

The Power and Possibility of PASRR Webinar Series

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*Please note that you **must** attend the entirety (90 minutes) of this webinar if you wish to receive Continuing Education credits.*



The 30th Anniversary of PASRR



A LOOK AT PASRR'S PAST AND FUTURE



Learning Objectives

1. Understand key touch points in PASRR's history since 1987
2. Understand how PASRR implementation has changed over time
3. Understand PASRR's historical accomplishments and challenges
4. Understand the considerations for PASRR's future.

Sometimes you need to look back –
to see how far you have come.

1987



1987, continued

- Year End Close Dow Jones Industrial Average **1938**
- Average Income per year **\$24,350.00**
- Average Monthly Rent **\$395.00**
- Average Price for new car **\$10,3055.00**
- 1 gallon of gas **89 cents**

PASRR – The Beginning



KEY TOUCHPOINTS



Key Touchpoints

Medicaid Creation

- 1965 - President Lyndon B. Johnson signed the Social Security Amendments of 1965. It created Medicaid to fund health care for low-income families. It did not pay for care in state mental health hospitals.
- In response to the incentive provided by federal Medicaid reimbursement, community based general hospital psychiatric beds grew rapidly, and states moved individuals to nursing homes to capture Medicaid reimbursement that was not available to state mental health hospitals.

Key Touchpoints

1984 – Litigation and Quality of Care

1984 decision by the Tenth Circuit Court of Appeals in *Smith v. Heckler* required the Health Care Financing Administration (HCFA) to modify the federal certification regulations so that they were more effective in assuring quality of care in nursing homes. The federal district court found that:

- (1) serious deficiencies existed in some nursing homes, which it labeled "orphanages for the aged,"
- (2) the existing survey system was facility-oriented rather than resident-oriented, and
- (3) it was feasible for Health and Human Services (HHS) to develop a survey system focusing on resident needs and care delivery.

HCFA is now CMS!

Key Touchpoints 1986

Institute of Medicine Committee (IOMC) Study and Report on Nursing Home Regulations

The study's purpose was to recommend changes in regulatory policies and procedures to enhance the ability of the regulatory system to assure that nursing home residents receive satisfactory care.

IOC Report Findings

- Quality of care and quality of life in many nursing homes was not satisfactory.
- More effective government regulation could substantially improve quality in nursing homes. A stronger federal role was essential.
- Specific improvements were needed in the regulatory system.
- *The regulatory system should be dynamic and evolutionary in outlook.*

IOC Report Recommendations

- A stronger federal role in improving quality
- Revisions in performance standards, the inspection process, and remedies to improve nursing home services
- Better training of nursing home staff
- Improved assessment of resident needs

IOC Report Recommendation

New Conditions of Participation - Residential Assessment

- Recommendation 3-2: Require that in every certified facility a registered nurse who has received appropriate training for the purpose shall be responsible for seeing that **accurate assessments of each resident are done upon admission, periodically, and whenever there is a change in resident status.** The results should be recorded and retained in a standard format in the resident's medical record.

PASRR now informs the NF Residential Assessment!

Key Touchpoints – Federal Leadership 1987 - 1992

- 1987 – [Omnibus Budget Reconciliation Act of \(OBRA '87\)](#)
- 1989 – [CMS Guidance to States on “PASARR”](#)
- 1990 – [Omnibus Budget Reconciliation Act of 1990](#)
- 1992 – [Code of Federal Regulations \(CFR\) for PASARR](#)

Omnibus Budget Reconciliation Act of 1987 (OBRA'87)

- **Subtitle C: Nursing Home Reform - Part 1: Medicare Program** - Amended the Medicare program to set forth requirements for skilled nursing facilities (other than facilities for the mentally retarded*), including requirements that such facilities: (1) *primarily engage in providing residents with nursing care or rehabilitation services directed toward residents' mental, psychosocial, and physical well-being;*

*All future references to historical language should be interpreted to reflect change in terminology (intellectual disability) based on Rosa's Law

Omnibus Budget Reconciliation Act of 1987 (OBRA'87), continued

- **Part 2: Medicaid Program** - Amended the Medicaid program to establish a single set of requirements for skilled nursing and intermediate care facilities (other than facilities for the mentally retarded), and to refer to such facilities as "nursing facilities."

Omnibus Budget Reconciliation Act of 1987 (OBRA'87), continued

Sets forth requirements for nursing facilities, including requirements that such facilities:

- Maintain a quality assessment and assurance committee
- Provide care in accordance with a written plan of care
- Employ a full-time social worker if they have over 120 beds
- Not admit any new resident, after 1988, who is mentally ill or retarded unless the State mental health authority or State mental retardation authority deems such individual to require nursing facility services and decides whether the individual requires active treatment for mental illness or retardation

Omnibus Budget Reconciliation Act of 1987 (OBRA'87), continued

- Required that State mental health authorities conduct an annual review of mentally ill or retarded residents to determine whether such residents require nursing facility services and whether they require **active treatment** for mental illness or intellectual disability
- Directed that such preadmission and annual reviews be conducted in accordance with criteria to be developed by the Secretary by October 1, 1988
- Required nursing facilities to provide for the active treatment of residents in need of treatment for mental illness or intellectual disability regardless of their continued need for nursing facility services or their discharge from such facility

Omnibus Budget Reconciliation Act of 1987 (OBRA'87), continued

- Gave long-term residents who did not require nursing facility services, but who required active treatment, the choice of remaining in the facility or receiving covered services in an alternative setting.

