The current definition of MI at § 483.102(b)(1) requires that for a PASRR program to determine an individual has MI, the program must consider three sets of criteria related to diagnosis, functional impairment, and duration of illness as measured by how recently the individual received intensive treatment.

The current diagnosis criteria for MI at § 483.102(b)(1)(i) requires that an individual have a ''major mental disorder'' diagnosable under the ''Diagnostic and Statistical Manual of Mental Disorders, 3rd edition'' (also

referred to as the DSM–III–R), which was released in 1987. The mental disorders listed currently in § 483.102(b)(1) include ''schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder'' and any other mental disorder that may lead to a chronic disability. Since § 483.102(b)(1) was issued, the DSM has been revised several times and is now in a 5th edition (DSM–5), published in 2013. The DSM–5 and DSM–III–R are not identical, and the DSM–5 does not categorize disorders the same way as the DSM–III–R. As a result, clinicians must currently crosswalk diagnoses made using the DSM–5 with the categories of mental disorders listed in the DSM–III–R.

In addition to diagnosis, the current definition of MI at § 483.102(b)(1)(ii) also includes criteria that an individual must have experienced a functional impairment within the previous 3–6 months and, at § 483.102(b)(1)(iii), that an individual must have required intensive psychiatric treatment or social supports within the previous 2 years. We believe that limiting the definition of MI only to those individuals who have recently had acute symptoms may be unintentionally problematic. For instance, under a strict reading of this current definition, an individual with MI who has successfully managed symptoms with treatment or therapy, or is in remission, may be considered to not have MI for PASRR purposes. If an individual requires such specific treatment or therapy while in a NF, including these therapies might constitute specialized services if they go beyond typical NF services (see discussion of specialized services in discussion of § 483.120 of this rule)—in which case the PASRR program may help ensure that these ongoing treatments or therapies are maintained in the NF.

We have also received feedback from stakeholders that the ''recent treatment'' requirement at § 483.102(b)(1)(iii), which requires individuals to have received inpatient hospitalization, is out of step with current practices, which are increasingly trending towards intensive outpatient and other community-based treatments. Individuals who may have received inpatient hospitalization in 1992, when § 483.102(b)(1)(iii) was originally promulgated, might today be more likely to receive some form of outpatient treatment, making this criterion unreasonably difficult to meet by today's standards of practice.

For readability, we propose to title § 483.102(b)(1) ''Mental illness.'' We propose to revise § 483.102(b)(1) in its entirety; a new definition of MI at § 483.102(b)(1) would provide that a person would be considered to have MI if:

- The individual has, within the past year, had a serious and persistent mental disorder meeting the criteria specified within the (DSM–5), with the exception of conditions that would fall under DSM–5 ''V'' codes, substance use or substance/medication-induced disorders, neurodevelopmental disorders, and neurocognitive disorders;
- The disorder has been determined by a qualified clinician to be acute or in partial remission, have recurrent or persistent features and, if the DSM includes a severity scale for the disorder, the severity level of the disorder is moderate to severe;
- The disorder has resulted in functional impairment which has substantially interfered with, or limited, one or more major life activity (including activities of daily living; instrumental activities of daily living; or functioning in social, family, and academic or vocational contexts), or would have caused functional impairment without the benefit of treatment or other support services; and
- A qualified clinician has found that the mental disorder is not a secondary characteristic of a primary diagnosis of dementia (or neurocognitive disorder due to Alzheimer's disease or related conditions), as defined in paragraph (b)(2).

The proposed definition is a PASRR-specific modification of the definition of serious MI issued by the Substance Abuse and Mental Health Services Administration (SAMHSA) as part of the Public Health Service Act (PHSA). The Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (Pub. L. 102–321, enacted July 10, 1992) that created SAMHSA in 1992 also directed SAMHSA to issue a definition of ''serious mental illness,'' which it did in 1993 (58 FR 29425, May 20, 1993). We arrived at this proposed definition for PASRR-eligible MI after consultation with NIMH staff, as directed by section 1919(e)(7)(G)(i) of the Act. In an attempt to streamline the regulations, we are proposing a single definition of MI to apply to both children and adults, whereas the PHSA definition offers separate definitions for ''serious mental illness'' and ''serious emotional disturbance'' for children. In addition, in an effort to bring the proposed definition of MI up-to-date, we have chosen to refer to the most current available version of the DSM (which is more current than the edition reflected in the PHSA). Unlike the PHSA definition, the proposed PASRR definition for MI would exclude Alzheimer's disease and related disorders in accordance with section 1919(e)(7)(G)(i) of the Act.

Another proposed update to the definition of MI is to indicate that a person must have been diagnosed with a ''mental disorder'' rather than a ''major mental disorder.'' The DSM–5 does not classify many mental disorders as ''major'' as it may have done in previous editions, and we believe removing ''major' aligns better with the current descriptions of most of the relevant mental disorders in the DSM–5. We also believe this would avoid over-inclusion of individuals with clinically mild presentations of disorders that have the word ''major'' in the diagnosis, such as major depressive disorder. We propose instead to specify that a qualified clinician would have to identify that the disorder has recurrent or persistent features. The term ''serious and persistent mental illness'' is often used interchangeably with ''serious mental illness,'' and we propose to highlight the persistent or recurrent nature of the disorder to avoid over-inclusion of individuals who have experienced a single episode of mental illness that will not require the ongoing specialized supports offered through PASRR interventions. We also propose to specify that, if the DSM–5 includes a severity scale for the disorder, that the disorder be considered by the clinician to be moderate to severe.

We note that in the proposed definition, a diagnosis of substance use disorder (including opioid use disorder) or a substance-induced disorder would not be considered a qualifying diagnosis of MI. This is in keeping with the SAMHSA definition of serious MI. However, an individual with a diagnosis of substance use disorder and a distinct diagnosis of a qualifying MI (such as bipolar disorder) would be considered eligible for PASRR evaluation.

We believe this proposed definition would rectify the problems posed by the current definition described above by updating the diagnostic criteria and removing specific treatment criteria. It would also adopt language from the preamble to SAMHSA's 1993 definition of serious MI (at 58 FR 29425) that specifies that the mental disorder would be considered serious if it caused a functional impairment in the past year, or would have caused an impairment in the past year absent treatment or support services. This would mean that people with serious but managed conditions could still be eligible for PASRR evaluation and determination to ensure continuation of these supports while they are in the NF.

The final criterion of the proposed definition for MI reflects the statutory requirement at section 1919(e)(7)(G)(i) of the Act that a person is not considered to have MI (for PASRR purposes) if the MI diagnosis is secondary to a primary diagnosis of dementia. We propose to specify as part of this provision that a qualified clinician would make the decision that the dementia is primary, as it may difficult for non-clinicians (such as those who may be performing the Level I identification screen, discussed in § 483.126 of this proposed rule) to identify accurately whether the individual's behavioral disturbances are caused by MI or dementia. We solicit feedback on this proposed updated definition.

b. Dementia

Section 483.102(b)(2) provides a definition of dementia, and for readability, we propose to title § 483.102(b)(2) ''Dementia.'' We propose to amend the current definition of dementia at § 483.102(b)(2). In the DSM–5, dementia is now described as ''major neurocognitive disorder'' and Alzheimer's disease and related disorders are described as different forms of either mild or major neurocognitive disorders. We propose to specify that an individual would be considered to have dementia if a qualified clinician has diagnosed such individual with a ''major neurocognitive disorder'' as defined in the DSM–5, with the exception of delirium. (See the discussion of proposed § 483.112(b)(3) for a discussion of how individuals with delirium diagnoses would be addressed by PASRR.) Mild neurocognitive disorders, including mild cognitive impairment, would not be included in the definition of dementia for PASRR purposes.

We also propose to specify that an individual with a co-occurring diagnosis of MI and a neurocognitive disorder would not automatically be considered to have ''primary dementia'' unless a qualified clinician has confirmed the identification of dementia as primary. We frequently receive requests for additional guidance on what is meant by ''primary dementia'' in PASRR. We solicit feedback on our proposed approach.

c. Intellectual Disability

Section 483.102(b)(3) provides a definition of intellectual disability, and for readability we propose to add a title to this provision, ''Intellectual disability.'' The statute does not provide a specific definition of ''intellectual disability''. Section 1919(e)(7)(G)(ii) of the Act states that a person is ''mentally retarded'' if the person is mentally retarded or has a related condition as described in section 1905(d) of the Act.'' Section 1905(d) defines intermediate care facilities for people with intellectual disability (ICF/IID), but does not define ''intellectual disability''. Section 483.102(b)(3)(i) currently provides a definition of ''intellectual disability,'' but it relies on an outdated diagnostic manual (the American Association on Mental Deficiency's ''Manual on Classification in Mental Retardation'' (1983)). We propose to update this definition, using an adaptation of the most current definition provided by the American Association on Intellectual and Developmental Disabilities (AAIDD), formerly known as the American Association on Mental Deficiency. We propose to specify that an individual may be considered to have an intellectual disability if the individual has a disability, with onset before age 18, which is characterized by significant limitations in both intellectual functioning and adaptive behavior, as described in the American Association on Intellectual and Developmental Disabilities' ''Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition'' (2010). We also propose to retain the provision at § 483.102(b)(3)(ii) that an individual may also be considered to have ID for PASRR purposes if the individual has a related condition as defined by § 435.1010. We welcome public comment on this definition.

d. Incorporation by Reference: Material Availability and Description

We also propose to add a new § 483.102(c) to incorporate the American Psychiatric Association's ''Diagnostic and Statistical Manual of Mental Disorders, 5th Edition'' (DSM–5) and the 11th edition of AAIDD's Intellectual Disability: Definition, Classification, and Systems of Support'' by reference; PASRR programs would use these materials to identify MI, dementia and ID, in accordance with 5 U.S.C. 552(a) and 1 CFR 51.5(a). Incorporation by reference allows federal agencies to comply with the requirement to publish rules in the **Federal Register** and the Code of Federal Regulations (CFR) by referring to material already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it had also been published in the **Federal Register** and the CFR. This material, like any other properly issued rule, has the force and effect of law. New § 483.102(c)(1) would incorporate by reference the DSM–5, which we propose would be used to identify qualifying MI diagnoses and to identify primary dementia diagnoses. Section 483.102(c)(2) would incorporate by reference the current edition of the AAIDD's ''Intellectual Disability: Definition, Classification, and Systems of Support'', which we propose would be used to identify instances of intellectual disability.

The ''Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition'' (DSM–5) is the diagnostic tool published by the American Psychiatric Association (APA). The DSM serves as one of the principal authorities for identifying and classifying the psychiatric diagnoses required for treatment recommendations and health care payments. The DSM–5 contains criteria that help clinicians identify subtypes of: Neurodevelopmental disorders; schizophrenia spectrum and other psychotic disorders; bipolar and related disorders; depressive disorders; anxiety disorders; obsessive-compulsive disorders; trauma- and stressor-related disorders; dissociative disorders; somatic symptom and related disorders; feeding and eating disorders; elimination disorders; sleep-wake disorders; sexual dysfunctions; gender dysphoria; disruptive, impulse-control, and conduct disorders; substance-related and addictive disorders; neurocognitive disorders; personality disorders; and paraphilic disorders.

The AAIDD's manual, ''Intellectual Disability: Definition, Classification, and Systems of Supports'', contains current guidelines on diagnosing and classifying intellectual disability, as well as information on developing a system of supports for people with an intellectual disability. The manual was created to provide an authoritative definition and diagnostic system of intellectual disability and to give guidance on the role of assessment in the diagnostic process, the role of the intelligence quotient (IQ) in making a diagnosis, and methods of assessing adaptive behavior.

We would make both the DSM–5 and the AAIDD's ''Intellectual Disability: Definition, Classification, and Systems of Support'' available for inspection at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Information on how to purchase a copy of the DSM–5 may be

obtained from the American Psychiatric Association, 800 Maine Avenue SW, Suite 900, Washington, DC 20024, 202–559–3500, or from American Psychiatric Association Publishing at *www.appi.org.* Information on how to purchase a copy of the AAIDD manual may be obtained from the AAIDD, 8403 Colesville Road, Suite 900, Silver Spring, MD 20910, 202–387–1968 or *www.aaidd.org.*

4. State Plan Requirement (§ 483.104)

§ 483.104 provides that, as a condition of approval of the State plan, states must operate a PASRR program that meets the requirements of §§ 483.100 through 483.138. We propose in this provision to remove the word ''annual'' to indicate that Resident Review is no longer required annually.

5. Basic Rules and Responsibilities (§ 483.106)

Currently, § 483.106 is titled ''Basic rule.'' The focus of this section is on providing a high-level overview of PASRR requirements and outlining the roles of the State Medicaid Agency (SMA), the SMHA, and the SIDA in implementing PASRR. PASRR is a somewhat unusual Medicaid mandate in that the statute (sections 1919(b)(3)(F) and (e)(7)(A) and (B) of the Act) assigns responsibilities to the SMHA and the SIDA, as well as the SMA. We propose to retitle this section ''Basic rules and responsibilities'' to draw readers' attention to these distinct responsibilities. We also propose to make revisions to this section to clarify and highlight the respective roles of each authority.

The current § 483.106(a) reiterates the requirement in section 1919(e)(7)(A)(i) of the Act that states were to have a system for Preadmission Screening in place by January 1, 1989. It also reflects the requirement in section 1919(e)(7)(B) of the Act that states must perform an initial Resident Review of all individuals with MI or ID in NFs by April 1, 1990, and have a system of annual Resident Review in place by April 1, 1990. This requirement for annual Resident Review was repealed in 1996 (by Pub. L. 104–315) and replaced with the requirement that a Resident Review was required upon a resident's ''significant change of physical and mental condition.'' We propose to remove § 483.106(a) because the deadlines for implementation of Preadmission Screening implementation and Resident Review programs have long passed, and the reference to annual Resident Review is now obsolete.

We propose to redesignate the current § 483.106(c) as § 483.106(a) and remove the existing reference to ''annual'' Resident Reviews. This provision provides the basic purpose of PASRR programs, which are to have Preadmission Screening and Resident Review processes that result in determinations for NF applicants and residents with MI and ID, based on a physical and mental evaluation of the individual.

The current § 483.106(b) indicates that ''new admissions'' must receive Preadmission Screening, and clarifies who is considered a ''new admission.'' It also defines and distinguishes among new admissions, exempted hospital discharges, readmissions, and inter-facility transfers. Because this provision has more relevance to Preadmission Screening than to Resident Review, we propose to move this provision to § 483.112 (which discusses Preadmission Screening for NF applicants) and to redesignate it as § 483.112(b). Additional proposed changes to that provision are contained in the discussion of § 483.112 in this proposed rule.

We propose new language at § 483.106(b) to provide a proposed restatement of the basic requirements of the PASRR programs, including:

- Identification of all applicants for admission to, and residents of, Medicaid-certified NFs who have possible MI or ID;
- Preadmission Screening of all eligible new admissions with MI or ID who apply to Medicaid NFs and tracking of individuals with possible MI or ID admitted under Preadmission Screening exceptions; and
- Resident Review of eligible residents with MI or ID.

This proposed regulation would provide a clear overview of PASRR requirements that reflects current statutory requirements. The proposed § 483.106(b)(2) would provide a cross-reference to § 483.112, where we propose that exempted hospital discharge and other exceptions to Preadmission Screening be defined.

We propose a new requirement at § 483.106(c) that would describe the SMA's PASRR responsibilities, including:

- General responsibility for ensuring and enforcing the PASRR program's compliance with federal regulations;
- Executing and enforcing written interagency agreement among the State Medicaid agency, SMHA and SIDA as required at § 431.621;
- Designating an entity to perform the evaluations for individuals with MI;
- Ensuring timely and accurate reporting of data as required in proposed § 483.130(j); and
- All PASRR functions not explicitly assigned to another entity by statute or regulation.

We believe this new regulation is necessary because the current regulations do not offer explicit discussion of the SMA's role in PASRR. Our proposed regulation would largely affirm current responsibilities of the SMA. We have observed that while the SMA does bear ultimate responsibility for PASRR implementation, in some instances SMAs have been unaware of some of their specific obligations, and we attempt to highlight these obligations in proposed § 483.106(c). For instance, the existing § 431.621 requires the SMA to execute a PASRR-related interagency agreement among the SMA, SMHA and SIDA—a requirement that is easy to overlook because it is not part of the PASRR requirements in part 483, subpart C. Additionally, we propose to clarify that since the SMHA cannot perform or delegate responsibility for evaluations for people with MI (per the restrictions at sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i) of the Act, discussed further in the discussion of § 483.106(d) in this proposed rule), that responsibility would fall to the SMA.

To the list of the SMA's responsibilities, we propose to add one new responsibility in proposed § 483.106(c)(4), to ensure timely and accurate reporting of data as required in proposed § 483.130(j). The proposed reporting requirements are discussed at greater length in the discussion of § 483.130(j) in this proposed rule. We propose at § 483.106(c)(4) that, when a PASRR program gathers and submits data on PASRR program activities, the SMA would bear ultimate responsibility for ensuring that this data is reported to the Secretary, as required in section 1919(e)(7)(C)(iv) of the Act.

Section 483.106(d) describes the specific obligations of the SMHA and SIDA to perform determinations for people with MI and ID (respectively), as described in the statute. Sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i) of the Act specify that the determinations made by the SMHA must be based on an ''independent physical and mental evaluation performed by a person or entity other than the [SMHA.]'' Sections 1919(b)(3)(F)(ii) and 1919(e)(7)(B)(ii) of the Act require the SIDA to base determinations ''on the physical and mental condition'' of the individual (implying that determinations must also be based on evaluations). Unlike the SMHA, the SIDA is not statutorily prohibited from performing the evaluation on which the determination is made. The language in current

§ 483.106(d) generally reflects this set of statutory requirements. We propose in § 483.106(d) to change a mention of ''the level of services provided by a NF'' to ''NF level of services'' to maintain consistent language around NF level of services. We propose to add clarifying language to § 483.106(d)(1) that indicates that the SMHA's determination for people with MI must be based on a physical and mental evaluation performed by a person or entity that is ''independent from'' the SMHA. The current language indicates only that the person or entity must be ''other than'' the SMHA. That arguably ambiguous language has created the misimpression for some PASRR programs that the evaluation of people with MI can be performed by an entity that is distinct from, but still under contract with, the SMHA. We believe a plain reading of the statute indicates that the entity performing the evaluation for people with MI cannot have a contractual relationship with the SMHA, and propose to make that clear. The SIDA's role is summarized at § 483.106(d)(2). To highlight the differences between the SIDA statutorily-authorized roles in evaluations, we propose to add language at § 483.106(d)(2) that specifies that the determination made by the SIDA must be ''based on a physical and mental evaluation performed by the state intellectual disability authority or its designee.''

We propose changes at § 483.106(e), which currently describes the obligations placed on the SMHA and the SIDA when delegating statutory responsibilities. We propose to redesignate § 483.106(e)(1)(i) through (iii) as § 483.106(e)(1) through (3). We propose to expand § 483.106(e) and (e)(1) to include the SMA, as well as the SMHA and SIDA. We also propose to remove current § 483.106(e)(1)(ii), which contains an instruction to the SMHA and SIDA that the two determinations as to the need for NF services and specialized services must be made based on a consistent analysis of the data. We believe this instruction is unnecessary, as this principle is also addressed in rules regarding determinations (contained in § 483.130). We propose to replace this provision with a clarification at newly redesignated § 483.106(e)(2) that the SMA cannot delegate the evaluation responsibility to the SMHA (in accordance with sections 1919(b)(3)(F)(i) and (e)(7)(B)(i) of the Act). Section 483.106(e)(1)(iii), which we propose to redesignate § 483.106(e)(3), instructs that the responsibility of evaluations and determinations cannot be delegated to a NF or an entity with a direct or indirect relationship with a NF. As this is required by sections 1919(b)(3)(F) and (e)(7)(B)(iv)) of the Act, we propose to retain this provision without amendment.

We propose to remove the current § 483.106(e)(2), which contains redundant language describing the SIDA and SMHA's responsibilities and ability to delegate these responsibilities. We also propose to remove the current § 483.106(e)(3), which reiterates the restriction against the SMHA providing (or delegating) evaluations for people with MI, and restricting the state from delegating this responsibility to NFs. We believe this language duplicates existing and proposed language in § 483.106(d)(1) and of newly redesignated § 483.106(e)(2) and (3).

We propose to move the current § 483.128(b) to § 483.106 and redesignate it as § 483.106(f). This provision requires that PASRR evaluations and determination notices be adapted to the cultural background, ethnic origin, language, and means of communication used by the individual. We propose this redesignation because the provision is currently in § 483.128, which provides criteria only for evaluations, yet the provision addresses both evaluation and determination practices. Culturally-sensitive and accessible communications are fundamental to all PASRR-related activities, so we consider this provision most appropriate for the section on basic rules. In relocating language currently found at § 483.128, we propose to revise the reference to ''PASARR notices'' to ''PASRR-related communications'' to clarify that cultural adaptation and accessibility would be expected of all communication, and not limited to formal determination notices issued by the PASRR program. We would also add in this provision that, at no cost to the individual, evaluations should include qualified interpreters as needed, as required by Section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964, and qualified sign language interpreters and auxiliary aids as required by Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act of 1973, to ensure there is effective communication.

