



## Ohio Revised Code

### Section 5119.40 Determination of services needed.

Effective: April 6, 2023

Legislation: House Bill 281

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(A) As used in this section, "individual with a mental illness" and "specialized services" have the same meanings as in section 5165.03 of the Revised Code.

(B)(1) Except as provided in division (B)(2) of this section and rules adopted under division (E)(3) of this section, for purposes of section 5165.03 of the Revised Code, the department of mental health and addiction services shall determine in accordance with the "Social Security Act," section 1919(e)(7), 42 U.S.C. 1396r(e)(7), and regulations adopted under section 1919(f)(8)(A) of that act, 42 U.S.C. 1396r(f)(8)(A), whether, because of the individual's physical and mental condition, an individual with a mental illness seeking admission to a nursing facility requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental illness. The determination required by this division shall be based on an independent physical and mental evaluation performed by a person or entity other than the department.

(2) Except as provided in division (B)(3) of this section, a determination under division (B)(1) of this section is not required for any of the following:

(a) An individual seeking readmission to a nursing facility after having been transferred from a nursing facility to a hospital for care;

(b) An individual who meets all of the following conditions:

(i) The individual is admitted to the nursing facility directly from a hospital after receiving inpatient care at the hospital;

(ii) The individual requires nursing facility services for the condition for which care in the hospital was received;



(iii) The individual's attending physician has certified, before admission to the nursing facility, that the individual is likely to require less than thirty days of nursing facility services.

(c) An individual transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(3) A determination under division (B)(1) of this section is required for an individual described in division (B)(2)(a) or (b) of this section if the hospital from which the individual is transferred or directly admitted to a nursing facility is either of the following:

(a) A hospital that the department maintains, operates, manages, and governs under section 5119.14 of the Revised Code for the care and treatment of persons with mental illnesses;

(b) A free-standing hospital, or unit of a hospital, licensed by the department under section 5119.33 of the Revised Code.

(C) Except as provided in rules adopted under division (E)(3) of this section, the department of mental health and addiction services shall review and determine for each resident of a nursing facility who has a mental illness, whether the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility and whether the resident requires specialized services for mental illness. The review and determination shall be conducted in accordance with section 1919(e)(7) of the "Social Security Act" and the regulations adopted under section 1919(f)(8)(A) of the act and based on an independent physical and mental evaluation performed by a person or entity other than the department. The review and determination shall be completed promptly after a nursing facility has notified the department that there has been a significant change in the resident's mental or physical condition.

(D)(1) In the case of a nursing facility resident who has continuously resided in a nursing facility for at least thirty months before the date of a review and determination under division (C) of this section, if the resident is determined not to require the level of services provided by a nursing facility, but is determined to require specialized services for mental illness, the department, in consultation with the resident's family or legal representative and care givers, shall do all of the following:



- (a) Inform the resident of the institutional and noninstitutional alternatives covered under the state plan for medical assistance;
  - (b) Offer the resident the choice of remaining in the nursing facility or receiving covered services in an alternative institutional or noninstitutional setting;
  - (c) Clarify the effect on eligibility for services under the state plan for medical assistance if the resident chooses to leave the facility, including its effect on readmission to the facility;
  - (d) Provide for or arrange for the provision of specialized services for the resident's mental illness in the setting chosen by the resident.
- (2) In the case of a nursing facility resident who has continuously resided in a nursing facility for less than thirty months before the date of the review and determination under division (C) of this section, if the resident is determined not to require the level of services provided by a nursing facility, but is determined to require specialized services for mental illness, or if the resident is determined to require neither the level of services provided by a nursing facility nor specialized services for mental illness, the department shall act in accordance with its alternative disposition plan approved by the United States department of health and human services under section 1919(e)(7)(E) of the "Social Security Act."
- (3) In the case of an individual who is determined under division (B) or (C) of this section to require both the level of services provided by a nursing facility and specialized services for mental illness, the department of mental health and addiction services shall provide or arrange for the provision of the specialized services needed by the individual or resident while residing in a nursing facility.
- (E) The department of mental health and addiction services shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:
- (1) Establish criteria to be used in making the determinations required by divisions (B) and (C) of this section. The criteria shall not exceed the criteria established by regulations adopted by the United States department of health and human services under section 1919(f)(8)(A) of the "Social Security Act."



- (2) Specify information to be provided by the individual or nursing facility resident being assessed;
  
- (3) Specify any circumstances, in addition to circumstances listed in division (B) of this section, under which determinations under divisions (B) and (C) of this section are not required to be made.