**R414. Health and Human Services, Integrated Healthcare.**

**R414-502. Nursing Facility Levels of Care.**

**R414-502-1. Purpose and Authority.**

(1) This rule defines the levels of care provided in nursing facilities.

(2) Sections 26B-1-213 and 26B-3-108 authorize this rule.

**R414-502-2. Definitions.**

The definitions in Section R414-1-2 and Section R414-501-2 apply to this rule.

**R414-502-3. Approval of Level of Care.**

(1) The Department shall document that at least two of the following factors exist when it determines whether an applicant has mental or physical conditions that require the level of care provided in a nursing facility or equivalent care provided through a Medicaid home and community-based waiver program:

(a) due to diagnosed medical conditions, the applicant requires substantial physical assistance with daily living activities above the level of verbal prompting, supervising, or setting up;

(b) the attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care, or equivalent care provided through a Medicaid home and community-based waiver program; or

(c) the medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of a Medicaid home and community-based waiver program.

(2) The Department shall determine whether at least two of the factors described in Subsection (1) exist by reviewing the following clinical documentation:

(a) a current history and physical examination completed by a physician;

(b) a comprehensive resident assessment completed, coordinated, and certified by a registered nurse;

(c) a social services evaluation that meets the criteria in 42 CFR 456.370 and completed by a person licensed as a social worker, or higher degree of training and licensure;

(d) a written plan of care established by a physician;

(e) a physician's written certification that the applicant requires nursing facility placement; and

(f) documentation indicating that less restrictive alternatives or services to prevent or defer nursing facility care have been explored.

(3) If the Department finds that at least two of the factors described in Subsection (1) exist, the Department shall determine whether the applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid home and community-based waiver program. Meeting medical eligibility for nursing facility services does not guarantee Medicaid payment. Financial eligibility and other home and community-based waiver targeting criteria apply.

**R414-502-4. Approval of Differential Levels of Care.**

The Department shall pay nursing facilities a rate differential for residents who meet nursing facility level of care and any of the criteria listed in Sections R414-502-5 through R414-502-7.

**R414-502-5. Criteria for Intensive-Skilled Care.**

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid reimbursement for intensive-skilled care.

(1) The applicant meets the need for skilled services provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the Centers for Medicare and Medicaid Services to furnish skilled nursing facility care in the Medicare program.

(2) The following routine-skilled care does not qualify as intensive-skilled care in making a determination under this section:

(a) skilled nursing services described in 42 CFR 409.33(b);

(b) skilled rehabilitation services described in 42 CFR 409.33(c);

(c) routine monitoring of medical gases after a therapy regimen;

(d) routine enteral tube and gastronomy feedings; and

(e) routine isolation room and techniques.

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for other reasons other than level of care requirements.

(4) The applicant requires and receives at least five additional hours of direct, licensed professional nursing care daily, including a combination of specialized care and services, and assessment by a registered nurse and 24-hour observation.

(5) The applicant meets criteria for intensive-skilled care if the attending physician makes any one of the following determinations:

(a) there is no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility, or the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days;

(b) an interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential; and

(c) except in extraordinary circumstances, the applicant has been hospitalized immediately before admission to the nursing facility.

(6) The applicant has continuously required skilled care, either through Medicare or Medicaid, since admission to the nursing facility.

(7) The attending physician has written and signed progress notes at the time of each physician visit that reflect the current medical condition of the applicant.

(8) An applicant who was previously approved for intensive-skilled care and later downgraded to a lower care level may return to intensive-skilled care instead of being hospitalized in an acute care setting if:

(a) a complication occurs that involves the condition for which the applicant was originally approved for intensive-skilled care; and

(b) it has been less than 30 days since the termination of the previous intensive-skilled care.

**R414-502-6. Criteria for Behaviorally Complex Program.**

For the Department to authorize Medicaid coverage for the Behaviorally Complex Program, a nursing facility must:

(1) demonstrate that the resident has a history of persistent disruptive behavior that is not easily altered and requires an increase in resources from nursing facility staff as documented by one or more of the following behaviors:

(a) the resident engages in wandering behavior with no rational purpose, is oblivious to self needs or safety, and places self and others at significant risk of physical illness or injury;

(b) the resident engages in verbally abusive behavior where the resident threatens, screams, or curses at others;

(c) the resident presents a threat of hitting, shoving, scratching, or sexually abusing other residents; or

(d) the resident engages in socially inappropriate and disruptive behavior by doing of one of the following:

(i) makes disruptive sounds, noises, and screams;

(ii) engages in self-abusive acts;

(iii) engages in inappropriate sexual behavior;

(iv) disrobes in public;

(v) smears or throws food or feces;

(vi) hoards; and

(vii) rummages through others belongings.