6. Relationship of PASRR to Other Medicaid Processes (§ 483.108)

Section 483.108 describes the protections for, and limitations on, the independence of the SMHA and SIDA in making determinations, and the statutory responsibility to coordinate PASRR with the resident assessment in § 483.20(b).

We propose to make only minor technical changes to § 483.108(a), to remove the acronym ''PASARR'' and replace it with ''PASRR.'' We propose minor changes in § 483.108(b). We propose replacing ''NF care'' with ''NF level of services'' to keep language regarding the NF level of services determination consistent. The current provision specifies that determinations regarding NF level of services and specialized services must be consistent with ''any supplemental criteria adopted by the State Medicaid agency under its approved State plan.'' We propose to remove the words ''under its approved State plan'' because state plan approval is not required for states to develop state-specific rules about PASRR criteria or NF admissions criteria.

We propose to add clarifying language in § 483.108(c), which reflects the statutory requirement in sections 1919(b)(3)(E) and 1919(e)(7)(B)(iii) of the Act that the resident assessment process implemented in § 483.20 must be coordinated with the state's PASRR program. (See discussion of § 483.20 for discussion of the resident assessment process.) As we discuss in the discussion of § 483.20(e) in this proposed rule, Preadmission Screening and Resident Review may be coordinated with the resident assessment by gathering the preliminary documentation that will aid in the completion of the resident assessment. To this end, we propose to replace language in § 483.108(e) requiring that PASRR must be coordinated with the routine resident assessments with a more specific statement to the effect that information gathered by the PASRR process must be incorporated into the routine resident assessments required by § 483.20(b) whenever possible. We recognize that the need for coordination between PASRR and resident assessments is both critical and complex, and intend to expand on this requirement through future sub-regulatory guidance.

7. Out-of-State Arrangements (§ 483.110)

Section 483.110 describes how responsibility for PASRR is assigned when an individual seeks admission or transfer to an out-of-state NF. The general goal of § 483.110(a) is to ensure that one state (the ''sending state'') cannot obligate another (the ''receiving state'') to provide, or pay for, NF services or specialized services that do not align with the NF level of services

or specialized services in the receiving state.

We have received stakeholder feedback that, for some states, deciding how PASRR should be performed when a NF resident is transferred between states, or otherwise moves over state lines, can be a source of confusion. We understand that some receiving states: (1) Elect to accept the PASRR documentation from the sending state, even if the receiving state will ultimately be responsible for paying for the individual's care (including paying for specialized services); (2) redo all PASRRs for relocated residents; or (3) attempt to perform Preadmission Screening on prospective new residents themselves, which may involve sending staff from the receiving state's PASRR program across state lines to the sending state to perform the Preadmission Screening.

Some of the challenges related to admitting NF applicants or residents from another state are beyond PASRR's scope, such as differences in Medicaid eligibility or states' level of care criteria for NF admission. However, while we do not currently propose substantive changes to § 483.110(a), we solicit suggestions from stakeholders on ways that the language in § 483.110 may, within the scope of the authority of this subpart, be amended to address any barriers to executing PASRR responsibilities associated with out-of-state transfers.

We propose to remove the current requirement at § 483.110(b), which indicates that states may choose to include PASRR in interstate agreements. States do not need regulatory authority to do so, and may continue to do so if this removal is finalized. We have observed that some states have interpreted § 483.110(b) as a mandate, which it is not. We note that the delegation authority granted at § 483.106(e) would include, for example, allowing a receiving state to delegate its authority to perform PASRR activities to a sending state's PASRR program to complete needed Preadmission Screening. Because we propose to remove § 483.110(b), we propose that § 483.110(a) would be redesignated as § 483.110.

8. Preadmission Screening of Admission to NFs (§ 483.112)

Section 483.112 describes the requirements for Preadmission Screening. Per section 1919(b)(3)(F) of the Act, Preadmission Screening instructs that ''new resident[s]'' with MI or ID cannot be admitted to a NF unless the SMHA or SIDA has determined ''prior to admission'' that the individual needs NF level of services and, if the individual does need NF level of services, whether the individual needs specialized services. (The need for NF level of services and specialized services are discussed in greater detail in the discussions of §§ 483.120, 483.132, and 483.134 of this proposed rule.)

In this section, we propose to reorganize and expand on the requirements for Preadmission Screening. As part of this reorganization, we propose to remove current § 483.112(a) and (b). These sections reiterate the statutory requirement set out in the previous paragraph. We propose removing these sections and consolidating this information into a single requirement at § 483.112(d), discussed later in this proposed rule.

We propose a new § 483.112(a) that would clarify who would be required to receive Level I identification screening prior to NF admission. We would specify that all individuals who are applying to Medicaid-certified NFs as a new admission (as defined in proposed § 483.112(b)) must receive a Level I identification screen. We note that Level I identification screens performed prior to admission do not constitute Preadmission Screening, but rather are used to indicate who must receive Preadmission Screening. This means that *all* applicants, including those who are eligible for exemptions from Preadmission Screening, would be required to receive a Level I identification screen. The rationale for this proposed policy is discussed further in the discussion of proposed § 483.112(b) in this proposed rule.

We propose a new § 483.112(b), which is largely a redesignation of the current § 483.106(b). As noted in our discussion in § 483.106, this provision currently describes who is required to receive Preadmission Screening. We would add new language in this revised § 483.112(b) that clarifies that new admissions with positive Level I identification screens applying to become a new resident of a Medicaid-certified NF would be required to receive Preadmission Screening prior to admission. (Proposals regarding the Level I identification process, including what may constitute a positive Level I screen, are discussed in the discussion of § 483.126 of this proposed rule.) We also propose to add language at proposed § 483.112(b) clarifying that Preadmission Screening (also referred to in this proposed rule as ''Level II Preadmission Screening'') consists of a Level II evaluation and determination as described in §§ 483.128 and 483.130. We believe this definition of Preadmission Screening accurately reflects the description of Preadmission Screening required by sections 1919(b)(3)(F) and 1919(e)(7)(A) of the Act, which only specifically includes the evaluation and determination process.

Proposed § 483.112(b)(1) contains much of the current language from existing § 483.106(b)(1) that defines ''new admission.'' We propose to retain the language that explains that ''new admissions'' are individuals applying for admission to a Medicaid-certified NF for the first time and who do not qualify as ''readmissions'' or an ''inter-facility transfer.'' (Readmissions and inter-facility transfers are discussed further in the discussions for § 483.112(b)(4) and (b)(5), respectively in this proposed rule.) We also propose to add language at proposed § 483.112(b)(1) that clarifies that, with the exception of certain hospital discharges or provisional admissions (explained in the next paragraph), new admissions would be subject to Preadmission Screening (meaning they must receive, if they have possible MI or ID, a Level II evaluation and determination prior to admission).

At proposed § 483.112(b)(2), we would preserve much of the language from current § 483.106(b)(2) that defines exempted hospital discharge. Current § 483.106(b)(2)(i) mirrors the language in section 1919(e)(7)(A)(iii) of the Act, which provides that Preadmission Screening ''shall not apply'' to an individual: (1) Who is admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital; (2) who requires nursing facility services for the condition for which the individual received care in the hospital; and (3) whose attending physician has certified, before admission to the NF, that the individual is likely to require less than 30 days of nursing facility services. Current § 483.106(b)(2)(ii) adds that if an individual who was admitted to a NF under an exempted hospital discharge ends up staying in the NF for more than 30 days, the SMHA or SIDA must conduct a Resident Review by the 40th day of the individual's admission.

We believe the current regulations do not provide adequate oversight for the exempted hospital discharge because they have left unclear whether the PASRR program may have any contact with individuals who qualify for the exempted hospital discharge prior to the NF admission (such as by performing a Level I identification screen on the individual or verifying that the person meets the criteria for exempted hospital discharge). We have received anecdotal

feedback from stakeholders that many states' PASRR programs do not feel they have the authority, under current regulations, to conduct proper oversight of the application of hospital discharge exemptions. The lack of oversight of hospital discharge exemptions may result in improper use of the exemption, such as identifying individuals as qualifying for the exemption even though they do not have written documentation from a physician as required by law. Another issue that may arise with hospital discharge exemptions is that individuals with possible MI or ID may initially meet the criteria for an exempted hospital discharge but then stay in the NF longer than 30 days, and not receive a timely referral for Resident Review; it is difficult for PASRR programs to ensure that such Resident Review referrals are being made when the PASRR program has no prior knowledge of the individuals admitted under this exemption.

To address these potential issues, we propose to add language at § 483.112(b)(2) to clarify that exempted hospital discharges are considered new admissions, which means that while they are exempted from Preadmission Screening (Level II evaluation and determination), they are not exempted from Level I identification screening. Performing Level I identification screens on people who qualify for the hospital discharge exemption would serve two purposes. One is to serve as notice to PASRR programs that individuals with MI or ID (as identified via a positive Level I screen) are being admitted to a NF under a hospital discharge exemption and may need a Resident Review if their stays exceed 30 days. The second is to have the Level I identification screen function as a means of verifying that the conditions of the hospital discharge exemption are met, including that a physician has certified the expected length of the stay. This proposed clarification would assist us in providing greater oversight of the use of hospital discharge exemptions to avoid misapplication or misuse of this exemption, and would provide PASRR programs with an improved ability to track individuals with MI or ID who have been admitted to NFs.

We propose to redesignate § 483.106(b)(2)(i) as § 483.112(b)(2)(i). The language in this provision describes the conditions for exempted hospital discharge per section 1919(e)(7)(A)(iii) of the Act. Additionally, we propose in § 483.112(b)(2)(ii) to retain the provision in current § 483.106(b)(2)(ii) which states that, if an individual ends up staying in a NF longer than 30 days, the state's PASRR program would be required to conduct a Resident Review (consisting of a Level II evaluation and determination) within 40 calendar days of admission. However, we propose to add language in proposed § 483.112(b)(2)(ii) specifying that only individuals who have possible MI or ID (as identified by the Level I identification screen) would have to receive a Resident Review by the 40th day of admission. We also propose to change the word ''conduct'' to ''complete,'' to make it clear that the Level II evaluation and determination would have to be completed by the 40th day (rather than merely initiated) after the person's admission date. We believe this proposed Resident Review requirement would provide a critical protection to ensure that individuals with MI or ID who intended to stay in a NF for only a short time do not become long-term residents without being reviewed by the PASRR program to confirm that the individual needs NF level of services and to determine whether the individual needs specialized services.

We propose to add a new provision at § 483.112(b)(3) that describes a second exemption to Preadmission Screening, called a ''provisional admission.'' Section 1919(b)(3)(F) of the Act specifies that those applying as ''new residents'' are subject to Preadmission Screening. We would define a provisional admission as a new admission in which the individual is only admitted to a NF for short, time-limited stays, and thus is not considered a ''new resident'' for PASRR purposes. These individuals would be subject to a Level I identification screen but, even if the individuals receive positive screens, would not be required to receive Level II evaluation and determination prior to admission. Provisional admissions, like hospital discharge exemptions, would be time-limited NF stays that are admissions for:

- Emergency stays due to emergency evacuations or protective services placements, with placement in the NF not to exceed 14 days;
- Individuals with delirium where the delirium prevents an accurate diagnosis at the time of entry into the NF, but is expected to clear within 14 days;
- Respite stays of up to 30 consecutive days to provide respite to in-home caregivers; or
- Convalescent stays of up to 30 days in which an applicant requires a stay in the NF to recover from an acute physical illness that required hospitalization; and does not meet all the criteria for an exempted hospital discharge (described previously in this proposed rule in the discussion of § 483.112(b)(2)). Convalescent stays, for example, may be required for individuals who do not qualify for hospital discharge exemptions because they are being discharged to a NF from a rehabilitative hospital, rather than an acute care hospital as specified by section 1919(e)(7)(A)(iii) of the Act.

While this would be a new requirement, it is one designed to reduce burden. We propose such provisional admissions in lieu of the categorical determinations, examples of which are set out at current § 483.130(d). Categorical determinations are part of the current regulations and are designed to expedite admissions for individuals with positive Level I screens whose conditions are such that the SMHA or SIDA can determine, without a comprehensive evaluation, that the individual either needs NF level of services or does not need specialized services, or both. As authorized by the current regulations, categorical determinations frequently result in ''desk reviews,'' which are quick reviews of the individual's medical paperwork (often without the individual's direct involvement).

We believe the proposed regulations at § 483.112(b)(3) would reduce PASRR programs' burden by eliminating the need to collect and review paperwork for individuals with positive Level I identification screens who are going to be in the NF for such a short period of time that the individual is not likely to become a long-term resident and would not have time to benefit from specialized services. The application of this exception would be voluntary for state PASRR programs; this provision would not preclude states, if they so choose, from performing Preadmission Screening or providing specialized services, as appropriate, to individuals with positive Level I identification screens who fall under these categories if the state identifies that the individual would benefit from such interventions.

We also propose to provide a schedule at proposed § 483.112(b)(3)(ii) for when a Resident Review would need to be completed by the SMHA or SIDA for an individual with possible MI or ID (as indicated by the Level I identification screen) who was admitted under provisional admission. We propose a similar timeframe to the Resident Review policy on expired hospital discharge exemptions described in proposed § 483.112(b)(2)(ii), which contemplates 9 calendar days for the Resident Review. We propose that a Resident Review would have to be completed by the 24th

calendar day after admission for emergency admissions and delirium, and the 40th calendar day after admission for respite stays and convalescent care stays. This ensures that individuals who are admitted under provisional admissions do not become long-term residents without an appropriate review for NF level of services and specialized services.

In summary, we are proposing parallel processes for hospital discharge exemptions and provisional admissions. We propose that individuals in both categories would receive Level I identification screening prior to admission to identify individuals who have possible MI or ID (as described in the discussion for § 483.126) and to confirm that the individual qualifies for a Preadmission Screening exemption, the individual's MI or ID notwithstanding. These exemptions come with an expiration date—30 days for exempted hospital discharge and provisional admission for respite or convalescent stays, 14 days for provisional admissions for emergencies and delirium. We propose that when individuals who have been admitted under an hospital discharge exemption or as a provisional admission remain in the NF past the allotted exemption period, the NF must notify the PASRR program promptly so that the SMHA or SIDA can perform a Resident Review and make a Level II determination within an average of 9 calendar days of when the individual's exemption period expired.

We propose at § 483.112(b)(4) to relocate and revise the language from current § 483.106(b)(3) that defines ''readmissions''. Readmissions, as set forth in section 1919(e)(7)(A)(ii) of the Act do not need to receive Preadmission Screening. We propose to remove the sentence that explains that readmissions are exempt from Preadmission Screening, but are subject to ''annual'' Resident Review, because annual Resident Review is no longer a requirement. In its place, we propose to add a specification that readmissions of individuals who received a Level I identification screen and Level II evaluation and determination (if needed) upon initial admission do not need to have these processes repeated upon readmission. We propose to retain the language from current § 483.106(b)(3) that readmissions are still subject to Resident Review, although we propose to remove the language that says that this Resident Review must be performed annually and would clarify that the Resident Review would need to be performed in accordance with § 483.114.

At proposed § 483.112(b)(5), we propose to retain the definition of ''inter-facility transfer'' from current § 483.106(b)(4), which is that an individual is being transferred from one NF to another, with or without an intervening hospital stay. We propose to add language specifying that inter-facility transfers are treated similarly to readmissions, in that Level I identification screening and, for individuals with MI or ID, Level II evaluations and determinations (conducted as Preadmission Screening and any subsequent Resident Reviews), Level I identification and Level II Preadmission Screening typically do not need to be repeated during the transfer. We propose to add language at § 483.112(b)(5)(ii) that would specify that a receiving NF would have to ensure that the individual has paperwork demonstrating that the individual has previously received a Level I identification screen and, if necessary, Level II determination (or multiple Level II determinations). Absent this documentation or if this documentation does not reflect the individual's current physical or mental condition, we would specify that the individual must be treated as a new admission (meaning the individual would need to receive a new Level I identification screen and, if necessary, Level II evaluation and determination prior to admission.) We also propose a new requirement at § 483.112(c)(5)(iii) indicating that a new Level II Preadmission Screening would be required for an individual whose inter-facility transfer involved an intervening stay in an inpatient facility in which the individual received inpatient psychiatric treatment or active treatment (as defined in § 483.440(a)).

We propose changes to the provisions at § 483.112(c)(1) describing the timeliness of the Level II Preadmission Screening. The current regulation indicates that Level II determinations must be made in writing within an annual average of 7–9 working days from the day the Level I referral was made. We believe setting a standard that is both an average *and* a range presents an unnecessarily confusing benchmark for PASRR programs. While 9 working days is clearly the upper limit of how long most determinations should take, states are not required to complete determinations in a minimum of 7 days. We propose to revise the existing completion rate of an annual average of 7 to 9 working days to within an annual average of 9 calendar days from date of receipt of the Level I referral. We propose to change ''working days'' to ''calendar days'' because calendar days, unlike ''working days'' are unambiguous. We also note that in the requirement for completing Level II determinations for expired hospital discharge exemptions (discussed in this section above in relation to proposed § 483.112(b)(2)), the need for the Level II determination would begin on the 31st day after admission, and the Level II would need to be completed by the 40th day of admission—in other words, within 9 calendar days. Thus, we propose that *all* Level II determinations be made within, on average, 9 calendar days of the Level I referral in order to streamline timeframes.

We also propose to add at § 483.112(c) that Level II Preadmission Screening (consisting of a Level II evaluation and determination) would have to be completed prior to admission, and propose to clarify that the Level II determinations may be made electronically or in writing. We believe many PASRR programs already deliver determinations electronically, and propose to formally memorialize this practice in regulation. Relatedly, we propose to remove § 483.112(c)(2) allowing the PASRR program to make Level II determinations verbally and confirming in writing. The presumed purpose of this requirement was to help expedite admissions to NFs at a time when email and other forms of electronic communication were not widely available. Electronic communication at this point can be almost as instantaneous as phone calls (if not more so) and, unlike verbal communications, create an instant verifiable record of the determination.

We propose to relocate § 483.112(c)(3) and (c)(4), which pertain to requirements for gathering data on the annual average timeliness and the ability to request waiver of this requirement to a new provision at proposed § 483.130(j). We discuss these requirements at greater length in the discussion of § 483.130 of this proposed rule.

We propose a new provision at § 483.112(d) that contains the expectations for Preadmission Screening determinations set forth in section 1919(b)(3)(F) of the Act. The Act indicates that NF applicants referred to the PASRR program for Level II determinations must first receive a determination for NF level of services and, if found to require NF level of services, a determination for specialized services.

9. Review of NF Residents (§ 483.114)

The title of § 483.114 is currently ''Annual Review of NF Residents.'' As

has been discussed elsewhere, Resident Review is no longer required annually so we propose to retitle this section ''Review of NF Residents.'' All regulations in this section currently presume the Annual Resident Review requirement. As such, we propose to remove them and replace them (at § 483.114(e)) with language on how states' PASRR programs may implement section 1919(e)(7)(B)(iii) of the Act, which requires that Resident Review be performed when there has been a ''significant change in the resident's physical or mental condition.''

We propose a new requirement at § 483.114(a) specifying the circumstances under which a referral for a Resident Review would be required. We propose at § 483.114(a) to specify that a referral for Resident Review would be required when a resident with known MI or ID (as confirmed by a previous Level II evaluation and determination) experiences a possible significant change in physical or mental condition, as defined in § 483.20(b)(2)(ii). The definition of ''significant change'' in § 483.20(b)(2)(ii) is a ''major decline or improvement in the resident's status'' that (1) will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, (2) has an impact on more than one area of the resident's health status, and (3) requires interdisciplinary review or revision of the individual's care plan (or both). In the absence of a specific definition of ''significant change'' in part 483, subpart C, NFs have already been using the definition of ''significant change'' provided in § 483.20(b)(2)(ii) when identifying the need for referral for Resident Review, and we propose to formally adopt this definition in subpart C.

We propose at § 483.114(a)(2) that an individual with possible MI or ID who was exempted from receiving Preadmission Screening (because the individual qualified as an exempted hospital discharge or a provisional admission) would be required to be referred for a Resident Review upon the expiration of the exemption's time limit as described in proposed § 483.112(b).

We propose at § 483.114(a)(3) that a Resident Review referral would be required when the NF identifies, through any means not otherwise described in this section, that a resident has a possible MI or ID that was not previously identified by a Level I identification screen. We propose at § 483.114(a)(4) to specify that states would be able to establish criteria, in addition to the criteria listed above, for when a Resident Review is required.