CMS Guidance on PASRR – The beginning of a Person-centered PASRR process

- CMS provided detailed guidance in May of 1989 on how states should meet the PASRR requirements detailed in OBRA'87.
- Guidance served as the foundation for subsequent federal regulations.

Guidance may be found in [Chapter 4 at 4250-4253](#) of the CMS paper based manual details for title: 45

Person-centered guidance examples

Active Treatment.--A continuous program for each client with mental retardation (MR) or mental illness (MI) which includes aggressive, consistent implementation of a program of specialized and generic training, specific therapies or treatments, activities, health services and related services, as ***identified in an individualized plan of care.***

- MI - The prescribed components of the **individualized active treatment** program must be provided by a physician *or other qualified mental health professionals.*
- MR - the individual program plan must be developed and supervised by an interdisciplinary team that represents areas that are relevant to identifying the client's needs and to ***designing programs that meet the client's needs.***

Person-centered guidance examples, continued

- “Active treatment is a concept that **embraces the whole range of services a patient needs**. Individual components are integrated and directed toward achieving the goals established in each individual resident’s plan of care.”
- “We believe that active treatment is a concept which embraces a wide range of services and involves **a complex set of competent interactions among the facility’s staff and between the staff and the resident.**”

Omnibus Budget Reconciliation Act of 1990

Part 5: Provisions Relating to Nursing Home

Reform - Made technical and miscellaneous amendments to Medicaid requirements imposed on nursing facilities by the Omnibus Budget Reconciliation Act of 1987, particularly nurse aide training and annual resident review requirements.

- Substitution of “Specialized Services” for “Active Treatment”

1992 PASRR Regulations



Did You Know?

- PASRR was created before Congress established the Substance Abuse and Mental Health Services Administration (SAMHSA) in 1992 to make substance use and mental disorder information, services, and research more accessible.
- The Social Security Act asked CMS to consult with the National Institute of Mental Health (NIMH) on the definition of serious mental illness.
- In 1993, SAMHSA promulgated a [definition of SMI](#) that is widely used (but is somewhat different from PASRR's definition)

1992 PASRR Regulations*

§ 483.104 State plan requirement: As a condition of approval of the State plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§483.100 through 438.138.

§ 483.106 Basic rule. (a) *Requirement.* The State PASARR program must require—(1) ***Preadmission screening of all individuals with mental illness or mental retardation who apply as new admissions*** to Medicaid NFs on or after January 1, 1989; (2) **Initial review, by April 1, 1990**, of all current residents with mental retardation or mental illness who entered Medicaid NFs prior to January 1, 1989; and (3) **At least annual review**, as of April 1, 1990, of all residents with mental illness or mental retardation, regardless of whether they were first screened under the preadmission screening or annual resident review requirements.

* [PASRR 101 webinar](#) – March 2018 for full overview of current regulations

1992 PASRR Regulations, continued

§ 483.106(d)(1) Basic rule. Defined distinct PASRR evaluation process for Mental Health (MH) and Intellectual Disability (ID) Authorities.

- Required that MH evaluation be performed by a person or entity independent of the MH Authority.
- Allowed the ID Authority to perform the evaluation.

§ 483.106(e)(3) Basic rule. Defined distinct delegation options for the MH and ID Authorities

- MH Authority not permitted to delegate the evaluation function

Clarification on Specialized Services

- (b) *Who must receive 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 MR whose needs are such that continuous supervision, treatment and training by qualified mental health or mental retardation personnel is necessary, as identified by the screening provided in [§ 483.130](#) or [§ 483.134](#) and [§ 483.136](#).

Alternative Disposition Plan - Did You Know?

Allowed individuals who PASARR determined did not meet NF Level of Care (LOC), but needed specialized MH or ID services, to remain in the NF, without risk of non-compliance with federal regulations, provided

- If, before April 1, 1989, the State and the Secretary had entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement.
- The State could revise the agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement that did not require NF level of services **had to be discharged from the facility by not later than April 1, 1994.**

[§483.118\(2\)](#) of PASRR regulations

[1919C\(&\)E](#) of Social Security Act

Key Touchpoints – Federal Legislation & Rules 1996 - 2016

- 1996 - [Social Security Act Revisions](#)
- 1997 – [Omnibus Budget Reconciliation Act of 1997](#)
- 2016 - [New Conditions of Participation for Long Term Care Facilities](#)

Social Security Act Revision - 1996

- Repeal of requirement for Annual Resident Review.
- Added requirement for Notification of State Authority promptly after a significant change in the physical or mental condition of a resident with a mental illness or intellectual disability.
- Added requirement that review must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority.