(e) the resident refuses assistance with medication administration or activities of daily living; or

(f) the resident's behavior interferes significantly with the stability of the living environment and interferes with other residents' ability to participate in activities or engage in social interactions; and

(2) demonstrate that an appropriate behavioral intervention program has been developed for the resident as follows:

(a) behavior intervention programs shall:

(b) plan the systematic application of methods and experimental findings of behavioral science with the intent to reduce observable negative behaviors;

(c) incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(d) be conducted following identification and, if feasible, remediation of environmental and social factors that likely precipitate or reinforce the inappropriate behavior;

(e) incorporate a process for identifying and reinforcing a desirable replacement behavior;

(f) include a program data sheet; and

(g) include a behavior baseline profile that consists of the following:

(i) include the applicant name;

(ii) include the date, time, location, and specific description of the undesirable behavior;

(iii) include persons and conditions present before and at the time of the undesirable behavior;

(iv) demonstrate interventions for the undesirable behavior and their results; and

(v) provide recommendations for future action; and

(h) the interdisciplinary team shall include a behavior intervention plan that consists of the following:

(i) the applicant's name, the date the plan is prepared, and when the plan will be used;

(ii) the objectives stated in terms of specific behaviors;

(iii) the names, titles, and signatures of persons responsible for conducting the plan; and

(iv) the methods and frequency of data collection and review.

**R414-502-7. Criteria for Specialized Rehabilitative Services for Residents with Intellectual Disabilities.**

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an applicant for specialized rehabilitative services:

(1) the nursing facility must arrange for specialized rehabilitative services for members with intellectual disabilities who are residing in nursing homes;

(2) the individual must meet the criteria for Nursing Facility III Level of Care, excluding residents who receive the intensive-skilled or behaviorally complex rate;

(3) the individual must have a Preadmission Screening and Resident Review (PASRR) Level II Evaluation that indicates the resident needs specialized rehabilitation. The nursing facility must assure that needed services are provided by qualified personnel under the written order of a physician; and

(4) the nursing facility must document the need for specialized rehabilitative services in the resident's comprehensive plan of care.

(5) Specialized rehabilitative services may include:

(a) medication management and monitoring effectiveness and side effects of medications prescribed to change inappropriate behavior or to alter manifestations of psychiatric illness;

(b) the provision of a structured environment to include structured socialization activities to diminish tendencies toward isolation and withdrawal;

(c) development, maintenance, and implementation of programs designed to teach individuals daily living skills that may include:

(i) grooming and personal hygiene;

(ii) mobility;

(iii) nutrition, health, and self-feeding;

(iv) medication management;

(v) mental health education;

(vi) money management;

(vii) maintenance of the living environment;

(viii) occupational, speech, and physical therapy obtained from providers outside the nursing facility who specialize in providing services for persons with intellectual disabilities at the intensity level necessary to attain the desired goals of independence and self-determination;

(d) formal behavior modification programs; and

(e) development of appropriate-person support networks.

**R414-502-8. Criteria for Intermediate Care Facility for Persons with Intellectual Disability.**

An intermediate care facility for persons with intellectual disabilities (ICF/ID) must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an individual who resides in an ICF/ID.

(1) The individual must have a diagnosis of:

(a) an intellectual disability in accordance with 42 CFR 483.102(b)(3); or

(b) a condition closely related to intellectual disability in accordance with 42 CFR 435.1010.

(2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with intellectual disabilities. The diagnosis identified in Subsection (1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:

(a) self-care, wherein the individual requires assistance, training, and supervision to eat, dress, groom, bathe, or use the toilet;

(b) the use of receptive and expressive language, wherein the individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or cannot follow two-step instructions;

(c) difficulty learning, wherein the individual has a valid diagnosis of an intellectual disability based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, 1994;

(d) lack of mobility, wherein the individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device;

(e) lack of self-direction, the individual is a danger to self or others without supervision, and wherein the individual is seven through 17 years of age and significantly at risk in making age-appropriate decisions, or, in the case of an adult, the individual cannot provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent;

(f) lack of capacity for independent living, wherein the individual who is seven through 17 years of age cannot locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills; or

(g) lack of economic self-sufficiency, wherein the individual receives disability benefits, cannot work more than 20 hours a week, or is paid less than minimum wage without employment support. This does not apply to children under 18 years of age.