We propose at § 483.114(b) to provide a definition of Resident Review, which we propose would consist of a Level II evaluation and determination (and is sometimes referred to in the proposed regulations as the Level II Resident Review). This proposed regulation would reflect the description of Resident Review in section 1919(e)(7)(B) of the Act, which describes Resident Review as a determination based on an evaluation. Criteria for Level II evaluation and determination are discussed in greater detail in the discussions of sections §§ 483.128 and 483.130, respectively. We propose new language at § 483.114(b)(1) to specify that the purpose of a Resident Review would be to provide first-time Level II evaluation and determination for residents with possible MI or ID who had not previously received Level II evaluation and determination. We propose new language at § 483.114(b)(2) to provide that a Resident Review would provide a new Level II evaluation and determination for residents who have previously been confirmed by Level II determination to have MI and ID, but are experiencing a significant change in physical or mental condition such that the PASRR program will need to revise the findings of the previous Level II determination.

We propose at § 483.114(c) requirements for when the NF would refer residents to the PASRR program for Resident Review. We propose at § 483.114(c)(1) that referrals would have to be made within 72 hours of when the resident experiences one of the circumstances described in proposed § 483.114(a)(1) and (a)(3), including an apparent significant change in an individual's mental or physical condition, or evidence of a previously-unidentified MI or ID. We propose a 72-hour timeframe for Resident Review referral because section 1919(e)(7)(B)(iii) of the Act requires NFs to make Resident Review referrals ''promptly'' when a ''significant change' occurs. Additionally, we propose at § 483.114(c)(2) that NFs must make a referral for Resident Review within 24 hours of when the NF identified, or should have identified, the expiration of an exemption period for exempted hospital discharges or provisional admissions. These conditions are described in greater detail in the discussion of proposed § 483.112(b).

In an effort to create consistency in PASRR processes where possible, we are proposing at § 483.114(d) to align the timeframe for completing a Level II determination made as part of Resident Review with the timeframe proposed at § 483.112(c) for Level II determinations made as part of Preadmission Screening—that is, within an annual average of 9 calendar days from date of receipt of referral. The rationale for that timeframe is discussed in the discussion of proposed § 483.112(c).

We are proposing a new requirement at § 483.114(e) that reflects the language from sections 1919(e)(7)(B)(i) and (ii) of the Act that describes, generally, the expectations for Resident Review determinations. These sections of the statute specify that NF residents referred to the PASRR program for determination must receive a determination for NF level of services (or the need for the level of services provided by an inpatient psychiatric hospital for individuals under age 21, an institution providing medical assistance for individuals over age 65, or an ICF/IID), and a determination for specialized services.

10. Residents and Applicants Determined To Require NF Level of Services (§ 483.116)

Section 483.116 describes the admission and retention requirements for individuals found to need NF level of services and specialized services. We are proposing only one technical change to this section. We propose to remove the phrase ''for the mental illness or intellectual disability'' from § 483.116(b). The definition of ''specialized services'' at § 483.120 makes it clear that specialized services are inherently services that support an individual's MI or ID. To avoid the impression that there are different types of ''specialized services'' and for consistency throughout the revised regulation, we propose to replace the phrase ''specialized services for mental illness and intellectual disability'' with ''specialized services'' in this regulation.

11. Residents and Applicants Determined Not To Require NF Level of Services (§ 483.118)

Section 483.118 describes the discharge and retention options for NF applicants and residents who have been determined by the PASRR program to not need NF level of services. These outcomes are carefully described in sections 1919(e)(7)(C) of the Act, and we do not propose to make significant changes to the regulations in § 483.118 that reiterate these requirements.

We propose to make minor changes in §§ 483.118(b) and (c) to promote consistency in how the regulations refer to ''specialized services.'' For the reasons explained in the discussion of § 483.116, we propose to remove the phrase ''specialized services for MI or IID'' where it appears in §§ 483.118(b)

and (c), as well as the phrase ''specialized services for the mental illness or intellectual disability'' in §§ 483.118(c)(1)(iv) and (c)(2)(iii), and replace them with ''specialized services.''

We propose to remove language in § 483.118(c)(1) and (2) that references alternative disposition plans. Alternative disposition plans were allowances under section 1919(e)(7)(E) of the Act for states to delay discharging residents from NFs pending development of resources in alternative settings. As noted in section 1919(e)(7)(E) of the Act, this allowance expired April 1, 1994, therefore it is no longer necessary to include in the regulations.

12. Specialized Services and NF Services (§ 483.120)

The current § 483.120 contains provisions describing specialized services, which are a central component of PASRR. We propose to revise the definition of ''specialized services'' and to add clarity as to how the provision of specialized services relates to, and is different from, the provision of NF services. We propose retitling § 483.120 to ''Specialized Services and NF Services'' to reflect this expanded focus on both specialized services and NF services.

Section 1919(e)(7)(G)(iii) of the Act gives the Secretary broad authority to define ''specialized services'' in regulations, so long as the definition specifies that they do not include services within the scope of services which the NF must provide or arrange for its residents under section 1919(b)(4) of the Act. (Section 1919(b)(4) of the Act contains a list of services that NFs must provide and are typically included in their per diem reimbursement rate.)

The current § 483.120(a) provides a definition of ''specialized services'', which distinguishes between specialized services for people with MI and for people with ID. In the current definition of ''specialized services'' for people with MI (at current § 483.120(a)(1)), the focus of the services is split between improving the resident's ''level of independent functioning'' and addressing the needs of residents ''experiencing an acute episode of serious mental illness.'' ''Specialized services'' for people with ID are defined at current § 483.120(a)(2) as equivalent to active treatment offered in ICF/IIDs, which is defined at § 483.440(a)(1). We have found that these requirements inadvertently perpetuate an image of specialized services as being restricted to institutional-type services. We propose a broader understanding of specialized services, beyond those furnished in institutional settings such as inpatient psychiatric facilities or ICF/IIDs.

We propose a new definition at § 483.120(a) that would define specialized services as state-defined services for NF residents with MI or ID, which, we propose, would have to be:

- Developed by an interdisciplinary team, that would include, at minimum, a physician and a mental health professional (for people with MI) or intellectual disability or developmental disability professional (for people with ID or related conditions);
- Designed to address needs related to MI or ID;
- Of greater intensity, frequency or customization than the NF services for MI or ID required in part 483, subpart B;
- Designed in a person-centered manner that promotes self-determination and independence,
- Designed to prevent or delay loss of, or support increase in, functional abilities; and
- If the individual is admitted to or remains in an institutional setting, designed to support any goals the individual may have of transition to the most integrated setting appropriate.

This proposed definition would depart from the current definition of ''specialized services'' in § 483.120(a) in several key ways. The proposed definition would not provide a distinct definition for ''specialized services'' for people with MI and a separate distinct definition for people with ID. This is, in part, because we want to provide a more flexible definition, and we believe a combined definition would pose fewer logistical challenges when designing service plans for people with co-occurring diagnoses of MI and ID. This also means, should our proposal be finalized as proposed, that for people with MI, specialized services would emphasize developing long-term skills needed for independence as opposed to focusing narrowly on managing discrete periods of crisis. Likewise, for people with ID, specialized services would have an even greater emphasis on developing skills needed to transition to the community than what may currently be captured in the active treatment requirement at § 483.440(a)(1).

Many states have done a commendable job of looking beyond the institutional bias of the current definition of ''specialized services'' and developing robust and creative systems of specialized services, and we propose to update this definition in ways that would solidify the commitment to using specialized services as a tool for assisting individuals' transition to the community. We emphasize, however, that we do not believe specialized services are *only* to be delivered to people with a specific goal of transitioning from the NF into the community. Rather, specialized services should be designed to maintain individuals in the most integrated setting appropriate—whether that is to help maintain them in a NF (versus a more restrictive institutional setting such as a locked psychiatric unit) or whether that is to assist the individual's move into a home- or community-based setting. The purpose of PASRR ultimately is to allow people to live in the optimal setting for that individual, as reflected by the individual's needs and preferences. Because they are critical to the operation and success of PASRR, we solicit comments on the proposed definition of specialized services.

We propose to remove the current § 483.120(b), which describes who must receive specialized services. Currently, § 483.120(b) requires that the state provide or arrange for the provision of specialized services, to all NF residents with MI or ID who require ''continuous supervision, treatment and training'' by qualified mental health or intellectual disability personnel. We propose to replace the language ''continuous supervision, treatment and training'' with new language that indicates that states would provide specialized services to individuals needing specialized services, as identified through the Level evaluation and determination process (discussed in sections §§ 483.128 and 483.130.) This proposal would remove language that ambiguously suggests that these services would be restricted only to those individuals requiring ''continuous supervision, treatment or training''—language reminiscent of the definition of ''active treatment'' in § 483.440(a)—and would clarify the connection the Level II evaluation and determination process and the provision of specialized services.

We also propose to remove language in § 483.120(b) suggesting that only ''mental health and intellectual disability professionals'' may provide specialized services. We propose to replace this with new language in § 483.120(b) that the state must ensure that the services are provided by qualified personnel. We propose to give states more flexibility in deciding the qualifications of who may deliver the specialized services and potentially to allow services to be delivered by qualified professionals who would not necessarily be considered ''mental

health or intellectual disability personnel.''

We also propose in revised § 483.120(b) to require that specialized services be periodically reviewed to ensure they remain effective for the individual. We include this proposal out of concern that once specialized services are recommended, it is not always clear if they are monitored for quality, safety, and efficacy. We want to ensure that states take measures to ensure that specialized services are not only being delivered to individuals as required, but that they are delivered efficiently and effectively. We do not propose a specific frequency with which specialized services must be reviewed, but welcome stakeholder comments on this proposal.

We propose to change the current title of § 483.120(c) from ''Services of a lesser intensity than specialized services'' to ''Provision of NF services'' as this provision describes services offered by NFs as part of their per diem and ''specialized services'' does not need to be included in the title.

We propose to add a new requirement at § 483.120(d) that would specify that specialized services may not duplicate the services NFs must provide under part 483, subpart B, which describes the activities NFs must perform to meet the requirements (also known as ''conditions of participation'') as a Medicaid provider, and for which they are already reimbursed by states participating in the Medicaid program. These are services that are largely medical or rehabilitative in nature and, while intended to improve or maintain an individual's health and well-being, may not explicitly prioritize helping individuals transition to the most integrated setting. This proposed requirement would reaffirm the statutory prohibition of specialized services duplicating NF services set forth in section 1919(e)(7)(G)(iii) of the Act.

We propose a new requirement at § 483.120(e) that would specify that, for individuals who are admitted to or retained by a NF, NF services and specialized services recommended by the PASRR program would have to be coordinated with the individual's care plan, as required at § 483.21(b)(1)(iii).

We propose a new § 483.120(f) to explain that, if an individual requiring specialized services is discharged to another institutional setting or to a community program for the purposes of receiving long-term services and supports, services offered in those settings would be presumed to satisfy the specialized services requirement. This proposed requirement would seek to clarify the requirement in sections 1919(e)(7)(C)(i) and (ii) of the Act that the state must continue to provide specialized services for residents who need specialized services but who have been discharged from a NF because they do not need the NF level of services.

13. FFP for NF Services (§ 483.122)

FFP for NF services, including when FFP may be provided to NF residents or withheld for non-compliance with PASRR requirements, is described in § 483.122. We propose at § 483.122(a) to remove the reference to alternative disposition plans provided for by section 1919(e)(7)(E) of the Act, since, as we explained in the discussion of §§ 483.118(c)(1) and (2) in this proposed rule, the availability of alternative disposition was a statutory construct that expired in 1994; consequently the language in this section, as in the other sections, is obsolete and can be removed.

We also propose to change ''NF care'' to ''NF level of services'' in § 483.122(a)(1), and we propose to change ''NF services'' to ''NF level of services'' in § 483.122(a)(2) to promote consistency in references to the determination for NF level of services.

In § 483.122(b), we propose to remove the obsolete mention of an ''annual review'' (referring to the annual Resident Review) and replace it with ''resident review.''

14. FFP for Specialized Services (§ 483.124)

Section 483.124 currently indicates that FFP is not available for specialized services delivered as NF services. This language has long caused confusion; until recently it has been misinterpreted as a prohibition against FFP for any specialized services. However, section 1919(e)(7)(G)(iii) of the Act does not prescribe such a restriction on specialized services; it only specifies that specialized services cannot be NF services. We propose to remove the current language in § 483.124 and replace it with new language that would more clearly describe the conditions under which FFP is available for specialized services. We propose language that states that FFP would be available for specialized services furnished to NF residents so long as the state has added a description of the services in its State plan (which is approved by CMS) and these services do not duplicate NF services included in payments to the NF. This language would not create a new policy regarding FFP for specialized services, but rather affirms existing policy.

15. Level I Identification Criteria (§ 483.126)

The current § 483.126, titled ''Appropriate placement,'' contains a single provision defining what ''appropriate placement'' in a NF means. This phrase relates to NF level of services determinations and is addressed in §§ 483.130(c) and 483.132. We propose to remove both the title and the requirement in § 483.126.

In its place, we propose to include requirements that describe the Level I identification process. Level I identification is the function of identifying people with possible MI or ID who are eligible for Preadmission Screening or Resident Review. Despite being a critical precursor to the PASRR process, the Level I identification process is not described in current regulation, aside from a brief mention in current § 483.128(a). We propose to retitle § 483.126 ''Level I identification criteria,'' and to provide in this revised section a description for the Level I process.

We propose a new provision at § 483.126(a) that would explain that the state's PASRR program must have a Level I screening process to identify all individuals with possible MI or ID who require Preadmission Screening (if they are NF applicants) or Resident Review (if they are residents). Note that, as will be explained in the discussion of § 483.126(b), people with known diagnoses of MI or ID are still considered to have ''possible MI or ID'' until the Level II evaluator has confirmed the individual meets the definition of MI or ID proposed in § 483.102(b).

We propose a new § 483.126(b) that would provide guidelines on the criteria for identifying ''possible MI'' that would be used during the Level I process. We propose that an individual may be considered to have possible MI if one or more of the following criteria are met:

- The individual has received a diagnosis of MI that appears to meet the definition at § 483.102(b)(1);
- Within the last 12 months the individual has experienced significant challenges to interpersonal or cognitive functioning, including but not limited to hallucinations or delusions, attempts to harm self or others, or suicidal ideation;
- Within the last 12 months the individual has required psychiatric treatment, including residential treatment, partial hospitalization, or inpatient hospitalization; or
- The Level I identification screener cannot rule out possible MI based on the available data.

We propose a new requirement at § 483.126(c) that would specify that an

applicant may be considered to have ''possible ID'' if:

- The individual has received a diagnosis of ID or a related condition that appears to meet the definition of ID in § 483.102(b)(3),
- Within the past 12 months the individual has received active treatment (as defined in § 483.440(a)) in an ICF/IID; or
- The Level I identification screener cannot rule out possible ID or related condition based on the available data.

We note that for both proposed definitions, an individual would not need to meet all of the listed criteria, but rather would have to meet at least one. We also propose to give Level I screeners flexibility to exercise judgment, particularly in instances in which the individual has gaps in medical history or is exhibiting behaviors not listed in this proposed regulations that the Level I screener regards as needing further examination. For instance, a Level I screener might have reason to believe that someone with a diagnosed substance use disorder, but no formal diagnosis of MI might nevertheless require evaluation for MI, given the high incidence of overlap between substance use disorders and MI. We welcome comments on our proposed criteria.

We propose at § 483.126(d) to specify that the state would be able to designate the qualifications for who may complete the Level I screen. While NFs are prohibited from performing the Level II evaluations and determinations by sections 1919(b)(3)(F) and (e)(7)(B)(iv) of the Act, NFs are not excluded from performing Level I screens because they are distinct from the evaluation and determination process.

We propose at § 483.126(e) to clarify that individuals performing the Level I identification screen would be able to rely on existing records, including hospital records, physician's evaluations, election of hospice status, school records, records of community mental health centers or community intellectual disability or developmental disability providers, and other information provided by the individual or the individual's legally authorized representative. We also propose in this provision that the Level I screener would have to certify that the records relied upon support the screener's conclusions regarding whether the individual has possible MI or ID and if the individual qualifies for a hospital discharge exemption or as a provisional admission.

We propose a new § 483.126(f) which would require that individuals with possible MI or ID be referred to the PASRR program for Level II evaluation and determination, unless the individuals are applicants who qualify for an exemption to Preadmission Screening due to a hospital discharge exemption or provisional admission, as discussed in the proposed changes to § 483.112(b) in this proposed rule. These individuals would have to be identified to the PASRR program but would not need to receive a Level II evaluation and determination prior to admission. Notifying the PASRR program when someone with a positive Level I identification screen has been admitted to the NF under a hospital discharge exemption or provisional admission would allow the PASRR program to track how often these exceptions were applied (to discourage misuse or overuse) and would alert the PASRR program to individuals who might need a Resident Review in the near future should the exception period expire (to offer better oversight of when NFs' Resident Review referrals).

We propose to move the fourth sentence of current § 483.128(a) to this section and redesignate it as § 483.126(g). This sentence currently states that as part of the Level I identification function, an individual must be provided (at least in the case of first time identifications), with written notice that the individual is ''suspected of having'' MI or ID and is being referred to the SMHA or SIDA for Level II evaluation and determination. We propose to retain some of this language in this section as well, but to modify it so that it would provide that the state's performance of the Level I identification function would have to provide a copy of the completed Level I identification screen (rather than a ''written notice'') to the individual, the individual's legal representative and the admitting or retaining NF (if applicable.) We also propose that the Level I identification screen would clearly indicate whether the individual is being referred to the PASRR program for Level II evaluation and determination. We believe it is important for individuals to have documentation demonstrating that they have had a Level I identification screen completed in compliance with this subpart. We also believe it is important that individuals be notified whether they are being referred for additional evaluation as part of the Level II evaluation and determination process. When an applicant has a positive Level I screen, providing a copy of the Level I screen would alert the NF that the individual could not be admitted until Preadmission Screening (consisting of a Level II evaluation and determination) is completed. In cases in which the individual has a negative Level I screen, the NF would be provided documentation that proves admission was appropriate and Level II Preadmission Screening was not required.

16. Level II Evaluation Criteria (§ 483.128)

Section 483.128 describes the criteria that must be used to perform the physical and mental evaluations on which the Level II determinations must be made. We propose to retitle § 483.128 ''Level II Evaluation Criteria,'' which would acknowledge that evaluations are typically referred to as ''Level II evaluations'' and further distinguish evaluations from the Level I identification process described in the previous section.

We propose to remove the first three sentences of § 483.128(a), which contain definitions of the terms ''Level I'' and ''Level II'' that are contained elsewhere (including proposed §§ 483.126, 483.128 and 483.130). We propose to redesignate the fourth sentence of § 483.128(a) as § 483.126(g), which is discussed in the discussion of § 483.126(g). We propose that the requirements of § 483.128(b) be redesignated as § 483.106(g), which is discussed in the discussion of § 483.106 in this proposed rule.

We propose new language for § 483.128(a) that would more clearly articulate the purpose of the evaluation, which is to provide the SMHA or SIDA with enough information to confirm that the individual has MI or ID, as defined in proposed § 483.102, or to confirm that the individual has experienced a qualifying significant change in physical or mental condition, as defined in § 483.114(b)(2); and to make the determinations regarding need for a NF level of services and specialized services.

We propose a new requirement at § 483.128(b) that would authorize the state to specify the mental health, intellectual disability or developmental disability professionals who may perform the evaluations. We specify in the proposed requirement that the state would have to ensure that the evaluators are qualified to make or confirm clinical diagnoses, and that the evaluations are performed in accordance with statutory restrictions. Specifically, evaluations for people with MI cannot be performed by the SMHA, and NFs cannot perform evaluations. The language of this proposed requirement is adapted from the current requirements for who may conduct evaluations at §§ 483.134(c)(2) and 483.136(c).

We propose to remove current § 483.128(c) as its substance would be incorporated into a new proposed requirement at § 483.128(e)(10), described later in this proposed rule.

We propose to redesignate current § 483.128(d), addressing interdisciplinary coordination of evaluations where more than one evaluator is needed, as § 483.128(c). We propose to add language to specify that this coordination would, in particular, apply to individuals who have (or may have) diagnoses of both MI and ID. We propose to include this specification because some PASRR programs have different processes for evaluations of people with MI and people with ID, and we do not want people with dual diagnoses to experience unnecessary burden or delays due to the different processes.

We propose a new title for § 483.128(d), ''Data to confirm Level II identification and significant change,'' and a new provision designated as § 483.128(d)(1), that would provide a list of data to be used to confirm that the individual does have MI or ID, as defined in § 483.102. This proposed list would include, at a minimum:

- A review of current medical and psychiatric condition and current medications;
- A medical history and physical exam that has been performed by a qualified clinician, as identified by the state;
- A history of medication and prescription and illegal drug use;
- For MI evaluations, an evaluation of psychiatric history performed by a qualified mental health professional;
- For ID evaluations, an evaluation of intellectual functioning performed by a licensed psychologist or psychiatrist; and
- Any other documentation or information provided to, or gathered by, the evaluator to confirm a diagnosis.