Omnibus Budget Reconciliation Act of 1997

Summarized and Incorporated Social Security Act of 1996 changes:

- Repeal of Annual Resident Review
- Notification on significant change in condition
- Prompt review after NF notifies the MH or ID Authority

New Conditions of Participation - 2016

The new Conditions of Participation include an emphasis at [§483.21](#) on specialized services and the importance of NF plans of comprehensive and person-centered care planning, including:

- Incorporating PASRR recommendations where applicable
- Documenting rationale for any disagreement on PASRR recommendations
- Services **provided or arranged** are delivered by individuals who have the skills, experience and knowledge to do a particular task or activity
- Referral for Level II resident review upon significant change in condition

PASRR and Disability Rights Legislation/Litigation



CREATING NEW EXPECTATIONS & OPPORTUNITIES

AMERICANS WITH DISABILITIES ACT (1990)

OLMSTEAD DECISION (1994)



Americans with Disabilities Act (ADA) of 1990

- The nation's first comprehensive civil rights law addressing the needs of people with disabilities.
- Affirmed that an individual with a disability shall not be excluded from participation in or denied benefits of services, programs or activities; and receive services in the most integrated setting appropriate to the needs of the individual.

**PASRR law predates ADA and Final rule
aligns with the ADA!**

Olmstead Decision

- Supreme Court decision affirmed the rights of individuals with disabilities to live independently pursuant to the ADA.
- Affirmed that the ADA prohibits unnecessary institutionalization for persons with disabilities, including those with mental disabilities
- Affirmed that the ADA promotes services in the most integrated setting.
- Affirmed that individuals at risk of institutionalization based on lack of community services is to be remedied.

PASRR

**A powerful tool for complying with
the ADA and Olmstead**

PASRR – Changing & Adapting



Rosa's Law - 2010

Made amendments to provisions of Federal law to substitute the term “an intellectual disability” for “mental retardation”, and “individuals with intellectual disabilities” for “the mentally retarded” or “individuals who are mentally retarded”

- Compelled States to change terminology in State laws for individuals covered by a provision amended by this Act

CMS Emphasis on Understanding Options for PASRR Specialized Services

Webinars

- [Paying for Specialized Services: New Mechanisms for States \(2014\)](#)
- [Leveraging Public Financing and Delivery System Changes to Fund Specialized Services \(2017\)](#)
- [Specialized Services Workgroup Calls](#)

Linking PASRR to Current State/National Initiatives

- *Continuity of care* for individuals with MI, ID, or RC who were being supported with community-based services prior to seeking NF admission, or who will need those services when transitioning back to a community setting.
- *Promote engagement* of MI, ID, or RC individuals with needed services, if those services were not being provided at the time of their seeking NF admission.
- Support NF efforts to develop person-centered plans of care.
- *Support state “community first” and “self-determination” initiatives.*
- *Reducing the risk of hospital/NF readmission.*

PASRR and other Medicaid Initiatives



**HOME AND COMMUNITY BASED SERVICES
MONEY FOLLOWS THE PERSON**



Medicaid Authorities and Demonstration Programs

[CMCS* Informational Bulletin – June 2015](#): This Bulletin identifies how these housing-related activities and services can be incorporated into a Medicaid benefit design for individuals needing long term services and supports (LTSS) and in states' strategies for transforming systems to achieve optimal community integration.

*CMCS, The Center for Medicaid and CHIP (Children's Health Insurance Program) Services

CMCS Informational Bulletin

- Money Follows the Person
- 1915(c) HCBS Waivers
- 1915(i) HCBS State Plan Optional Benefit
- 1915(b) Waivers
- 1905(a) State Plan Services

HCBS information found at [CMS.gov](https://www.cms.gov)

Looking Ahead



“PASRR is more than an administrative process. People should get the best and most appropriate, and person centered, care possible. In the end, do what is right for the individual.”

– Dan Timmel, former CMS Lead and PASRR Champion

Envision the Possibilities

- Expanding HCBS options create opportunities for diversion and transition.
- Increased use of Specialized Services State Plan to finance Specialized Services.
- Amendments create opportunities for persons with PASRR conditions to receive the services they need while residing in a NF, or those they have been receiving prior to their need for NF care.
- Medicaid expansion increases access to treatment.

Envision and Plan for the Challenges

- The Silver Tsunami - It is estimated that by 2050, people over 65 will represent more than 20 percent of the population, up from 15 percent today.
 - That equates to about 40 million additional Medicare-age patients flooding the already beleaguered U.S. healthcare system.
- Money Follows the Person is phasing out in many states without reauthorization
- [National Institute of Health studies](#) show that mental illnesses are common, with one in six U.S. adults living with a mental illness (44.7 million in 2016)

QUESTIONS



THANK YOU!

PASRR Technical Assistance Center

www.pasrrassist.org