(3) The Department considers a child under seven years of age to be at risk for functional limitation in three or more areas of major life activity. The child may satisfy the criteria for functional limitations if the child has been diagnosed with an intellectual disability or a condition closely related to intellectual disability. The Department does not require separate documentation of the limitations defined in Subsection (2) until the child turns seven years of age.

(4) To meet the criteria of a condition closely related to an intellectual disability, an individual must manifest the condition before the individual turns 22 years of age and the condition must be likely to continue. The following criteria further specify the Department's consideration of a closely related condition.

(a) The Department does not require an individual to demonstrate an intellectual impairment of cerebral palsy, but the individual must demonstrate functional limitations as described in Subsection (2).

(b) The Department does not require an individual to demonstrate an intellectual impairment of epilepsy, but the individual must demonstrate functional limitations as described in Subsection (2).

(5)(a) The Department requires an individual to meet the following criteria under the category of autism spectrum disorder:

(i) persistent deficits in social communication and social interaction across contexts, not accounted for by general developmental delays, and manifested by the following:

(A) deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction;

(B) deficits in non-verbal communicative behaviors used for social interaction, ranging from poorly integrated verbal and non-verbal communication through abnormalities in eye contact and body language, or deficits in understanding and use of non-verbal communication to total lack of facial expression or gestures; and

(C) deficits in developing and maintaining relationships appropriate to developmental level, ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play and in making friends, to an apparent absence of interest in people; and

(ii) restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:

(A) stereotyped or repetitive speech, motor movements, or use of objects;

(B) excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change;

(C) highly restricted, fixated interests with abnormal intensity or focus, such as strong attachment to or preoccupation with unusual objects and excessively circumscribed or perseverative interests; or

(D) hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment, such as apparent indifference to pain, heat and cold, adverse response to specific sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects.

(b) Symptoms must be present in early childhood.

(c) Symptoms must together limit and impair everyday functioning.

(d) An individual must have a severe brain injury that is the result of an acquired brain injury, traumatic brain injury, stroke, anoxia, or meningitis.

(e) An individual must have a diagnosis of fetal alcohol syndrome.

(f) An individual must have chromosomal disorders such as Down syndrome, fragile x syndrome, and Prader-Willi syndrome.

(g) Individuals with other genetic disorders that include Williams syndrome, spina bifida, and phenylketonuria may qualify.

(6) The following conditions do not qualify as conditions closely related to intellectual disabilities. Nevertheless, the Department may consider a person with any of these conditions if there is a simultaneous occurrence of a qualifying condition as cited in Subsections (1)(a) and (b):

(a) learning disability;

(b) behavior or conduct disorders;

(c) substance abuse;

(d) hearing or vision impairment;

(e) mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(f) borderline intellectual functioning, a related condition that does not result in an intellectual impairment, developmental delay, or at risk designations;

(g) physical problems such as multiple sclerosis, muscular dystrophy, spinal cord injuries, and amputations;

(h) medical health problems such as cancer, acquired immune deficiency syndrome, and terminal illnesses;

(i) neurological problems not associated with intellectual deficits. Examples include Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability; and

(j) mild traumatic brain injury such as minimal brain injury and post-concussion syndrome.

(7) An individual who was admitted to an ICF/ID before August 27, 2009, is eligible for continued stay as long as the individual continues to meet the requirements in effect before that date. A resident who was admitted to an ICF/ID before August 27, 2009, is only required to meet the revised eligibility criteria if there is a break in stay wherein the individual resides in a setting that is not a Medicaid-certified ICF/ID facility or hospital.

(8) Before admission to an ICF/ID, the facility must provide each potential resident with a two-sided fact sheet known as a Community Supports Waiver and ICF/ID Fact Sheet or Form IFS 10, which offers information about ICFs/IDs and the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must also contain a Freedom of Choice Acknowledgement Form or Form IFS 20, signed by the resident or legal representative, which verifies that the facility provided the Form IFS 10 before admission.

**KEY: Medicaid**

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