We adapted this proposed revised regulation from the current list of data required in §§ 483.134(b) and 483.136(b). We propose to specify that this data would have to be used to confirm MI or ID for people with positive Level I identification screens who are eligible for Preadmission Screening or Resident Review. We note one specific proposed change in proposed § 483.128(d)(1)(ii). Currently, § 483.134(c)(1) requires that the history and physical examination of individuals with MI, when used during a Level II evaluation of the need for specialized services, be performed or reviewed by a physician. This same requirement currently does not exist for people with ID. We have received feedback from stakeholders that the requirement that a history and physical examination be performed or reviewed by a physician is burdensome, particularly in rural areas where there may be few physicians and such examinations are typically performed by a nurse practitioner or other qualified clinician. We propose to reduce this burden by allowing states to identify which clinicians are qualified to perform the history and physical examinations included as part of PASRR documentation for people with MI and with ID.

We propose a new provision at § 483.128(d)(2) to describe the data that we believe should be used in confirming a qualifying significant change in physical or mental status of a resident who was already confirmed by the PASRR program to have MI or ID. This data would include, at minimum, recent medical, psychiatric and medication records and resident assessments relevant to the significant change in physical or mental status; and other information deemed necessary by the evaluator. This proposed language would expand on the new regulations that we propose in § 483.114 to implement the statutory requirement that Resident Review be performed for individuals experiencing a significant change in physical or mental status.

We propose to remove § 483.128(e), which currently requires that evaluators use the data listed in §§ 483.132, 483.134, and 483.136 when performing evaluations for NF level of services and specialized services. With the changes that we propose in this rule, those cross-references would no longer be accurate. Section 483.128(e) also mentions evaluations for categorical determinations, which—as is discussed further in the discussion of § 483.128(m)—we propose to remove.

We also propose to remove the current language in § 483.128(f) describing data to be used in evaluations and propose to replace it with language that would more specifically describe the data that evaluators should use when performing evaluations for NF level of services and specialized services. Currently, §§ 483.132, 483.134, and 483.136 contain separate lists of the data that should be used to evaluate individuals' need for NF level of services and specialized services. We envision a more integrated evaluation process and propose to not require use of different sets of data for an individual's evaluation.

To that end, we propose a new provision at § 483.128(e) that would require that the data relied upon for evaluations to assess the need for NF level of services and specialized services include:

- Review of the relevant history of the physical status;
- Focused relevant physical examination (either as recorded in chart or conducted by the evaluator);
- Review of relevant psychiatric history including diagnoses, date of onset, treatment history;
- Focused relevant mental status examination, including observations and professional opinion regarding intellectual and memory functioning, impulse control, irritability and ability to be redirected, likelihood that individual may post threat to self or others, agreeableness to participate in activities of daily living (that is, how likely the patient is to resist activities such as bathing, eating, grooming, etc.);
- Functional assessment (activities of daily living and instrumental activities of daily living);
- Psychosocial evaluation (for example, living arrangements, natural and formal supports);
- Social, academic and vocational history;
- Service plans from community-based providers, if applicable; and
- Relevant sections of the individual's plan of care (as defined in § 483.21(b)) if the individual is a NF resident.

This proposed requirement is drawn from the data listed in the current requirements at §§ 483.132, 483.134, and 483.136 for evaluating need for NF level of services and specialized services. We also propose to require at § 483.128(e)(10) that these evaluations include person-centered interviews that involve the individual being evaluated and the individual's legal representative, if one has been designated under state law; and the individual's family, friends or caregivers, at the individual's discretion. With proposed § 483.128(e)(10), we propose to make it clearer that for the NF level of services and specialized services evaluations, the individual must be directly involved in the evaluation activities.

We propose at § 483.128(f) that the person-centered interviews that we propose to require in proposed § 483.128(e)(10) be conducted face-to-face. We include in this proposed provision that we would permit telehealth evaluations via live videoconferencing to be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent timely completion of the determination. We have observed that most PASRR

programs already conduct face-to-face interviews with NF applicants and residents, and some states have begun piloting the use of telehealth technologies to perform evaluations. We would specify that the telehealth technology applied would be live videoconferencing (as opposed to other asynchronous telehealth options). The purpose of the use of telehealth technology would be to recreate the experience of a live, face-to-face interaction as much as possible. Note that we do not propose to apply this face-to-face requirement for the confirmation of MI or ID, or the confirmation of a significant change in physical or mental status, which, if the state PASRR program chooses, may be performed as a desk review in advance of the NF level of services and specialized services evaluations. We propose that the face-to-face interview requirement only apply to the NF level of services and specialized services evaluations.

We propose to retain § 483.128(g), which discusses the use of pre-existing data that evaluators may use when gathering information to perform the evaluation. We propose to delete two minor elements in this regulation; we would remove reference to ''annual resident reviews'' and ''individualized evaluations.'' We would expect all evaluations to be individualized. (See discussion for §§ 483.112, 483.128(m) and 483.130 regarding removal of categorical determinations in this proposed rule.)

We propose to retain § 483.128(h) requiring that findings made in evaluations reflect the individual's current condition. However, we propose to remove references to ''categorical and individualized determinations'' as we would expect that all determinations would be individualized. As noted previously with respect to §§ 483.112, 483.128(m), and 483.130 in this proposed rule, we propose to remove categorical determinations, making references to categorical determinations unnecessary in this proposed rule.

We propose to retain § 483.128(i), which describes the evaluation report that the evaluator submits to the SMHA or SIDA after completing the evaluation. Section 483.128(i) currently requires that after completing the evaluation for NF level of services and specialized services, the evaluator must submit to the SMHA or SIDA a written evaluative report summarizing the findings. We propose to add that the report must summarize recommendations in addition to findings. (See discussion of proposed changes to §§ 483.20(e), and 483.20(k) in this rule for discussion of ''findings'' versus ''recommendations.'') We also propose to remove language that indicates this report is for ''individualized determinations'' as we would expect that all evaluations would be individualized (see discussion of the proposed removal of categorical determinations in §§ 483.112, 483.128(m) and 483.130 in this proposed rule). We propose to combine two of the provisions in § 483.128(i)—currently designated §§ 483.128(i)(3) and 483.138(i)(4)—both of which presently require the evaluator to describe the types of NF services the evaluator is recommending for the individual. We propose to merge these duplicative provisions into a single provision designated § 483.128(i)(3). Sections 483.128(i)(5) and (6) would be redesignated as §§ 483.128(i)(4) and (5), respectively.

We propose to retain the provision at § 483.128(j), with revisions. This provision describes the format of an abbreviated evaluation report generated for evaluations made for categorical determinations—a report that is shorter than the evaluation report that is to be issued for individualized evaluations. As noted in the discussions of §§ 483.112, 483.128(m), and 483.130 of this proposed rule, we are proposing to eliminate categorical determinations, so there would no longer be a need to generate an evaluation report for categorical determinations. We do, however, propose to retain the concept of an abbreviated evaluation report under certain circumstances. In particular, we propose that this abbreviated report would be issued when an evaluation is terminated before the evaluation for NF level of services or specialized services, as discussed in § 483.128(m) of this proposed rule. We propose to include a specific regulation describing evaluation reports issued after termination of an evaluation to clarify the presently existing, but ambiguously stated, expectation that evaluation reports must be generated to document the rationale for terminating an evaluation. The current regulations do not waive the evaluation report requirement for terminated evaluations, but also do not specify what information should be shared with the SMHA or SIDA. We propose at § 483.128(j) to retitle the provision ''Evaluation report: Terminated evaluations'' and replace the mention of ''categorical determinations'' in the introductory text with language specifying the regulation refers to terminated evaluations. We propose to remove § 483.128(j)(2), which is specific to categorical determinations, and replace it with a requirement that the evaluator include in the report the specific reason why the evaluator terminated the report.

We propose to retain § 483.128(k) that requires that findings of the report must be explained to the individual. We propose to remove the phrase ''For both categorical and individualized determinations'' because we expect that there would only be individualized determinations, referred to simply as determinations. (See discussion of categorical determinations in sections for §§ 483.112, 483.128(m), and 483.130 in this proposed rule.)

In § 483.128(l), we propose to retain only the requirement at § 483.128(l)(2) that the evaluation report be forwarded to the SMHA or SIDA as appropriate. In an effort to consolidate the paperwork sent to individuals during the PASRR process, we propose to remove the requirements at §§ 483.128(l)(1), (3), (4) and (5) that the evaluation report be provided to the individual and others separately from the determination notice. We discuss the proposed requirement to include the evaluation report with the determination notice in proposed § 483.130(g).

We propose to remove the language at § 483.128(m), which allows evaluators to terminate evaluations under certain circumstances. We propose to replace this regulation with language that would lay out a different set of criteria for terminating an evaluation. The current § 483.128(m) allows evaluators to terminate the evaluation if: (1) The evaluator finds that the individual being evaluated does not have MI or ID within the definition of proposed § 483.102 or (2) the individual has MI but also has primary dementia. We propose to replace this language with a revised § 483.128(m) that would indicate the evaluations may be terminated without further evaluation of the need for NF level of services or specialized services (as discussed in §§ 483.132 and 483.134 of this proposed rule), and an abbreviated evaluation report issued (per proposed § 483.128(j) discussed above) should the evaluator find that the individual being evaluated—

- Does not have MI or ID within the definition of § 483.102;
- Did not experience a qualifying significant change in physical or mental condition as defined in § 483.114(b)(2); or
- Has a severe physical illness (such as ventilator dependency; advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), terminal illness (as defined in § 418.3 of this chapter) or dementia (as defined in § 483.102(b)(2)) which

results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services and specialized services.

We intend that the list of physical conditions that we propose here would replace the current categorical determinations criteria in current § 483.130(d) and (h). Under the current regulations, categorical determinations function as expedited determinations for people with certain conditions. According to current regulations at § 483.130(f), people with severe physical illness and terminal illness do not need an evaluation for NF level of services, but are still required to receive an evaluation for specialized services. The current regulation at § 483.130(h) allows individuals with co-occurring ID and dementia to be admitted to a NF without an evaluation for specialized services, but still requires that they receive an evaluation for NF level of services. We consider this current framework of categorical determinations to be somewhat confusing, and propose to retain the principle that evaluations should not be performed needlessly on individuals who clearly need NF level of services but who are not likely, as the result of a severe physical or cognitive impairment, to benefit from specialized services. Proposed § 483.128(m) would simply require an evaluator to confirm that individuals have a condition or conditions such that the individual could not be effectively evaluated by the Level II evaluator for NF services specific to ID or MI or for specialized services.

We note that this would also allow individuals with the listed conditions to receive PASRR interventions if they are able to participate in evaluations for NF level of services and specialized services. For instance, if an individual with terminal illness is able to participate in the evaluations, the individual could still receive NF level of services and specialized service recommendations (whereas under the old categorical determinations framework, an individual with terminal illness might automatically be considered to require NF level of services without an evaluation). Our intent is that the PASRR process should be driven by the person's individual circumstances rather than a diagnosis. This focus on person-centeredness motivates the proposal to eliminate categorical determinations, which focus too heavily on making assumptions about individuals based solely on diagnosis.

17. Level II Determination Criteria (§ 483.130)

Section 483.130 sets out the criteria that must be used to make determinations of the need for NF level of services and for specialized services. We propose to retitle § 483.130 ''Level II PASRR Determination Criteria,'' to acknowledge that determinations are typically referred to as ''Level II determinations'' and to underscore that Level II evaluations and determinations should be an integrated process.

We propose to retain § 483.130(a), which explains that the determinations must be based on evaluations, and add a cross-reference to § 483.128(e). As discussed in the discussion of § 483.128(e), we propose to add language to § 483.128(e) to describe the data to be used in evaluations.

We propose to remove §§ 483.130(b) through (i), which set out requirements pertaining to categorical determinations. As we explained in discussing §§ 483.112 and 483.128(m) of this proposed rule, we propose to eliminate categorical determinations. We have found that the framework of categorical determinations has proven cumbersome and counterproductive. In too many instances, they have created the opportunity for individuals with MI or ID to be admitted to an NF with only a cursory review of the individual's records, and without a follow-up comprehensive Resident Review to ensure individuals do not end up unnecessarily becoming long-term NF residents (or, if the long-term institutionalization is necessary, to ensure that they receive needed specialized services). We believe new proposals of provisional admissions (as proposed at § 483.112(b)(3)) and the expansion of evaluation terminations (as proposed at § 483.128(m)) would adequately preserve the spirit of categorical determinations—avoiding unnecessary evaluations—but would create a simpler system with greater accountability.

We propose a new requirement at § 483.130(b) to clarify who would be able to perform the determinations. We propose that the state would be able to designate the medical, mental health, intellectual disability, or developmental disability professionals who perform the determinations, as appropriate. The proposed rule would also reiterate requirements stemming from sections 1919(b)(3)(F) and (e)(7)(B)(iv) of the Act that the determinations may not be performed by NFs.

We propose a new requirement at § 483.130(c) that would provide the criteria for making a determination regarding the need for NF level of services. (The criteria for evaluation of individuals for NF level of services on which this determination would be based will be discussed in greater detail in the discussion of § 483.132 in this proposed rule.) In proposed § 483.130(c), we propose that an individual with MI or ID could be determined to need NF level of services only when:

- The individual meets the state's criteria for NF admission;
- The individual's total needs do not exceed the services which can be delivered in the NF to which the individual is admitted, either through NF services alone or, where necessary, through NF services supplemented by specialized services; and
- Placement in HCBS program cannot be achieved either because the individual's total needs exceed or cannot currently be accommodated by the state's HCBS programs, or the individual does not want the community placement.

We propose a new requirement at § 483.130(d) that would provide criteria for determining the need for specialized services. (The criteria for evaluating individuals for specialized services is discussed in greater detail in proposed § 483.134 of this proposed rule.) We propose at § 483.130(d) that an individual may be determined to need specialized services if the individual's total needs are such that services described in § 483.120(a) would be necessary to maintain the individual in, or transition the individual to, the most integrated setting appropriate, and the individual would benefit from such services. We believe this proposed criteria for determination adequately summarizes the underlying purpose of specialized services, as discussed in proposed § 483.120.

We propose redesignating § 483.130(j), requiring that determinations be recorded in the individual's records, as § 483.130(e). This requirement currently specifies that all determinations made by the SMHA and SIDA, ''regardless of how they are arrived at,'' must be recorded in the individual's record. We propose removing the clause ''regardless of how they are arrived at,'' as its meaning and purpose is unclear.

We propose to redesignate and revise the current § 483.130(k) as § 483.130(f). This section requires that the SMHA or SIDA send determination notices (either in writing or, as we propose to add here, electronically) to the individual and the individual's legal representative, the admitting or retaining NF, the individual's attending physician, and

the discharging hospital (unless the individual is exempt from Preadmission Screening). We propose that the determination notice be sent to the ''physician most involved in the individual's medical care, as identified by the individual,'' as opposed to the presently specified ''attending'' physician. We have received feedback from stakeholders that the provision to simply send the determination to the ''attending'' physician meant that determinations notices were sometimes sent to physicians with little involvement in the individual's ongoing care, such as the attending physician during an individual's brief hospital stay.

We propose to retain § 483.130(l), but redesignate it as § 483.130(g). This requirement describes the contents of the determination notice. We propose to retain the introductory text of this newly redesignated section. We propose to replace the language in §§ 483.130(g)(1), (2) and (3). We propose a new § 483.130(g)(1) that specifies that the determination notice should indicate if the person was found by the PASRR program to have MI or ID (as defined in § 483.102) or a significant change in physical or mental status (as described in § 483.114(b)(2)). We propose a new § 483.130(g)(2) that specifies that if an individual has been confirmed to have MI or ID (as defined in § 483.102) or a significant change in physical or mental condition (as described in § 483.114(b)(2)), the determination notice should specify whether the individual needs NF level of services and specialized services, and what placement options are available to the individual as described in §§ 483.116 and 483.118. These changes largely reflect the current language in § 483.130(l), but are intended to clarify that the PASRR program only needs to make determinations regarding NF level of services, specialized services, and placement options when the individual has MI or ID, or has had a significant change in physical or mental condition, and is within the PASRR program's jurisdiction. We propose to redesignate § 483.130(l)(4), which provides for individuals' appeal rights, as § 483.130(g)(3). We also propose to add a new § 483.130(g)(4) that would require the evaluation report described in proposed §§ 483.128(i) and (j) to be attached to the determination notice. As noted in the discussion in § 483.128(l) in this proposed rule, we are proposing to remove the requirement that the evaluation report be sent to the individual separately from the determination notice; here we propose that the two documents be delivered to the individual (as well as the individual's legal representative, physician, and admitting or retaining NF) in a single package.

We propose to remove § 483.130(m) and (n), which describe the placement options and the provision of specialized services based on the determinations. We believe these regulations are duplicative of requirements in §§ 483.116, 483.118 and 483.120.

We propose to redesignate § 483.130(o), which describes requirements regarding record retention, as § 483.130(h). We propose to remove the reference to categorical and individualized determinations. Per the discussion of §§ 483.112 and 483.128, and in this section of the proposed rule, we propose to eliminate categorical determinations and such distinctions would not be necessary. The current language states that record retention is necessary to help protect the appeal rights of individuals subjected to PASRR. We also propose to revise the provision so that rather than describing individuals as being ''subjected to'' PASRR, the requirement would state that records must be kept in order to protect individuals' appeal rights related to PASRR determinations.

We propose to retain the language of § 483.130(p), but redesignate it as § 483.130(i) with no substantive changes. We propose to replace mention of ''PASARR'' with ''PASRR.'' We propose to replace ''individuals with MI or IID'' with ''individuals with MI or ID'' for grammatical reasons.

We propose to add a new § 483.130(j) that would contain new reporting requirements on two key activities related to the determination process: Timeliness and outcomes. The language we propose at § 483.130(j)(1) would require that the state report to the Secretary on an annual basis the annual averages for completion of determinations, in order to demonstrate compliance with the timeframes required in proposed §§ 483.112(c) and 483.114(d). Section 483.106(c)(3) currently requires that states compute annual averages for their completion times, and § 483.112(c)(4) allows the Secretary to grant a waiver should a state fall behind, but the current regulations do not make explicit the requirement to actually report the completion times. We seek to remedy this confusion with proposed § 483.130(j)(1). We believe our oversight of PASRR would be more effective if states affirmatively reported on their compliance with the timeliness requirement, rather than only reporting to the Secretary when the state has fallen behind on the timeliness standard. We propose to specify at § 483.130(j) that states would be expected to report the annual average of the completion of these determinations, as is suggested by current § 483.112(c)(3). While proposed changes to §§ 483.112(c) and 483.114(d) indicate that determinations would be provided within 9 calendar days of Level I referral, it is possible that some determinations would be issued sooner than in 9 days. Thus, we are proposing to request that states report on the average of the number of days required to complete determinations over the course of a year, and expect that states would report an average of 9 calendar days or less.

We propose at § 483.130(j)(2) that states would report annually on the number of people with MI or ID who, as a result of the PASRR program's determinations, are diverted or are discharged from NFs each year because the individual:

- Does not meet, or no longer meets, the state's criteria for NF level of care,
- Requires the level of services offered in another institutional setting; or
- Elects to receive services in a non-institutional setting.

This proposed provision is designed to implement section 1919(e)(7)(D)(iv) of the Act that requires that each state report annually to the Secretary the number and disposition of individuals who are discharged from NFs because they have been determined to no longer needed NF level of services (but still need specialized services) and individuals who are discharged from NFs because they are determined to need neither NF level of services nor specialized services. This reporting requirement was not explained in the current regulations, and, as a result, reporting to the Secretary has been inconsistent. We propose to require reporting on both diversions of NF applicants, as well as discharges of NF residents. We believe that the purpose of the statutory requirement at section 1919(e)(7)(D)(iv) of the Act is to ensure that PASRR has a meaningful impact on the outcome of individuals who do not need (or want) NF placement, which would include dispositions for applicants as well as residents.

We propose to add a new requirement at § 483.130(j)(3) that would retain language from current § 483.112(c)(3) allowing the state to compute separate annual averages for the determination made by the SMHA and SIDA. We propose to add language indicating that dispositions for individuals with MI or ID, as required in proposed

§ 483.130(j)(2), could also be reported separately.

We propose to add a new requirement at § 483.130(j)(4) that incorporates the language from current § 483.112(c)(4), authorizing the Secretary to grant an exception to the timeliness standard (which would be reported on per proposed § 483.130(j)(1)) at the Secretary's discretion.

We propose to add a new requirement at § 483.130(j)(5) that would require that reports containing data for the previous calendar year be submitted to the Secretary by March 1 of each year.

18. Evaluating the Need for NF Level of Services (§ 483.132)

We propose to retitle § 483.132 as ''Evaluating the Need for NF Level of Services.'' The current title, ''Evaluating the Need for Services and NF Level of Care,'' perpetuates the confusion that PASRR processes include NF level of care assessments. This is a problematic assumption. NF level of care assessments are the functional needs assessments states use to confirm basic eligibility for NF admission on the basis of functional needs. The evaluation of NF level of services evaluation required by PASRR involves a more comprehensive and holistic evaluation than most NF level of care assessments, and we want to avoid the impression that performing a NF level of care assessment satisfies the requirement to evaluate individuals with MI or ID for NF level of services. The relationship between NF level of services and NF level of care is further discussed in the discussion of proposed § 483.132(e).

