



National Association of Councils on Developmental Disabilities  
Comments on Proposed Rule: Preadmission Screening and Resident Review CMS-2418-P  
Centers for Medicare & Medicaid Services, Department of Health and Human Services  
Submitted via [Regulation.gov](https://www.regulation.gov) on May 20, 2020

The National Association of Councils on Developmental Disabilities (NACDD) is a national non-profit, non-partisan organization that serves as the national voice of the 56 state and territorial Councils on Developmental Disabilities (DD Councils). DD Councils are federally funded, self-governing organizations charged with identifying the most pressing needs of people with developmental disabilities in their state or territory. Councilmembers are appointed by governors and committed to advancing public policy and systems change that help people with developmental disabilities gain more control over their lives.

We appreciate this opportunity to comment on CMS' proposed changes to Preadmission Screening and Resident Review (PASRR). PASRR plays a vital role in preventing people with disabilities from unnecessary placement in nursing facilities, and allows for residents of such facilities to transition back into community living. These diversion and transition components ensure proper state compliance with the Americans with Disabilities Act (ADA) and the Supreme Court's *Olmstead* decision; however, CMS' proposed changes weaken PASRR, allowing for states to admit people to nursing facilities more easily while also making it more difficult for residents to transition back into the community. In light of the COVID-19 pandemic and its particularly devastating effects on nursing facilities, robust PASRR requirements are especially critical. We therefore oppose CMS' proposed changes to PASRR and strongly urge CMS to revise and reissue them for public comment.

Our opposition to CMS' proposed changes is based on three components, which we believe both undermine the goals of PASRR and fail to comply with the requirements of the ADA and *Olmstead*. First, CMS' proposed changes weaken PASRR's goals of diversion by allowing states to bypass preadmission screening and evaluation of individuals prior to admission to a nursing facility if those admissions are readmissions, nursing facility transfers, acute hospital discharges, and "provisional admissions." In many states, this bypassing would exclude the majority of people covered by PASRR from prescreening and evaluation. For example, 97% of admissions of people with intellectual and developmental disabilities in Texas, a state that has adopted all of these categorical admission options, were not subject to preadmission evaluation. Such changes greatly increase the likelihood of unnecessary placement into nursing facilities and preclude possible transition into community living.

Second, CMS's proposed changes to PASRR weaken the process for transitioning nursing facility residents back into the community by allowing states to stop working on the transition of a resident if the person does not have a community living option currently available. Even when everyone agrees that a person could best be served through such a transition, their case manager is not required to continue to work to identify community living options. Furthermore, the proposed changes do not guarantee that nursing facility residents have enough information to properly decide whether or not community



placement is right for them. States are only required to provide “information about community options,” with no specification concerning its type, amount, or frequency. This information is of great importance in ensuring that nursing facility residents are able to make an informed decision about their living situation.

Third, CMS’ proposed changes to PASRR would limit the services that nursing facilities are required to provide once a person is admitted. Without such services, residents lose basic skills and are denied opportunities to hone skills that would aid in their transition back into the community. These service limitations come in two forms within the proposed changes. For one, the current regulation’s requirement for an assessment of the need for specialized services in a broad array of social, vocational, educational, and communication areas are replaced with a more narrowly focused assessment centered around activities of daily living (ADL) and instrumental activities of daily living (IADL). In addition, the proposed changes eliminate standards for determining what services are required, allowing states to reduce the services they provide. Each of these limitations on services further prevent residents from successfully transitioning into community living arrangements.

NACDD strongly opposes CMS’ proposed changes to PASRR, as they will lead to more people with disabilities being unnecessarily placed in nursing facilities with little ability to transition into community living. Such changes are particularly concerning given the fact that people with disabilities are more at risk of contracting COVID-19 as it spreads across the country, especially in congregate settings like nursing facilities. In order to reduce risks for people with disabilities during this crisis, CMS must be doing all that it can to minimize the number of people living in these facilities. Despite these circumstances, the proposed changes to PASRR have the opposite effect, endangering the lives of people with disabilities by increasing the likelihood of admission and continued placement in nursing facilities. We urge you to reconsider these changes, revise them to align with the goals of PASRR, and reissue them for public comment. The health and safety of people with disabilities across the nation depend on it.