Because many of the current requirements in this section were incorporated in proposed §§ 483.120 and 483.128, we propose to remove all of the requirements in this section and replace them with new language. We propose at § 483.132(a) to describe the evaluation for the most integrated setting appropriate for the individual. At proposed § 483.132(a)(1), we propose that for each NF applicant and each NF resident who has MI or ID, the evaluator would assess whether the individual has the option of placement in an HCBS program (and a non-institutional placement is desired by the individual). At § 483.132(a)(2), we propose that if the individual does not have the option of community placement, or does not want community placement, the evaluator would assess whether the individual's total needs are such that they can be met only by admitting the individual on an inpatient basis (as ''inpatient'' is defined in § 440.2 of this chapter). In that case, the evaluator would also have to assess whether the NF (with or without specialized services) would be an appropriate institutional setting for meeting those needs; or, if the NF would not be the most appropriate setting for meeting the individual's needs, whether another institutional setting would be an appropriate setting for meeting those needs. Our proposed language is similar to the current basic rule at § 483.132(a), but we propose to restructure it such that we would highlight more explicitly the expectation that evaluators should review the individual's consideration of HCBS options during the evaluation.

We propose a new requirement at § 483.132(b) that would require that the evaluator assess the individual's preferences for where the individual may receive long term services and supports, including HCBS and institutional care. We propose that this evaluation would include confirming whether the individual and the individual's legal representative, if applicable, have received information about the types of long term care options available to the individual.

We propose a new requirement at § 483.132(c) that would require that for individuals for whom NF placement is identified as an appropriate setting by the evaluator (resulting from the evaluations performed under proposed § 483.132(a) and (b)), the evaluator would be required to assess what services for MI or ID the individual may need that are offered as part of standard NF services, including behavioral health services and specialized rehabilitative services described at §§ 483.40 and 483.65, respectively.

We propose a new requirement at § 483.132(d) that would require the data relied on in performing the evaluation to include the data listed in proposed § 483.128(e).

We propose a new requirement at § 483.132(e) that would clarify the relationship between NF level of services and NF level of care, which is a set of criteria established by each state that an individual must meet to be eligible for Medicaid coverage of services provided in a NF. We propose to clarify that evaluations to determine whether an individual meets the state's NF level of care criteria are not part of the PASRR process. However, PASRR evaluators may ''look behind'' a level of care determination to confirm that the individual has been accurately assessed as meeting the state's NF level of care criteria, and may consider that assessment in determining an individual's needs for PASRR purposes. We note that Level II evaluators are charged with ensuring that individuals with MI or ID are not improperly placed in NFs simply because they have MI or ID (when other options preferred by the individuals are available), and Level II evaluators may disagree with the conclusions of a level of care assessment (so long as their findings still abide by state-specific criteria for NF level of care).

19. Evaluating the Need for Specialized Services (§ 483.134)

Currently, § 483.134 lists criteria for evaluating people with MI for specialized services and § 483.136 contains criteria for evaluating people with ID for specialized services. Because many of the requirements presented in this section were incorporated in our proposed §§ 483.120 and 483.128, we propose to remove §§ 483.134 and 483.136 in their entirety and replace them with a single new § 483.134, titled ''Evaluating the Need for Specialized Services.''

We propose a new requirement at § 483.134(a) that would provide a basic rule for performing specialized services evaluations for NF applicants with MI or ID who are recommended for NF placement per § 483.132, and for NF residents with MI or ID. (Note that for NF applicants, section 1919(b)(3)(F) of the Act makes the evaluation for specialized services conditional on the outcome of the NF level of services evaluation, while section 1919(e)(7)(B) of the Act requires NF residents to receive both evaluations for NF level of services and specialized services.) We propose at new § 483.134(a)(1) that the evaluator would be required to assess the individual's ability to engage in activities of daily living and instrumental activities of daily living. We propose at new § 483.134(a)(2) that the evaluator would then assess the level of support that would be needed to assist the individual to perform these activities successfully in the NF or while living in the community. We propose at new § 483.134(a)(3) that the evaluator would then evaluate the level of support needed by the individual could be provided by standard NF services or whether specialized services (as defined at proposed § 483.120) were required. We intend that the definition of specialized services we propose in § 483.120(a) would provide evaluators with additional guidance as to what types of services should be considered as part of this evaluation.

We propose a new requirement at § 483.134(b) that would indicate that if specialized services are already being provided to a NF resident, the evaluator would assess whether the specialized services included in the resident's care plan need to be modified. We seek to encourage regular and meaningful

review of specialized services to ensure they continue to be effective for the individual and meet the individual's needs.

We propose a new requirement at § 483.134(c) that would require, at a minimum, that the data relied on to perform an evaluation for specialized services include the data listed in proposed § 483.128(e).

20. Maintenance of Services and Availability of FFP (§ 483.138)

We are not proposing any changes to this section.

D. Part 483, Subpart E

1. Appeals of Discharges, Transfers and Preadmission Screening and Resident Review Actions (Part 483, Subpart E).

The current title of part 483, subpart E is ''Appeals of Discharges, Transfers and Preadmission Screening and Annual Resident Review (PASARR) Determinations.'' We propose to change this title to ''Appeals of Discharges, Transfers, and Preadmission Screening and Resident Review (PASRR) Actions'' in order to (1) remove the word ''annual'' from the title, for reasons we discuss previously, and (2) change the word ''Determinations'' to ''Actions'' to broaden the scope of appeals to include both Level I identification screening decisions as well as Level II determinations.

2. Provision of a Hearing and Appeal System (§ 483.204)

Section 483.204 specifies individuals' ability to appeal PASRR determinations. We propose at § 483.204(a)(2) to change ''PASARR determination'' to ''PASRR Level I screen or Level II determination.'' We propose to further streamline and update the regulation by removing ''in the context of preadmission screening and annual resident review.'' We also propose to change ''appeal that determination'' to ''appeal that Level I screen or Level II determination.'' Our intent with this proposal is to clarify individuals' right to appeal both Level I screens (positive and negative identifications) as well as Level II determinations.

III. PASRR Requirements Crosswalk

Table 1 notes the proposed changes to the regulations in part 483, subpart C.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C

Existing CFR section	Title	Action	New CFR section
§ 483.100	Basis		§ 483.100.
§ 483.100	*Basis*	Technical changes	§ 483.100.
§ 483.102	Applicability and definitions	Revised	§ 483.102.
§ 483.102(a)	(a) *Applicability*	Technical changes	§ 483.102(a).
§ 483.102(b)	(b) *Definitions*		§ 483.102(b).
§ 483.102(b)(1)	(1) untitled	Titled and revised	§ 483.102(b)(1) *Mental illness.*
§ 483.102(b)(2)	(2) untitled	Titled and revised	§ 483.102(b)(2) *Dementia.*
§ 483.102(b)(3)	(3) untitled	Titled and revised	§ 483.102(b)(3) *Intellectual disability.*
n/a	*(c) Incorporation by reference*	Added	§ 483.102(c)(1)–(2).
§ 483.104	State plan requirement		§ 483.104.
§ 483.104	*State plan requirement*	Technical changes	§ 483.104.
§ 483.106	Basic rule	Retitled	§ 483.106 Basic rules and responsibilities.
§ 483.106(a)	(a) *Requirement*	Removed	n/a.
§ 483.106(b)	(b) *Admissions, readmissions and inter-facility transfers.*	Redesignated, retitled and revised.	§ 483.112(b) *Who must receive Level II preadmission screening.*
§ 483.106(b)(1)	(1) *New admissions*	Redesignated and revised.	§ 483.112(b)(1).
§ 483.106(b)(2)	(2) *Exempted hospital discharge*	Redesignated and revised.	§ 483.112(b)(2).
§ 483.106(b)(3)	(3) *Readmissions*	Redesignated and revised.	§ 483.112(b)(4).
§ 483.106(b)(4)	(4) *Inter-facility transfers*	Redesignated and revised.	§ 483.112(b)(5).
§ 483.106(c)	(c) *Purpose*	Redesignated	§ 483.106(a).
n/a	*Requirement*	Added	§ 483.106(b).
n/a	*State Medicaid agency responsibilities*	Added	§ 483.106(c)(1)–(5).
§ 483.106(d)	(d) *Responsibility for evaluation and determinations.*	Revised	§ 483.106(d).
§ 483.106(e)	(e) *Delegation of responsibility*	Revised	§ 483.106(e).
§ 483.106(e)(1)	(1) untitled	Redesignated and revised.	§ 483.106(e).
§ 483.106(e)(1)(i)	(i) untitled	Redesignated and revised.	§ 483.106(e)(1).
§ 483.106(e)(1)(ii)	(ii) untitled	Redesignated and revised.	§ 483.106(e)(2).
§ 483.106(e)(1)(iii)	(iii) untitled	Redesignated and revised.	§ 483.106(e)(3).
§ 483.106(e)(2)	(2) untitled	Removed	n/a.
§ 483.106(e)(3)	(3) untitled	Removed	n/a.
§ 483.108	Relationship of PASARR to other Medicaid processes.	Retitled	§ 483.108 Relationship of PASRR to other Medicaid processes.
§ 483.108(a)	(a) untitled	Technical changes	§ 483.108(a).
§ 483.108(b)	(b) untitled	Revised	§ 483.108(b).
§ 483.108(c)	(c) untitled	Revised	§ 483.108(c).
§ 483.110	Out-of-State arrangements		§ 483.110.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.110(a)	(a) *Basic rule*	Redesignated and title removed.	§ 483.110.
§ 483.110(b)	(b) *Agreements*	Removed	n/a.
§ 483.112	Preadmission screening of applicants for admission to NFs.		§ 483.112.
§ 483.112(a)	(a) *Determination of need for NF services.*	Removed	n/a.
§ 483.112(b)	(b) *Determination of need for specialized services.*	Removed	n/a.
n/a	*Preadmission Level I*	Added	§ 483.112(a).
n/a	*Provisional admissions*	Added	§ 483.112(b)(3).
§ 483.112(c)	(c) *Timeliness*	Retitled and revised.	§ 483.112(c) *Timeliness of determinations.*
§ 483.112(c)(1)	(1) untitled	Redesignated and revised.	§ 483.112(c).
§ 483.112(c)(2)	(2) untitled	Removed	n/a.
§ 483.112(c)(3)	(3) untitled	Redesignated and retititled.	§ 483.130(j)(3).
§ 483.112(c)(4)	(4) untitled	Redesignated and retitled.	§ 483.130(j)(4).
§ 483.114	Annual review of NF residents	Retitled	§ 483.114 Review of NF residents.
§ 483.114(a)	(a) *Individuals with mental illness*	Removed	n/a.
§ 483.114(b)	(b) *Individuals with intellectual disability*	Removed	n/a.
§ 483.114(c)	(c) *Frequency of review*	Removed	n/a.
§ 483.114(d)	(d) *April 1, 1990 deadline for initial review.*	Removed	n/a.
n/a	*Referral for resident review*	Added	§ 483.114(a)(1)–(4).
n/a	*Level II resident review*	Added	§ 483.114(b)(1)–(2).
n/a	*Timing for referral from NF*	Added	§ 483.114(c)(1)–(2).
n/a	*Timeliness of determination*	Added	§ 483.114(d).
n/a	*Resident review determinations*	Added	§ 483.114(e).
§ 483.116	Residents and applicants determined to require NF level of services.		§ 483.116.
§ 483.116(a)	(a) *Individuals needing NF services*	No change	§ 483.116(a).
§ 483.116(b)	(b) *Individuals needing NF services and specialized services.*	Technical changes	§ 483.116(b).
§ 483.118	Residents and applicants determined not to require NF level of services.		§ 483.118.
§ 483.118(a)	(a) *Applicants who do not require NF services.*	No change	§ 483.118(a).
§ 483.118(b)	(b) *Residents who require neither NF services nor specialized services for MI or IID.*	Technical changes	§ 483.118(b).
§ 483.118(c)	(c) *Residents who do not require NF services but require specialized services for MI or IID.*	Revised	§ 483.118(c).
§ 483.120	Specialized services	Retitled	§ 483.120 Specialized services and NF services.
§ 483.120(a)(1)–(2)	(a) *Definition*	Revised	§ 483.120(a)(1)–(6).
§ 483.120(b)	(b) *Who must receive specialized services.*	Retitled and revised.	§ 483.120(b) *Provision of specialized services.*
§ 483.120(c)	(c) *Services of lesser intensity*	Retitled	§ 483.120(c) *Provision of NF services.*
n/a	*Duplication with NF services prohibited*	Added	§ 483.120(d).
n/a	*Coordination with plan of care*	Added	§ 483.120(e).
n/a	*Coordination with other program services.*	Added	§ 483.120(f).
§ 483.122	FFP for NF services		§ 483.122.
§ 483.122(a)	(a) *Basic rule*	Revised	§ 483.122(a).
§ 483.122(b)	(b) *FFP for late reviews*	Technical changes	§ 483.122(b).
§ 483.124	FFP for specialized services		§ 483.124.
§ 483.124	*FFP for specialized services*	Redesignated and revised.	§ 483.124(a)(1)–(2).
n/a	*Reserved*	Added	§ 483.124(b).
§ 483.126	Appropriate placement	Retitled	§ 483.126 Level I identification criteria.
§ 483.126	Untitled	Removed	n/a.
n/a	*Level I identification of individuals with possible MI or ID.*	Added	§ 483.126(a).
n/a	*Possible MI*	Added	§ 483.126(b)(1)–(4).
n/a	*Possible ID*	Added	§ 483.126(c)(1)–(3).
n/a	*Personnel*	Added	§ 483.126(d).
n/a	*Data*	Added	§ 483.126(e).
n/a	*Referral after positive identification*	Added	§ 483.126(f).

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.128(a)	(a) *Level I: Identification of individuals with MI or IID.*	Retitled, redesignated and revised.	§ 483.126(g) *Documentation of completed identification screen.*
§ 483.128(b)	(b) *Adaptation to culture, language, ethnic origin.*	Redesignated and revised.	§ 483.106(f).
§ 483.128(c)	(c) *Participation by individual and family.*	Removed	n/a.
n/a	*Purpose*	Added	§ 483.128(a)(1)–(2).
n/a	*Personnel*	Added	§ 483.128(b)(1)–(2).
§ 483.128(d)	(d) *Interdisciplinary coordination*	Redesignated and technical changes.	§ 483.128(c).
§ 483.128(e)	(e) untitled	Removed	n/a.
§ 483.128(f)	(f) *Data*	Removed	n/a.
n/a	*Data to confirm Level I identification or significant change.*	Added	§ 483.128(d)(1)–(2).
n/a	*Data for evaluations needed for NF level of services and specialized services.*	Added	§ 483.128(e)(1)–(10).
n/a	*Face-to-face interviews*	Added	§ 483.128(f).
§ 483.128(g)	(g) *Preexisting data*	Technical changes	§ 483.128(g).
§ 483.128(h)	(h) *Findings*	Technical changes	§ 483.128(h).
§ 483.128(i)(1)–(6)	(i) *Evaluation report: Individualized determinations.*	Retitled and technical changes.	§ 483.128(i) *Evaluation report.*
§ 483.128(j)(1)–(4)	(j) *Evaluation report: Categorical determinations.*	Retitled and revised.	§ 483.128(j) *Evaluation report: Terminated evaluations.*
§ 483.128(k)	(k) *Interpretation of findings to individual.*	Technical changes	§ 483.128(k).
§ 483.128(l)(1) through (5)	(l) *Evaluation report*	Retitled and revised.	§ 483.128(l) *Evaluation report submission.*
§ 483.128(m)(1) through (2)	(m) untitled	Titled and revised	§ 483.128(m) *Termination before evaluations for NF and specialized services.*
§ 483.130	PASARR determination criteria	Retitled	§ 483.130 Level II PASRR determination criteria.
§ 483.130(a)	(a) *Basis for determinations*	Technical changes	§ 483.130(a).
n/a	*Personnel*	Added	§ 483.130(b).
n/a	*Determination of need for NF level of services.*	Added	§ 483.130(c)(1)–(3).
n/a	*Determination of need for specialized services.*	Added	§ 483.130(d).
§ 483.130(b)	(b) *Types of determinations*	Removed	n/a.
§ 483.130(c)	(c) *Group determinations by category*	Removed	n/a.
§ 483.130(d)	(d) *Examples of categories*	Removed	n/a.
§ 483.130(e)	(e) *Time limits*	Removed	n/a.
§ 483.130(f)	(f) untitled	Removed	n/a.
§ 483.130(g)	(g) *Categorical determinations: No positive specialized treatment determinations.*	Removed	n/a.
§ 483.130(h)	(h) *Categorical determinations: Dementia and IID.*	Removed	n/a.
§ 483.130(i)	(i) untitled	Removed	n/a.
§ 483.130(j)	(j) *Recording determinations*	Redesignated and technical changes.	§ 483.130(e).
§ 483.130(k)	(k) *Notice of determination*	Redesignated and revised.	§ 483.130(f).
§ 483.130(l)	(l) *Contents of notice*	Redesignated and revised.	§ 483.130(g).
§ 483.130(m)	(m) *Placement options*	Removed	n/a.
§ 483.130(n)	(n) *Specialized services needed in a NF.*	Removed	n/a.
§ 483.130(o)	(o) *Record retention*	Redesignated and technical changes.	§ 483.130(h).
§ 483.130(p)	(p) *Tracking system*	Redesignated and technical changes.	§ 483.130(i).
n/a	*Reporting*	Added	§ 483.130(j)(1)–(4).
§ 483.132	Evaluating the need for NF services and NF level of care (PASARR/NF).	Retitled	§ 483.132 Evaluating the need for NF level of services.
§ 483.132(a)	(a) *Basic rule*	Removed	n/a.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.132(b)	(b) *Determining appropriate placement*	Removed	n/a.
§ 483.132(c)	(c) *Data*	Removed	n/a.
§ 483.132(d)	(d) untitled	Removed	n/a.
n/a	*Evaluation for appropriate settings*	Added	§ 483.132(a)(1)–(2).
n/a	*Evaluation of preferences*	Added	§ 483.132(b).
n/a	*Evaluation for NF services*	Added	§ 483.132(c).
n/a	*Data*	Added	§ 483.132(d).
n/a	*Relationship to NF level of care*	Added	§ 483.132(e).
§ 483.134	Evaluating whether an individual with mental illness requires specialized services (PASARR/MI).	Retitled	§ 483.134 Evaluating whether an individual requires specialized services.
§ 483.134(a)	(a) *Purpose*	Removed	n/a.
§ 483.134(b)	(b) Data	Removed	n/a.
§ 483.134(c)	(c) *Personnel requirements*	Removed	n/a.
§ 483.134(d)	(d) *Data interpretation*	Removed	n/a.
n/a	*Basic rule*	Added	§ 483.134(a)(1)–(3).
n/a	*Review of specialized services*	Added	§ 483.134(b).
n/a	*Data*	Added	§ 483.134(c).
§ 483.136	Evaluating whether an individual with intellectual disability requires specialized services (PASARR/IID).	Removed	n/a.
§ 483.136(a)	(a) *Purpose*	Removed	n/a.
§ 483.136(b)	(b) *Data*	Removed	n/a.
§ 483.136(c)	(c) *Data interpretation*	Removed	n/a.
§ 483.138	Maintenance of services and availability of FFP.		§ 483.138.
§ 483.138(a)	(a) *Maintenance of services*	No change	§ 483.138(a).
§ 483.138(b)	(b) *Availability of FFP*	No change	§ 483.138(b).

IV. Collection of Information Requirements

Consistent with our implementing PASARR regulation (November 30, 1992; 57 FR 56504) section 4214(d) of OBRA '87 exempts this rule's proposed nursing home reform amendments from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In this regard, Office of Management and Budget review under the authority of the PRA is not applicable. The projected costs and savings of this proposed rule are discussed in the Regulatory Impact Analysis section of this proposed rule.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule intends to modernize the requirements for Preadmission Screening and Resident Review (PASRR), currently referred to in the regulation as Preadmission Screening and Annual Resident Review. PASRR proposes to incorporate statutory changes, which reflects updates to diagnostic criteria for mental illness and intellectual disability. It will also reduce duplicative requirements and other administrative burdens on state PASRR programs, and makes the process more streamlined and person-centered.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (Pub. L. 96–354, enacted on September 19, 1980) (RFA), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, enacted on March 22, 1995) (UMRA), Executive Order 13132 on Federalism (August 4, 1999), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

C. Anticipated Effects

As discussed in the Collection of Information section of this proposed rule, the proposed collections of information in this rule are exempt from Paperwork Reduction Act. However, we will identify here the estimated costs and savings associated with this proposed rule.

1. Wage Estimates

To derive average costs for this estimate, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 2 presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 2—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Social and Community Services Managers	11–9151	34.46	34.46	68.92
Healthcare Social Worker	21–1022	28.11	28.11	56.22
Registered Nurse	29–1141	36.30	36.30	72.60

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

2. Minimum Data Set Data

Unless otherwise noted, numbers drawn from the Minimum Data Set (MDS) were generated from internal analysis of MDS data reported to CMS by NFs.

3. Estimated Costs of the Proposed Regulations

Note that all of states' costs associated with the proposed regulation changes would be considered administrative costs related to administering PASRR and eligible for 75 percent FFP per § 433.15(b)(9).

a. Updated Terminology, Definition and Data Collection (§§ 483.102, 483.128, 483.132, 483.134)

We are proposing to replace the name ''Preadmission Screening and Annual Resident Review'' with ''Preadmission Screening and Resident Review'' in the regulation, to reflect the fact that the statutory obligation of ''annual'' Resident Review was removed from section 1919(e)(7)(B) of the Act in 1996. It is our understanding that most states have already updated their program materials to reflect the statutory requirement. For states that do retain references to ''PASARR'' in their documents, we presume the states would make that change while making other updates to program documents, and that the cost would be absorbed into the cost estimates calculated in the next paragraph.

In § 483.102(b), we propose to update the definitions of MI, dementia, and ID, as well as update the diagnostic manuals that would be used to identify these conditions. Currently, § 483.102(b)(1) and (2) requires that clinicians use the DSM–III–R when identifying MI and dementia; we propose that clinicians would use the most current edition of the DSM, the DSM–5. Currently, § 483.102(b)(3) also requires use of an outdated diagnostic manual for the identification of ID; we propose that clinicians instead would use the most current edition of the American Association on Intellectual and Developmental Disabilities' manual, ''Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition''. It is our understanding that most clinicians are already using the most current versions of diagnostic manuals when identifying MI, dementia, and ID, and have been performing a crosswalk between the current manuals and those included at § 483.102. We believe that no longer having to perform this crosswalk would reduce burden on clinicians. Making this update, however, may require that PASRR programs make updates to some of their program materials where they have retained references to the outdated manuals. We also propose at §§ 483.128, 483.132 and 483.134 to consolidate and simplify the data that must be collected from individuals as part of the Level II evaluation process.

We do not provide or prescribe specific program materials or forms for the Level I identification screen and the Level II evaluation and determinations (that is, states develop their own documents). We presume that these proposed updates described above would necessitate revisions to states' internal program documents and Level I and II PASRR documents.

We note that we maintain a technical contract (the PASRR Technical Assistance Center) that is a free resource to states, and would be available to provide assistance with helping state PASRR programs align documents with changes to federal PASRR requirements once they are finalized. Assuming states take advantage of this free resource, we estimate it would take 16 hours at $68.92/hr for a social and community services manager to review and update the program materials. Including the state PASRR programs of all 50 states and the District of Columbia performing this activity, we estimate a one-time burden of 816 hours (51 programs × 16 hr) at a cost of $56,239 (816 hr × $68.92/hr).

b. Preadmission Screening of NF Applicants: Exempted Hospital Discharge (§ 483.112)

We propose in § 483.112 to clarify that all individuals, including those who qualify for an exemption from Level II Preadmission Screening under the exempted hospital discharge would still receive a Level I identification screen. (See discussion of § 483.112 for information on the exempted hospital discharge and this proposed clarification.) The current regulations do not prohibit such individuals from receiving Level I identification screens, and it is our understanding that at least 15 of the 51 states and District of Columbia (29 percent of state PASRR programs) already do perform Level I identification screens or collect some other kind of preadmission documentation for these individuals.[2] We believe that our proposed change to § 483.112 would not significantly impact these states; we provide here an estimate of the cost impact on the states that may not currently be collecting preadmission documentation from individuals being admitted to NFs under an exempted hospital discharge.

[2] PASRR Technical Assistance Center, ''Revised 2017 National PASRR,'' May 2018. Available at *https://www.medicaid.gov/medicaid/ltss/downloads/institutional/2017-pasrr-national-report.pdf*. Last accessed: August 27, 2019. Data taken from page 7, showing that 15 states reported they collect data on admissions of people with exempted hospital discharges.

Using nursing home data collected as part of the MDS we estimate that there were 2,998,840 individuals admitted to NFs from acute care hospitals nationwide in 2016. A portion of these individuals would have been eligible for an exempted hospital discharge. We reduce the total number of these admissions from acute care hospitals by 29 percent, to 2,129,176 because, as previously mentioned, 29 percent of states collect preadmission documentation from exempted hospital discharges. This leaves 2,129,176 individuals potentially admitted to a NF under an exempted hospital discharge without a Level I identification screen or other collection of preadmission documentation.

MDS data indicates that 56 percent of individuals admitted to a NF from an acute care hospital will end up staying in the NF for more than 30 days (at which point these individuals would be required to receive a Level I identification screen under current rules at § 483.106(b)(2)(ii)). This means that 1,192,338 individuals (2,129,176 individuals × 0.56) would still have required a Level I identification screen performed post-admission. Under our proposed rule at § 483.112(b), performing all Level I identification screens preadmission would obviate the need for a post-admission Level I identification screen. Thus, these 1,192,338 individuals would not represent a new cost to state PASRR programs resulting from this proposed rule because they would have received a Level I identification screen under the current regulations.

We then presume that the 44 percent of residents discharged before 30 days may have been eligible for an exempted hospital discharge and would not have received a Level I identification screen either before or after admission. This would mean that 936,837 individuals (2,129,176 individuals × 0.44) a year who might not otherwise have received a Level I identification screen would now receive a screen under our proposed revisions. (We believe this number is on the high end. We are assuming here that *all* individuals admitted from an acute care hospital qualified for an exempted hospital discharge, even though many of these individuals may have not qualified and thus received a Level I identification screen prior to admission.)

It is our experience that the Level I identification screens take 0.25 hours at $56.22/hr for a hospital discharge planner (who are often social workers) to complete. With one Level I identification screen being performed for 936,837 individuals, we estimate an ongoing annual burden of 234,209 hours (936,837 screens × 0.25 hr/screen) at a cost of $13,167,244 (234,209 hr × $56.22/hr) to complete the Level I identification screens.

Additionally, both current and proposed regulations require that only positive Level I identification screens would be forwarded to PASRR programs for tracking purposes. According to MDS data, roughly 7 percent of people who are admitted to NFs are identified as having MI or ID, which means that of the 936,837 potential additional Level I identification screens, 65,578 (936,837 screens × 0.07) of the Level I identification screens may be forwarded to the PASRR programs by the Level I screeners. We estimate it would take 6 minutes (0.1 hr) at $68.92/hr for a community and social services manager to review and process the completed form. In aggregate we estimate an ongoing annual burden of 6,558 hours (65,578 screens × 0.1 hr/screen) at a cost of $451,967 (6,558 × $68.92/hr) for processing the additional positive Level I identification screens.

c. Reporting on Timeliness (§ 483.130(j)(1))

Each state's PASRR program is currently required to comply with the requirements at § 483.112(c)(1) which specify that preadmission screening must be completed within an average of 7–9 working days, and requirements at § 483.106(b)(2)(ii) which specify that Resident Reviews for expired exempted hospital discharges be completed within 40 days of admission. State PASRR programs should already be tracking their completion rates to ensure compliance with these requirements. To ensure better oversight of compliance with the timeliness standards, we propose new language at § 483.130(j)(1) which would require that the state report to the Secretary on an annual basis the annual averages for the completion of determinations.

In calculating the cost of this reporting, we assume that states' PASRR programs already have in place an effective means to track timeliness, as they are already expected under current regulations at § 483.112(c) to comply with timeliness requirements. The reporting would require the SMHA and SIDA to cooperate with the state Medicaid agency (SMA) by providing data to the SMA, which would be responsible for reporting the data to the Secretary. We anticipate that the staff in each of the SMHA, SIDA, and SMA would be of comparable positions and salaries, namely social and community service managers with an adjusted wage of $68.92/hr. We estimate that in both the SMHA and the SIDA, staff would each require 1 hour to generate, review and submit the data to the SMA. We also estimate that the SMA staff would require 1 hour to assemble the reported data and submit a report electronically to CMS, using a CMS-generated template. This is a total of 3 hours (1 hr SMHA + 1 hr SIDA + 1 hr SMA). We expect that all 50 states and the District of Columbia would submit timeliness annual reports, for an ongoing annual burden of 153 hours (3 hr × 51 respondents) at a cost of $10,545 (153 hr × $68.92/hr).

d. Reporting on Dispositions (§ 483.130(j)(2))

Section 1919(e)(7)(C)(iv) of the Act requires that each state report annually to the Secretary the number and disposition of individuals who are discharged from NFs because they have been determined by the PASRR program to no longer needed NF level of services (but still needed specialized services) and individuals who are discharged from NFs because they were determined by the PASRR program to no longer need NF level of services or specialized services. We have not previously issued robust guidance on how to comply with this statutory requirement or what kind of information relating to discharge should be reported. This rule proposes new language at § 483.130(j)(2) which would clarify that states must report annually on the number of people with MI or ID who are diverted or discharged from NFs each year because the PASRR program has determined that the individual:

- Does not meet, or no longer meets, the state's criteria for NF level of care,
- Requires the level of services offered in another institutional setting; or
- Elects to receive services in a non-institutional setting.

This rule proposes to include reporting on both diversion for applicants and discharge for residents, as we believe the intent of this statutory reporting requirement was to demonstrate efficacy of the PASRR process. The proposed requirement is designed to more effectively implement section 1919(e)(7)(C)(iv) of the Act, thus providing better insight into whether PASRR programs are fulfilling the statutory goals of avoiding unnecessary NF placements.

Since states do not consistently report on the outcomes for applicants and residents, we are using data collected on NF residents as part of the MDS to approximate the time that would be spent gathering this data. In 2016, approximately 62,000 individuals with

PASRR-level MI or ID in all 50 states and the District of Columbia were discharged from Medicaid-certified NFs into one of the settings we contemplate would be reportable under proposed § 483.130(j)(2) (community, psychiatric hospital or intermediate care facility for individuals with intellectual disabilities). We note here that the following cost estimates presumes that all 62,000 PASRR-identified individuals discharged from NFs in a year were discharged as a result of a PASRR determination. The MDS data does not indicate how many of these individuals were discharged as a result of PASRR program intervention; some portion of these individuals will have been discharged for reasons unrelated to the PASRR program's determination and thus would not be subject to the proposed reporting requirement. Thus, our cost estimates related to this proposal will be on the high end. However, in the absence of more precise data, we will use the figure 62,000 discharged individuals for our time and cost estimates.

We assume that in order to confirm the recommended discharge has occurred, NFs may need to send confirmation of the discharges of PASRR-identified individuals directly to the state PASRR program by a method identified by the state. It is our understanding that in many NFs a social worker is tasked with PASRR-related duties, taking approximately 6 minutes (0.1 hr) at $56.22/hr per discharged individual. In aggregate we estimate an ongoing annual burden of 6,200 hours (0.1 hr × 62,000 discharges) at a cost of $348,564 (6,200 hr × $56.22/hr) for all NFs to report to their respective state PASRR programs the discharge outcome for PASRR-identified individuals.

Additionally, we estimate that state PASRR program staff would need to enter this information from NFs into the PASRR program's tracking system. Per each discharged individual we estimate it would take 6 minutes (0.1 hr) at $68.92/hr for a social and community services manager to perform this task. In aggregate, we estimate an ongoing annual burden of 6,200 hours (0.1 hr × 62,000 discharges) at a cost of $427,304 (6,200 hr × $68.92/hr).

We also estimate it would take 1 hour at $68.92/hr for a social and community services manager to assemble this data into a report and submit it to CMS. We anticipate that this report will be submitted electronically to CMS via a CMS-developed template and we do not estimate additional materials costs to states. In aggregate, we estimate an ongoing annual burden of 51 hours (51 respondents × 1 hr/response) at a cost of $3,515 (51 hr × $68.92/hr).

4 Estimated Savings of the Proposed Rule

a. Changes to State Plan Requirements (§ 483.104)

Section 483.104 requires that states have a PASRR program as a condition of approval of the Medicaid State Plan. Currently in the Medicaid State Plan, states provide an assurance that they have a PASRR program on plan page 4.39. This page is a preprint created by CMS that contains boilerplate language regarding PASRR requirements and does not require states to provide additional information. As a result of this proposed rule, page 4.39 of the Medicaid State Plan would be revised by CMS. It was issued in 1993 and contains obsolete references to ''Preadmission Screening and Annual Resident Review.'' In this proposed rule we propose to remove ''annual'' before ''Resident Review,'' and replace the acronym ''PASARR'' with ''PASRR,'' to reflect the statutory change made in 1996 (by Pub. L. 104–315) that removed the ''annual'' requirement for Resident Review. Page 4.39 would also be impacted by our proposal to remove categorical determination requirements (as discussed in § 483.130 of this rule), so we would need to remove references to that requirement. Because the page simply contains boilerplate language and does not require the state to provide additional information, we do not believe it would be administratively efficient to require states to go through the State Plan Amendment (SPA) process to affirm the updated preprint. Rather, as page 4.39 (which is currently paper-based) is slated to be included in CMS' transition of the Medicaid State Plan to an electronic format (MACPro), we propose to make the necessary updates when page 4.39 is added to MACPro (CMS–10434, OMB control number: 0938–1188) as part of the routine business of that transition. No action would be required of states, aside from receiving electronic notice of the updated page.

However, by proposing to eliminate categorical determinations (as is discussed in § 483.130 of this proposed rule), we would eliminate the requirement for states to submit an attachment to page 4.39 describing the categorical determinations that they apply in their program. States are not required to update this page on a regular schedule, but rather submit updates via the SPA process whenever changes are made to their program. All 50 states and the District of Columbia have a PASRR program, and almost all of these programs have made updates to these attachments since the PASRR requirements were originally issued. We estimate that revising the attachment to page 4.39 takes 4 hours at $68.92/hr for a social and community service manager to generate and submit their state's 4.39 page attachment to CMS for approval. Since this rule proposes to remove the requirement for the attachment, we estimate a one-time savings of 204 hours (1 SPA × 4hr/response × 51 programs). This amounts to a one-time savings of $14,060 (204hr × $68.92/hr).

b. Provisional Admissions (§ 483.102(b)(3))

We propose in § 483.112(b)(3) to eliminate the need for Level II Preadmission Screening of individuals who are admitted to NFs as a ''provisional admission'' meaning the individual was admitted with delirium or as part for emergency, respite, or convalescent reasons. Under current regulations at § 483.130(d), these individuals would be required to receive a Level II categorical determination.

While we do not collect information from state PASRR programs on the number of categorical determinations they perform in a year, MDS data suggests that about 7 percent of NF residents are identified as having MI or ID for PASRR purposes. We estimate that there are 3,748,550 new admissions to NFs each year (from both acute care hospitals and other settings), of which roughly 7 percent or 262,399 individuals (3,748,550 new admissions × 0.07) may be identified as having MI or ID necessitating a Level II screen. Of those individuals, we further estimate that half of these individuals, or 131,200 individuals (262,399/2) would be eligible for a provisional admission who would have previously been required to receive a Level II categorical determination prior to admission.

Anecdotal evidence suggests that categorical determinations take 2 hours at $72.60/hr for a registered nurse to complete the Level II categorical determination and communication the information to the admitting NF. In aggregate we estimate an annual savings of 262,400 hours (2 hr × 131,200) and $19,050,240 (262,400 hr × $72.60/hr).

c. Terminating Evaluations (§ 483.128)

We propose to revise the language at § 483.128(m), which specifies when evaluators may terminate evaluations. We propose to expand on the number of conditions under which an evaluation could be terminated. The current § 483.128(m) allows evaluators to

terminate the evaluation if: (1) The evaluator finds that the individual being evaluated does not have MI or ID within the definition of proposed § 483.102 or (2) the individual has MI but also has primary dementia. We propose to revise § 483.128(m) to indicate the evaluations may be terminated without further evaluation of the need for NF level of services or specialized services if the evaluator finds that the individual being evaluated (1) does not have MI or ID within the definition of § 483.102; (2) has not experienced a qualifying significant change in physical or mental condition as defined in proposed § 483.114(b)(2); or (3) has a severe physical illness (such as ventilator dependency; advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), terminal illness; or advanced dementia (as defined in § 483.102(b)(2) which results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services and specialized services.

The first condition of our proposed change to § 483.128(m) mirrors the current regulation (allowing evaluators to terminate an evaluation if the individual does not have MI or ID.) The second proposed condition (the individual did not experience a qualifying significant change in physical or mental condition) is intended to memorialize what we believe to be current practice among PASRR programs. We do not expect this part of our proposed change to § 483.128(m) to have an impact on PASRR program expenditures.

The list of physical and neurocognitive conditions that we propose in § 483.128(m) would replace the current categorical determinations criteria in current § 483.130(d) and (h). Under the current regulations, categorical determinations function as expedited determinations for people with certain conditions. As discussed in the narrative above, we consider the current framework of categorical determinations to add unnecessary complexity to the PASRR process and propose to eliminate categorical determinations. We propose to expand the number of conditions under which a Level II evaluation may be terminated in order to retain the principle that evaluations should not be performed needlessly on individuals who, as a result of severe physical illness or cognitive impairment, cannot participate in the evaluations (and would not be expected to benefit from specialized services.)

We believe this proposal would reduce costs for PASRR programs. Because there is great variability among states' current use of categorical determinations for NF applicants with severe illness, terminal illness, and co-occurring ID/dementia, we cannot estimate the exact impact of this proposal. For states with a robust or highly expedited system of categorical determinations, we expect that terminating an evaluation for people with severe physical illness, terminal illness, or co-occurring ID/dementia would require comparable effort as performing the categorical determination for those same individuals. For states that do not use categorical determinations—meaning that NF applicants with severe physical illness, terminal illness and co-occurring ID/dementia receive complete Level II evaluations and determinations—we expect the savings to be greater, since those state PASRR programs would not need to perform as many comprehensive Level II evaluations for these individuals. We welcome public comment on the potential costs and savings associated with this proposal.

d. Telehealth (§ 483.128)

We propose at § 483.128(f) that, for evaluations that would otherwise need to be conducted face-to-face, telehealth evaluations may be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent timely completion of the PASRR Level II evaluation and determination process. We believe this proposal would present a cost savings for PASRR programs. Using telehealth technologies in states with large geographical areas, for instance, would likely be less expensive than paying for the time and travel costs for staff who would otherwise need to travel long distances to reach NF applicants and residents.

We cannot estimate the cost savings that would result from this proposal because we expect that implementation of this proposal would vary greatly among the states. Some states have already begun piloting telehealth technologies in their PASRR programs, so will not incur new cost savings as a result of this proposed regulation. Many states may be able to fulfill all of their evaluation obligations without needing telehealth technology and will not be impacted by this proposal. Of the states that might choose to decide to use telehealth technologies as a result of this proposal, the technologies that they use and the associated costs or savings will vary, as will the number of individuals reached via telehealth. We would note that the use of telehealth is not proposed as a requirement, but rather presented as an option for states to explore if the states individually determine that using telehealth technology would provide them with cost savings or other meaningful benefit. We welcome public comment on the potential costs and savings associated with this proposal.

5. Summary of Estimated Costs and Savings

TABLE 3—ESTIMATED COSTS AND SAVINGS

Provision under Title 42 of the CFR	Responsible entity	Total estimated annual cost	Total estimated annual savings
§§ 483.102, 483.128, 483.132, 483.134—Updating PASRR Level I and Level II forms.	State PASRR programs	$56,239 (one-time).	
§ 483.112—Level Is for exempted hospital discharges performed preadmission.	State's designated Level I entities	$13,167,244 (ongoing).	
§ 483.112—PASRR programs processing Level Is for exempted hospital discharges.	State PASRR programs	$451,957 (ongoing).	
§ 483.130(j)(i)—Reporting on timeliness	State PASRR programs	$10,545 (ongoing).	
§ 483.130(j)(ii)—Reporting on dispositions to PASRR program.	NFs	$348,564 (ongoing).	
§ 483.130(j)(ii)—Collecting information on dispositions.	State PASRR programs	$427,304 (ongoing).	
§ 483.130(j)(ii)—Reporting on dispositions to CMS.	State PASRR programs	$3,515 (ongoing).	

TABLE 3—ESTIMATED COSTS AND SAVINGS—Continued

Provision under Title 42 of the CFR	Responsible entity	Total estimated annual cost	Total estimated annual savings
§ 483104—State Plan changes	State PASRR programs		($14,060) (one-time).
§ 483.112—Provisional admissions	State PASRR programs		($19,050,240) (ongoing).
Total		$14,465,378	($19,064,300).
Net costs/savings (Year 1)			($4,598,922).
Net costs/savings (ongoing)			($4,641,101).

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, we estimate that many NFs are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). Many nursing facilities and hospitals are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's (SBA) definition of a small business having revenues of less than $25.5 million in any 1 year (see the SBA's website at *http://www.sba.gov/content/small-business-size-standards*). However, while NFs would be subject to the proposed rule, we do not believe this proposed rule will have a significant economic impact on a substantial number of small entities. As noted above, the estimated total impact on NFs as a result of this rule is projected at an annual cost of $348,564, resulting from the proposed requirement that NFs confirm with state PASRR programs when PASRR-identified residents are discharged from the after the PASRR program has determined the resident no longer needs NF services. As noted in the analysis of this proposed cost, we believe the estimate of $348,564 to NFs is on the high end. (See discussion in the section on Estimated Costs of the Proposed Rule, above.) This total cost would be distributed among nearly 15,000 NFs. (According to recent data, there are 14,524 dually-certified nursing homes and 354 Medicaid-only nursing homes, all of which would be subject to PASRR requirements and would share in the total estimated annual costs associated with this proposed rule.) Because the Secretary certifies that rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule does not have a substantial direct cost impact on state or local governments, nor does it preempt state law.

D. Alternatives Considered

This proposed rule contains a range of other proposed policies. We have provided descriptions of the statutory provisions that are addressed, identified the proposed policies, and presented rationales for our decisions. We have attempted to make proposals that would adequately address the need to update the PASRR requirements, promote better oversight, and improve outcomes for PASRR-identified individuals. We solicit feedback on this proposed rule, including any alternative policies stakeholders identify that would support the principles of efficiency, accountability, quality, and self-direction in long-term care.

We did consider a specific alternative regarding inclusion of people with acquired and traumatic brain injury. We proposed updates to the definitions of mental illness, intellectual disability, and dementia in § 483.102. Sections 1919(e)(7)(G)(i) and 1919(e)(7)(G)(ii) of the Act provide broad definitions for PASRR-eligible mental illness and intellectual disability. We are aware that people who experience acquired or traumatic brain injuries sometimes require supports that overlap with those provided to people with intellectual disability. While individuals who acquire a brain injury prior to age 22 sometimes qualify for PASRR consideration due to having a ''related condition'' as defined in § 435.1010. We are aware, however, that individuals who have acquired brain injuries after the age 22 are typically regarded as ineligible for PASRR. We considered the possibility of explicitly expanding PASRR eligibility to individuals with acquired or traumatic brain injury (without an age restriction), but were not certain that this expansion would be supported by section 1919(e)(7) of the Act or the definition of ''related conditions'' provided in § 435.1010. We were also concerned that attempting to add traumatic brain injury to the definition of ''related conditions'' in § 435.1010 could have unintentional consequences for other programs or policies that rely on this definition.

We considered a specific alternative in the requirements relating to provisional admissions. We propose in § 483.112(b)(3) to create a set of conditions under which someone may be considered a provisional admission to a NF and does not require Preadmission Screening. Among these conditions we propose that individuals admitted for a convalescent care stay would be eligible for this Preadmission Screening exemption so long as the convalescent stay is not expected to exceed 30 days. (See discussion of this proposal in the discussion of § 483.112(b)(3).) We considered extending this length of time to 60 days, but were concerned that this might compromise the care for individuals admitted under this provisional admission. For individuals in need of specialized services, 60 days without these reports could may put the individuals at risk of decompensation or

functional loss. While we do not want to require unnecessary Level II evaluations for individuals staying in NFs for comparatively short periods, we also want to ensure that individuals with MI or ID receive appropriate supports in NFs.

E. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule, if finalized, is expected to be an E.O. 13771 deregulatory action. We estimate that this rule generates $3.4 million in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated cost savings of this rule can be found in the preceding analyses.

F. Conclusion

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 441

Aged, Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority for part 431 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Section 431.200 is amended by revising paragraph (c)(2) to read as follows:

§ 431.200 Basis and scope.

* * * * *

(c) * * *

(2) Is adversely affected by the preadmission screening or the resident review that are required by section 1919(e)(7) of the Act and further described in part 483, subpart C of this chapter.

* * * * *

■ 3. Section 431.201 is amended by revising the definition of ''Date of action'' to read as follows:

§ 431.201 Definitions.

* * * * *

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 4. Section 431.206 is amended by revising paragraph (c)(4) to read as follows:

§ 431.206 Informing applicants and beneficiaries.

* * * * *

(c) * * *

(4) At the time an individual receives an adverse determination by the State with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 5. Section 431.213 is amended by revising paragraph (g) to read as follows:

§ 431.213 Exceptions from advance notice.

* * * * *

(g) The notice involves an adverse determination made with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter; or

* * * * *

■ 6. Section 431.220 is amended by revising paragraph (a)(3) to read as follows:

§ 431.220 When a hearing is required.

(a) * * *

(3) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 7. Section 431.241 is amended by revising paragraph (c) to read as follows:

§ 431.241 Matters to be considered at the hearing.

* * * * *

(c) A State determination with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

■ 8. Section 431.244 is amended by revising paragraph (f)(3)(i) to read as follows:

§ 431.244 Hearing decisions.

* * * * *

(f) * * *

(3) * * *

(i) For a claim related to eligibility described in § 431.220(a)(1), or any claim described in § 431.220(a)(2) (relating to a nursing facility) or § 431.220(a)(3) (related to preadmission screening and resident review), as expeditiously as possible and, effective no later than the date described in § 435.1200(i) of this chapter, no later than 7 working days after the agency receives a request for expedited fair hearing; or

* * * * *

§ 431.250 [Amended]

■ 9. Section 431.250 is amended in paragraph (f)(4) by removing the word ''annual''.

§ 431.621 [Amended]

■ 10. Section 431.621 is amended—

■ a. In paragraphs (a) and (c)(3), (6), and (7) by removing the term ''PASARR'' and adding in its place the term ''PASRR'';

■ b. In paragraphs (a) and (c)(4) by removing the word ''annual'';

■ c. In paragraphs (a), (b), (c) introductory text, and (c)(2), (5), and (6) by removing the phrase ''Intellectual Disability'' and adding in its place the phrase ''intellectual disability'';

■ d. In paragraph (c)(4) by removing the reference ''483.114(c)'' and adding in its place the reference ''§ 483.114(d)'';

■ e. In paragraphs (c)(4) and (5) by removing the word ''part'' and adding in its place the word ''chapter'';.

■ f. In paragraph (c)(6) by removing the phrase ''under its approved State plan''; and

■ g. In paragraph (c)(8) by removing the reference ''483.136'' and adding in its place the reference ''483.138 of this chapter''.

PART 433—STATE FISCAL ADMINISTRATION

■ 11. The authority citation for part 433 is revised to read as follows:

Authority: 42 U.S.C. 1302.

§ 433.15 [Amended]

■ 12. Section 433.15 is amended in paragraphs (b)(9) by removing the term ''PASARR'' and adding in its place the phrase ''PASRR''; and by removing the word ''annual''.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 13. The authority citation for part 435 is revised to read as follows:

Authority: 42 U.S.C. 1302.

§ 435.1010 [Amended]

■ 14. Section 435.1010 is amended in the definition of ''Persons with related conditions'' in paragraph (a)(2) by removing the phrase ''mentally retarded persons,'' and adding in its place the phrase ''people with intellectual disabilities,''.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 15. The authority citation for part 441 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 8. Section 441.303 is amended—
■ a. By revising paragraph (f)(4); and
■ b. In paragraph (f)(9) by removing the term ''PASARR'' and adding in its place the phrase ''PASRR''.

The revision reads as follows:

§ 441.303 Supporting documentation required.

* * * * *

(f) * * *

(4) In making estimates of average per capita expenditures for a separate waiver program that applies only to individuals with developmental disabilities who are identified through the preadmission screening and resident review (PASRR) process, residents of a NF, or require the level of care provided in an ICF/IID as determined by the State on the basis of an evaluation under § 441.303(c), the agency may determine the average per capita expenditures that would have been made in a fiscal year for those individuals based on the average per capita expenditures for residents in an ICF/IID. When submitting estimates of institutional costs without the waiver, the agency may use the average per capita costs of ICF/IID care even though the deinstitutionalized individuals with developmental disabilities were residents of NFs.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 16. The authority citation for part 483 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1395i, 1395hh and 1396r.

■ 17. Section 483.20 is amended—
■ a. In paragraphs (e) introductory text and (e)(1) by removing the term ''PASARR'' and adding in its place the term ''PASRR'';
■ b. In paragraph (e)(1) removing the word ''recommendations'' and adding in its place the word ''findings'', and by removing the phrase '', care planning, and transitions of care'';
■ c. By revising paragraph (e)(2);
■ d. In paragraph (k) subject heading, by adding ''and resident review'' after ''Preadmission screening'';
■ e. In paragraph (k) heading, by removing the phrase ''mental disorder'' and adding in its place the phrase ''mental illness'';
■ f. In paragraph (k)(1)(i) introductory text, by removing the phrase ''Mental disorder'' and adding in its place the phrase ''Mental illness'';
■ g. In paragraph (k)(2)(i) by adding the phrase ''Level I identification screening and Level II evaluations and'' before the word ''determinations'';
■ h. By revising paragraph (k)(2)(ii) introductory text;
■ i. By adding paragraph (k)(2)(iii);
■ j. In paragraphs (k)(3)(i), by removing the phrase ''mental disorder'' and adding in its place the phrase ''mental illness''; and
■ k. By revising paragraph (k)(4).

The revisions and additions read as follows:

§ 483.20 Resident assessment.

* * * * *

(e) * * *

(2) Referring all residents with newly evident or possible mental illness or an intellectual disability or related condition for Level II resident review within 72 hours of when the facility identifies conditions indicating possible mental illness or intellectual disability or related condition as described in § 483.126.

* * * * *

(k) * * *

(2) * * *

(ii) The State must apply Level I identification screening, but may choose not to apply Level II preadmission screening under paragraph (k)(1) of this section, to the admission to a nursing facility of an individual—

* * * * *

(iii) The State must apply Level I identification screening, but may choose not to apply the Level II preadmission screening program under paragraph (k)(1) of this section, to the admission to a nursing facility of an individual who qualifies as a ''provisional admission'' in accordance with § 483.112(b)(3).

* * * * *

(4) Residents with mental illness or intellectual disability who are experiencing a significant change in physical or mental condition (as defined in paragraph (b)(2)(ii) of this section) must be referred by the nursing facility within 72 hours of the significant change to the state mental health authority or state intellectual disability authority, as applicable, for a resident review.

■ 18. Section 483.21 is amended—
■ a. In paragraph (a)(1)(ii)(F) by removing the term ''PASARR'' and adding in its place the term ''PASRR''; and
■ b. Revising paragraph (b)(1)(iii).

The revision reads as follows:

§ 483.21 Comprehensive person-centered care planning.

* * * * *

(b) * * *

(1) * * *

(iii) Any specialized services (provided or arranged for by the state) or specialized rehabilitative services (provided by the nursing facility) as a result of PASRR recommendations. If a facility disagrees with the PASRR recommendations, it may request a Level II resident review. Changes to PASRR recommendations in the plan of care must be authorized by the PASRR program as part of a Level II determination in accordance with § 483.130.

* * * * *

Subpart C—Preadmission Screening and Resident Review for Individuals with Mental Illness or Intellectual Disability

■ 19. The heading for subpart C is revised to read as set forth above.

§ 483.100 [Amended]

■ 20. Section 483.100 is amended—
■ a. By removing the term ''annual''; and
■ b. By removing the term ''PASARR'' and adding in its place the term ''PASRR''.
■ 21. Section 483.102 is amended—
■ a. By revising paragraphs (b)(1) and (2) and (b)(3)(i);

■ b. In paragraph (b)(3) introductory text by adding a subject heading; and
■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 483.102 Applicability and definitions.

* * * * *

(b) * * *

(1) *Mental illness.* An individual is considered to have a mental illness (MI) if:

(i) The individual has within the past year had a serious and persistent mental disorder meeting the criteria specified within the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (2013), incorporated by reference in paragraph (c) of this section, with the exception of conditions that would fall under DSM–5 ''V'' codes, substance use or substance/medication-induced disorders, neurodevelopmental disorders, and neurocognitive disorders;

(ii) The disorder has been determined by a qualified clinician to be acute or in partial remission, have recurrent or persistent features and, if the DSM includes a severity scale for the disorder, the severity level of the disorder is moderate to severe;

(iii) The disorder has resulted in functional impairment which has substantially interfered with or limited one or more major life activity (including activities of daily living; instrumental activities of daily living; or functioning in social, family, and academic or vocational contexts), or would have caused functional impairment without the benefit of treatment or other support services; and

(iv) A qualified clinician has found that the mental illness is not a secondary characteristic of a primary diagnosis of dementia (or neurocognitive disorder due to Alzheimer's disease or related conditions), as defined in paragraph (b)(2) of this section.

(2) *Dementia.* An individual is considered to have dementia if he or she has a primary diagnosis of a major neurocognitive disorder (other than delirium) as described in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition, revised in 2013. An individual with co-occurring diagnoses of MI and major neurocognitive disorder would not be automatically considered to have ''primary dementia'' unless a qualified clinician has confirmed that the individual's primary diagnosis is a major neurocognitive disorder.

(3) *Intellectual Disability.* * * *

(i) A disability, with onset before age 18, which is characterized by significant limitations in both intellectual functioning and adaptive behavior, as described in the American Association on Intellectual and Developmental Disabilities' Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition (2010), incorporated by reference in paragraph (c) of this section; or

* * * * *

(c) *Incorporation by reference.* The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain the material from the sources listed below. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) Diagnostic and Statistical Manual of Mental Disorders, 5th edition (2013).

(2) Association on Intellectual and Developmental Disabilities' Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition (2010).

§ 483.104 [Amended]

■ 22. Section 483.104 is amended by removing the word ''annual''.

■ 23. Section 483.106 is revised to read as follows:

§ 483.106 Basic rules and responsibilities.

(a) *Purpose.* The preadmission screening and resident review process must result in determinations based on a physical and mental evaluation of each individual with MI or ID, that are described in §§ 483.112 and 483.114.

(b) *Requirement.* The State PASRR program must require:

(1) Identification of all applicants for admission to and residents of Medicaid certified NFs who have possible MI or ID;

(2) Preadmission screening of all eligible new admissions with MI or ID who apply to Medicaid NFs and tracking of individuals with possible MI or ID admitted under preadmission screening exceptions, in accordance with § 483.112; and

(3) Resident review of eligible residents with MI or ID in accordance with § 483.114.

(c) *State Medicaid agency responsibilities.* The State Medicaid agency is responsible for:

(1) Ensuring that the PASRR process is in compliance with this subpart;

(2) Executing and enforcing written interagency agreements with the State mental health and intellectual disability authorities as required at § 431.621 of this chapter;

(3) Designating an entity to perform evaluations of individuals with MI;

(4) Ensuring timely and accurate reporting of data in accordance with § 483.130(j); and

(5) All PASRR functions not otherwise assigned to another entity by statute or regulation.

(d) *Responsibility for evaluations and determinations.* The PASRR determinations of whether an individual requires NF level of services and whether specialized services are needed—

(1) For individuals with MI, must be made by the State mental health authority and be based on a physical and mental evaluation performed by a person or entity that is independent from the State mental health authority; and

(2) For individuals with ID, must be made by the State intellectual disability authority based on a physical and mental evaluation performed by the State intellectual disability authority or its designee.

(e) *Delegation of responsibility.* The State Medicaid agency and the State mental health and intellectual disability authorities may delegate by subcontract or otherwise the functions for which they are responsible to another entity only if:

(1) The State Medicaid agency and the State mental health and intellectual disability authorities retain ultimate control and responsibility for the performance of their statutory obligations;

(2) The entity to which the State Medicaid agency delegates the evaluation function for individuals with MI is independent from the State mental health authority; and

(3) The entity to which the delegation is made for evaluation and determinations is not a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

(f) *Adaptation to culture, language, ethnic origin.* Evaluations performed under PASRR and PASRR-related communications must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated. At no cost to the individual, evaluations should include as needed qualified

interpreters as required by section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964, and qualified sign language interpreters and auxiliary aids as required by section 1557 of the Affordable Care Act and section 504 of the Rehabilitation Act of 1973, to ensure there is effective communication.

■ 24. Section 483.108 is amended—

■ a. By revising the section heading.

■ b. In paragraph (a) by removing the term ''PASARR'' each time it appears and adding in its place the term ''PASRR''; and

■ c. By revising paragraphs (b) and (c).

The revisions read as follows:

§ 483.108 Relationship of PASRR to other Medicaid processes.

* * * * *

(b) In making their determinations, however, the State mental health and intellectual disability authorities must not use criteria relating to the need for NF level of services or specialized services that are inconsistent with this regulation and any supplementary criteria adopted by the State Medicaid agency.

(c) To the maximum extent practicable, in order to avoid duplicative testing and effort, information gathered by the PASRR process must be incorporated into the routine resident assessments required by § 483.20(b), whenever possible.

■ 25. Section 483.110 is revised to read as follows:

§ 483.110 Out-of-state arrangements.

The State in which the individual is a State resident (or would be a State resident at the time he or she becomes eligible for Medicaid), as defined in § 435.403 of this chapter, must pay for the PASRR and make the required determinations, in accordance with § 431.52(b) of this chapter.

■ 26. Section 483.112 is revised to read as follows:

§ 483.112 Preadmission screening of applicants for admission to NFs.

(a) *Preadmission Level I.* All individuals applying to Medicaid certified NFs as new admissions as defined in paragraph (b)(1) of this section, must receive a Level I identification screen (pursuant to § 483.126) prior to admission to a Medicaid certified NF.

(b) *Who must receive Level II preadmission screening.* New admissions with positive Level I screens (as described in § 483.126) who are applying to become a new resident of a Medicaid certified NF must receive preadmission screening prior to admission. Preadmission screening, also referred to in these regulations as Level II preadmission screening, consists of a Level II evaluation and determination in accordance with §§ 483.128 and 483.130.

(1) *New admission.* An individual is a new admission if he or she is admitted to any NF for the first time or does not qualify as a readmission as described in paragraph (b)(4) of this section or inter-facility transfer as described in paragraph (b)(5) of this section. With the exception of certain hospital discharges described in paragraph (b)(2) of this section or provisional admission described in paragraph (b)(3) of this section, new admissions are subject to Level II preadmission screening (as defined in paragraph (b) of this section).

(2) *Exempted hospital discharge.* Exempted hospital discharges are considered new admissions and require Level I identification screening (as described in § 483.126), but are exempted from Level II preadmission screening (as defined in paragraph (b) of this section).

(i) An exempted hospital discharge means an individual—

(A) Who is admitted to any NF directly from a hospital after receiving acute inpatient care at the hospital;

(B) Who requires NF services for the condition for which he or she received care in the hospital; and

(C) Whose attending physician has certified before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(ii) If an individual with possible MI or ID (as identified by the Level I identification process) who enters a NF as an exempted hospital discharge is later found to require more than 30 days of NF care, the State PASRR program must complete a resident review within 40 calendar days of admission.

(3) *Provisional admissions.* Provisional admissions are considered new admissions and require Level I identification screening (as described in § 483.126), but are not considered new residents, and may be exempted from Level II preadmission screening (as defined in paragraph (b) of this section).

(i) A provisional admission means an individual is being admitted to a NF for a short, time-limited stay. Provisional admissions are admissions for:

(A) Emergency stays due to emergency evacuations or protective services placements, with placement in the NF not to exceed 14 days;

(B) Delirium, where an accurate diagnosis cannot be made until the delirium clears, but is expected to clear within 14 days;

(C) Respite stays of up to 30 consecutive days to provide respite to in-home caregivers; or

(D) Convalescent stays of up to 30 days in which an applicant:

(*1*) Requires a stay in the NF to recover from an acute physical illness that required hospitalization; and

(*2*) Does not meet all the criteria for an exempted hospital discharge described in paragraph (b)(2) of this section.

(ii) If an individual with possible MI or ID (as identified by the Level I identification process) who enters a NF as a provisional admission is later found to require more than 14 days of NF care (for emergency admissions or delirium) or more than 30 days of NF care (for respite or convalescent stay admissions), the State PASRR program must complete a resident review in accordance with § 483.114 within 24 calendar days of admission (for emergency admissions or delirium) or within 40 calendar days of admission (for respite or convalescent stay admissions).

(4) *Readmissions.* An individual's status is deemed to be a ''readmission'' if he or she was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions who received Level I identification screens and Level II evaluation and determinations (if applicable) as new admissions do not need to repeat these processes upon readmission. Readmissions may still be subject to resident review as needed, in accordance with § 483.114.

(5) *Inter-facility transfers.* (i) An inter-facility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. With the exceptions noted in paragraphs (b)(5)(ii) and (iii) of this paragraph, residents receiving inter-facility transfers who previously received Level I identification screens as new admissions and Level II preadmission screening or resident review (if applicable) do not need a new Level I identification screen or Level II preadmission screening upon inter-facility transfer.

(ii) In cases of transfer of a resident to another NF, with or without an intervening hospital stay, the receiving NF is responsible for ensuring that copies of the resident's most recent Level I and, if applicable, Level II PASRR documentation accompany the transferring resident. If such paperwork is missing, or does not reflect the individual's current physical and mental condition, the individual must be treated as a new admission.

(iii) Individuals who are transferred from one NF to another with an intervening stay in an inpatient facility in which the individuals received inpatient psychiatric treatment or active treatment (as defined at § 483.440(a) of this part) must be treated as new admissions.

(c) *Timeliness of determination.* A preadmission Level II determination must be made electronically or in writing within an annual average of 9 calendar days of referral of the individual with possible MI or ID by whatever agent performs the Level I identification, under § 483.126, to the State PASRR program for preadmission screening. Level II preadmission screening determinations must be completed prior to the individual's admission to the NF.

(d) *Preadmission screening determinations.* NF applicants referred to the State PASRR program for determination must receive a determination of need for NF level of services and, if found to require NF level of services, a determination of need for specialized services, in accordance with § 483.130.

■ 27. Section 483.114 is revised to read as follows:

§ 483.114 Review of NF residents.

(a) *Referral for resident review.* Referral for resident review of NF residents is required:

(1) When a resident previously confirmed by a Level II evaluation and determination as having MI or ID experiences a possible significant change in physical or mental condition, as defined in § 483.20(b)(2)(ii);

(2) Upon the expiration of an exempted hospital discharge or provisional admission, as described in § 483.112(b)(2) and (3);

(3) When the NF identifies, through any means not otherwise described in this section, that a resident has a possible MI or ID (as described in § 483.126) that was not previously identified by a preadmission screen or resident review; or

(4) Upon other conditions designated by the State.

(b) *Level II resident review.* Resident review consists of a Level II evaluation and determination (also referred to in these regulations as Level II resident review), as described in §§ 483.128 and 483.130. The purpose of a resident review is to provide:

(1) First-time Level II evaluation and determination for residents with possible MI or ID who had not previously received Level II evaluation and determination, in order to make the determination required in § 483.114(e); or

(2) A new Level II evaluation and determination for residents who have previously been confirmed by Level II determination to have MI and ID, but are experiencing a significant change in physical or mental condition (as defined in § 483.20(b)(2)(ii)) such that the PASRR program will need to revise the findings of the previous Level II determination.

(c) *Timing for referral from NF.* NFs must notify the State PASRR program of the need for resident review within—

(1) 72 hours of when a resident experiences one of the conditions described in paragraphs (a)(1) or (3) of this section.

(2) 24 hours of the expiration of an exempted hospital discharge or provisional admission, as described in paragraph (a)(2) of this section.

(d) *Timeliness of determination.* A Level II resident review determination must be made electronically or in writing within an annual average of 9 calendar days from the date the resident was referred to the State PASRR program for resident review.

(e) *Resident review determinatio*n. NF residents referred to the State PASRR program for determination must receive a determination of need for NF level of services (or the need for the level of services provided by an resident psychiatric hospital for individuals under age 21, an institution providing medical assistance for individuals over age 65, or an ICF/IID), and a determination of need for specialized services, in accordance with § 483.130.

§ 483.116 [Amended]

■ 28. Section 483.116 is amended in paragraph (b) introductory text by removing ''for the mental illness or intellectual disability''.

■ 29. Section 483.118 is amended—

■ a. In the paragraph (b) subject heading, paragraph (b) introductory text, and the paragraph (c) subject heading by removing the phrase ''for MI or IID'';

■ b. By revising paragraph (c)(1) introductory text;

■ c. In paragraph (c)(1)(iv) by removing the phrase ''for the mental illness or intellectual disability'' '

■ d. By revising paragraph (c)(2) introductory text; and

■ e. In paragraph (c)(2)(iii) by removing the phrase ''for the mental illness or intellectual disability''.

The revisions read as follows:

§ 483.118 Residents and applicants determined not to require NF level of services.

* * * * *

(c) * * *

(1) *Long term residents.* For any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services as defined in § 483.120, the State must, in consultation with the resident's family or legal representative and caregivers.

* * * * *

(2) *Short term residents.* For any resident who requires only specialized services as defined in § 483.120 and who has not continuously resided in a NF for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

* * * * *

■ 30. Section 483.120 is revised to read as follows:

§ 483.120 Specialized services and NF services.

(a) *Definition.* Specialized services are State-defined services for NF residents with MI or ID as determined by the Level II process. These services must be—

(1) Developed by an interdisciplinary team, which includes, at minimum, a physician and a mental health or intellectual disability or developmental disability professional, as appropriate;

(2) Designed to address needs related to MI or ID;

(3) Of greater intensity, frequency or customization than the NF services for MI or ID mandated in subpart B of this part;

(4) Designed in a person-centered manner to promote self-determination and independence;

(5) Designed to prevent or delay loss of or support increase in functional abilities; and

(6) If applicable, designed to support the individual's goals of transition to the most integrated setting, if the individual is admitted to or remains in an institutional setting (including a NF, ICF/IID, inpatient psychiatric facility for individuals under age 22, or an IMD for individuals over 65).

(b) *Provision of specialized services.* The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or ID determined to need specialized services in accordance with §§ 483.130 and 483.134. The State must ensure that the services are provided by qualified personnel, and must periodically review the specialized services to ensure that they continue to be effective for the individual.

(c) *Provision of NF services.* The NF must provide mental health or intellectual disability services which are

of a lesser intensity than specialized service to all residents who need such services.

(d) *Duplication with NF services prohibited.* Specialized services delivered to NF residents may not duplicate NF services as described in subpart B of this part.

(e) *Coordination with plan of care.* For individuals who are admitted to or retained by a NF, NF services and specialized services recommended by the PASRR program must be coordinated with the individual's care plan, as required at § 483.21(b)(1)(iii).

(f) *Coordination with other program services.* If an individual requiring specialized services is discharged to another institutional setting or to a community program in which the individual is receiving long-term services and supports, services offered in those settings may satisfy the specialized services requirement.

■ 31. Section 483.122 is amended—

■ a. By revising paragraph (a) introductory text;

■ b. In paragraph (a)(1) by removing the phrase ''NF care'' and adding in its place the phrase ''NF level of services'';

■ c. In paragraph (a)(2) by removing the phrase ''NF services'' and adding in its place the phrase ''NF level of services'';

■ d. In paragraph (b) by removing the phrase ''annual review'' ' and adding in its place ''resident review''; and

■ e. In paragraph (b) by removing the reference ''§ 483.114(c)'' and adding in its place the reference ''§ 483.114(d)''.

The revision reads as follows:

§ 483.122 FFP for NF services.

(a) Basic rule. FFP is available in State expenditures for NF services provided to a Medicaid eligible individual subject to the requirements of this part only if the individual has been determined—

* * * * *

■ 32. Section 483.124 is revised to read as follows:

§ 483.124 FFP for specialized services.

(a) FFP is available for specialized services furnished to NF residents so long as the services:

(1) Have been described by the State in its approved State plan; and

(2) Do not duplicate NF services included in payments to the NF.

(b) [Reserved]

■ 33. Section 483.126 is revised to read as follows:

§ 483.126 Level I identification criteria.

(a) *Level I identification of individuals with possible MI or ID.* The State's PASRR program must have a Level I identification screening process to identify all individuals with possible MI or ID (as defined in paragraphs (b) and (c) in this section) who require Level II preadmission screening or Level II resident review.

(b) *Possible MI.* An individual may be considered to have a positive Level I identification screen for possible MI if any of the following criteria are met:

(1) The individual has received a diagnosis of MI that appears to meet the definition of MI in § 483.102(b)(2); or

(2) Within the last 12 months the individual has experienced significant challenges to interpersonal or cognitive functioning, such as hallucinations or delusions, attempts to harm self or others, or suicidal ideation; or

(3) Within the last 12 months the individual has required psychiatric treatment including residential treatment, partial hospitalization, or inpatient hospitalization; or

(4) The Level I identification screener cannot rule out possible MI based on the available data.

(c) *Possible ID.* A person is considered to have a positive Level I identification screen for possible ID if:

(1) The individual has received a diagnosis of ID or a related condition that appears to meet the definition of ID in § 483.102(b)(3); or

(2) Within the past 12 months the individual has received active treatment (as defined in § 483.440(a)) in an intermediate care facility for individuals with intellectual disabilities; or

(3) The Level I identification screener cannot rule out possible ID or related condition based on the available data.

(d) *Personnel.* The State may designate who can perform a Level I identification screen.

(e) *Data.* Level I identification screeners may conduct the screen using existing data, including hospital records, physicians' evaluations, election of hospice status, school records, records of community mental health centers or community intellectual disability or developmental disability providers, and other information provided by the individual or the individual's legally authorized representative. Level I identification screeners must certify that the data supports the screener's conclusion regarding whether the individual has possible MI or ID and, if applicable, whether the individual qualifies for an exempted hospital discharge or provisional admission, as defined in § 483.112.

(f) *Referral after positive identification.* Individuals with possible MI or ID must be referred to the State PASRR program for Level II preadmission screening or resident review. Individuals who qualify for a preadmission screening exception per § 483.112 must still be referred to the Level II authority so it may track the individual's need for a resident review, as described in § 483.112(b)(2) and (3).

(g) *Documentation of completed identification screen.* The State's performance of the Level I identification function must provide a copy of the completed Level I identification screen to the individual, the individual's legal representative and the admitting or retaining NF (if applicable). The Level I identification screen must clearly indicate whether the individual is being referred to the State PASRR program for Level II evaluation and determination.

■ 34. Section 483.128 is revised to read as follows:

§ 483.128 Level II PASRR evaluation criteria.

(a) *Purpose.* The purpose of the evaluation is to provide the SMHA or SIDA with enough information to:

(1) Confirm the individual has MI or ID, as defined in § 483.102, or has experienced a qualifying significant change in physical or mental condition, as defined in § 483.114(b)(2); and

(2) Make the determinations regarding need for NF level of services and specialized services as required by § 483.130(c) and (d).

(b) *Personnel.* The State may designate the mental health or intellectual or developmental disability professionals who perform the evaluations. The State must ensure that:

(1) Evaluators are qualified to make or confirm clinical diagnoses; and

(2) Evaluations are conducted by appropriate personnel in accordance with § 483.106(d).

(c) *Interdisciplinary coordination.* When parts of a PASRR evaluation are performed by more than one evaluator, or are performed for individuals with co-occurring possible or known MI and ID, the State must ensure that there is interdisciplinary coordination among the evaluators.

(d) *Data to confirm Level I identification and significant change in condition.* (1) For individuals with positive Level I screens for possible MI or ID, including individuals receiving resident review after an expired exempted hospital discharge or provisional admission as described in § 483.112(b), evaluators must collect and review data reflecting the individual's current condition in order to confirm that the individual has MI or ID. This data at a minimum must include-

(i) A review of current medical and psychiatric conditions and current medications;

(ii) A medical history and physical exam that has been performed by a qualified clinician as identified by the state;

(iii) A history of medication and prescription and illegal drug use;

(iv) For MI evaluations, an evaluation of psychiatric history performed by a qualified mental health professional;

(v) For ID evaluations, an evaluation of intellectual functioning performed by a licensed psychologist or psychiatrist; and

(vi) Other documentation or information provided to or gathered by the evaluator deemed necessary to confirm a diagnosis.

(2) For individuals identified as needing a Level II resident review due to a significant change of physical or mental condition(s) (as defined in § 483.114(b)(2)) evaluators must collect and review at a minimum recent medical, psychiatric and medication records, recent resident assessments performed under § 483.20(b), and other documents or information provided to or gathered by the evaluator deemed necessary to confirm the significant change.

(e) *Data for evaluations needed for NF level of services and specialized services.* The data relied on for evaluations for the NF level of services and specialized services, described in §§ 483.132 and 483.134, respectively, should include:

(1) Review of the relevant history of the physical status.

(2) Focused relevant physical examination (either as recorded in chart or conducted by the evaluator).

(3) Review of relevant psychiatric history including diagnoses, date of onset, treatment history.

(4) Focused relevant mental status examination, including observations and professional opinion regarding intellectual and memory functioning, impulse control, irritability and ability to be redirected, likelihood that individual may pose a threat to self or others, agreeableness to participate in activities of daily living (that is, how likely the patient is to resist activities such as bathing, eating, grooming, etc.).

(5) Functional assessment (activities of daily living and instrumental activities of daily living).

(6) Psychosocial evaluation (for example, living arrangements, paid and unpaid supports);

(7) Social, academic and vocational history;

(8) Service plans from community-based providers, if applicable;

(9) Relevant sections of the individual's plan of care (as defined in § 483.21(b)) if the individual is a NF resident; and

(10) Person-centered interviews including—

(i) The individual being evaluated;

(ii) The individual's legal representative, if one has been designated under State law; and

(iii) The individual's family, friends or caregivers, at the individual's discretion.

(f) *Face-to-face interviews.* The person-centered interviews required in paragraph (e)(10) of this section must be conducted face-to-face. Telehealth evaluations conducted via live videoconferencing may be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent completion of the determination within the timeframe required by §§ 483.112(c) and 483.114(e).

(g) *Preexisting data.* Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, to supplement and verify the currency and accuracy of existing data, the State's PASRR program may need to gather additional information necessary to assess proper placement and treatment.

(h) *Findings.* Findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(i) *Evaluation report.* The evaluation findings and recommendations must be issued in the form of a written evaluative report which—

(1) Identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including any specific intellectual disability or mental health services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs;

(4) If specialized services are recommended, identifies the specific intellectual disability or mental health services required to meet the evaluated individual's needs; and

(5) Includes the bases for the report's conclusions.

(j) *Evaluation report: Terminated evaluations.* If an evaluator terminates an evaluation pursuant to § 483.128(m) of this section, findings must be issued in the form of an abbreviated written evaluative report which—

(1) Identifies the name and professional title of the person performing the evaluation;

(2) Explains the reason for the termination of the evaluation;

(3) Identifies, to the extent possible, based on the available data, NF services, including any behavioral health or specialized psychiatric rehabilitative services (as described in §§ 483.40 and 483.65, respectively), that may be needed; and

(4) Includes the bases for the report's conclusions.

(k) *Interpretation of findings to individual.* The findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

(l) *Evaluation report submission.* The evaluator must send a copy of the evaluation report to the State mental health or intellectual disability authority, as appropriate, in sufficient time for the State authorities to meet the times identified in § 483.112(c) for preadmission screens and § 483.114(d) for resident reviews;

(m) *Termination before evaluations for NF level of services and specialized service*s. The evaluation may be terminated without further evaluation of the need for NF level of services or specialized services (as described in §§ 483.132 and 483.134) and an abbreviated evaluation report issued per paragraph (j) of this section if the evaluator finds that the individual being evaluated—

(1) Does not have MI or ID within the definition of § 483.102;

(2) Did not experience a qualifying significant change in physical or mental condition as defined in § 483.114(b)(2); or

(3) Has a severe physical illness (such as ventilator dependency, advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), a terminal illness (as defined in § 418.3 of this chapter) or dementia (as defined in § 483.102(b)(2)), which results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services or for specialized

services as required in §§ 483.132 and 483.134.

■ 35. Section 483.130 is revised to read as follows:

§ 483.130 Level II PASRR determination criteria.

(a) *Basis for determinations.* Determinations made by the State mental health or intellectual disability 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 § 483.128(e) of this section.

(b) *Personnel.* The State may designate the medical, mental health, intellectual disability, or developmental disability professionals who perform the determinations. Personnel cannot have a direct or indirect relationship with a NF.

(c) *Determination of need for NF level of services.* An individual with MI or ID shall be determined to need NF level of services only when:

(1) The individual meets the State's criteria for NF admission;

(2) The individual's total needs do not exceed the services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services; and

(3) Placement in a home and community based program cannot be achieved because:

(i) The individual's total needs pursuant to § 483.128(e) exceed or cannot currently be accommodated by the State's home and community based programs: or

(ii) The individual does not want community placement.

(d) *Determination of need for specialized services.* An individual with MI or ID shall be determined to need specialized services if the individual's total needs are such that services described in § 483.120(a) are necessary to maintain the individual in or transition the individual to the most integrated setting possible, and the individual would benefit from such services.

(e) *Recording determinations.* All determinations made by the State mental health and intellectual disability authority must be recorded in the individual's record.

(f) *Notice of determination.* The State mental health or intellectual disability authority must notify in writing or electronically 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 physician most involved in the individual's medical care, as identified by the individual; and

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

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

(1) Whether the individual was found to have MI or ID (as defined in § 483.102 of this subpart) or a significant change of physical or mental condition (as described in § 483.114(b)(2) of this subpart);

(2) If the individual was found to have MI or ID or a significant change in physical or mental condition—

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

(ii) Whether specialized services are needed;

(iii) The placement options that are available to the individual consistent with these determinations, as described in §§ 483.116 and 483.118;

(3) The rights of the individual to appeal the determination under subpart E of this part; and

(4) A copy of the evaluation report generated in accordance with § 483.128(i) or (j), as appropriate.

(h) *Record retention.* The State PASRR system must maintain records of evaluations and determinations in order to support its determinations and actions and to protect the individual's appeal rights related to PASRR determinations.

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

(j) *Reporting.* The State must report to the Secretary on an annual basis:

(1) The annual averages for completing determinations as required in §§ 483.112(c) and 483.114(d).

(2) The number of people with MI or ID as defined in § 483.102 who are diverted and who are discharged from NFs each year in accordance with § 483.118 because the PASRR program has determined that the individual:

(i) Does not meet, or no longer meets, the State's criteria for NF admission,

(ii) Requires the level of services offered in another institutional setting; or

(iii) Elects to receive services in a non-institutional setting.

(3) The State may report separate annual averages for the determinations made by the State mental health and intellectual disability authorities as required in paragraph (j)(1) of this section and report separately for persons with MI and ID the outcomes required in paragraph (j)(2) of this section.

(4) The Secretary may grant an exception to the timeliness standard of §§ 483.112(c) and 483.114(d) or of the annual reporting requirement as described in this section at the Secretary's discretion.

(5) Reports should be submitted to the Secretary on March 1 of each year, and report on data for previous calendar year.

■ 36. Section 483.132 is revised to read as follows:

§ 483.132 Evaluating the need for NF level of services.

(a) *Evaluation for appropriate settings.* For each NF applicant for admission to a NF and each NF resident who has MI or ID, the evaluator must assess whether—

(1) The individual has the option of placement in a home and community based services program and a non-institutional placement is desired, or

(2) The individual's total needs are such that they can be met only on an inpatient basis and

(i) The NF (with or without specialized services) is an appropriate institutional setting for meeting those needs; or

(ii) The NF is not the appropriate setting for meeting the individual's needs and another institutional setting is an appropriate setting for meeting those needs.

(b) *Evaluation of preferences.* The evaluator must assess the individual's preferences for where the individual may receive long term services and supports, including whether the individual and the individual's legal representative, if applicable, have received information about the types of long term care setting options available to the individual.

(c) *Evaluation for NF services.* For individuals for whom NF placement is considered an appropriate option by the evaluator (per the evaluation in paragraphs (a) and (b)) of this section), the evaluator must assess what services for MI or ID the individual may need which are offered as part of standard NF services, including behavioral health services and specialized rehabilitative services described at §§ 483.40 and 483.65, respectively.

(d) *Data.* At a minimum, the data relied on to perform the evaluation must include the data listed in § 483.128(e).

(e) *Relationship to NF level of care.* Evaluations to determine whether an individual meets the State's NF level of

care criteria are not part of the PASRR process, but PASRR evaluators should confirm that the individual has been accurately assessed as meeting the State's NF level of care, and may consider the individual's level of care assessment as part of the analysis of the individual's total needs as described in this section.

■ 37. Section 483.134 is revised to read as follows:

§ 483.134 Evaluating the need for specialized services.

(a) *Basic rule.* For each NF applicant with MI or ID who is recommended for NF placement per § 483.132, and each NF resident with MI or ID, the evaluator must assess:

(1) The individual's ability to engage in:

(i) Activities of daily living; and

(ii) Instrumental activities of daily living.

(2) The level of support that would be needed to assist the individual to perform these activities successfully in the NF or while living in the community; and

(3) Whether the level of support needed can be provided by standard NF services or whether specialized services, as defined at § 483.120, are required.

(b) *Review of specialized services.* If specialized services are already being provided to a NF resident, the evaluator must assess whether changes need to be made to the specialized services included in the resident's care plan.

(c) *Data.* At a minimum, the data relied on to perform the evaluation must include the data listed in § 483.128(e).

§ 483.136 [Removed and Reserved]

■ 38. Section 483.136 is removed and reserved.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Resident Review (PASRR) Actions

■ 39. The heading for subpart E is revised to read as set forth above.

■ 40. Section 483.204 is amended by revising paragraph (a)(2) to read as follows:

§ 483.204 Provision of a hearing and appeal system.

(a) * * *

(2) An individual who has been adversely affected by any Level I identification or Level II PASRR determination made by the State under subpart C of this part to appeal that Level I identification screen or Level II determination.

* * * * *

Dated: January 8, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 24, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–03081 Filed 2–14–20; 11:15 am]

BILLING CODE 4120–01–P