You can find the commenting portal here: <https://www.regulations.gov/document?D=CMS-2020-0015-0002>. **The deadline to submit comments is 11:59pm ET on May 20, 2020.**

ADD LETTERHEAD

May 15, 2020

Seema Verma

Administrator

Centers for Medicare & Medicaid Services

Department of Health and Human Services

Attention: CMS-2418-P

B.O. Box 8016

Baltimore, MD 21244-8016

Re: Comments on Proposed Rule: Preadmission Screening and Resident Review

CMS-2418-P

Dear Administrator Verma,

INSERT: Your organization, your involvement with PASRR, your description of the urgency of this moment, and any specific information/data on COVID that affects your members

CPR - Thank you for the opportunity to submit comments on behalf of the Center for Public Representation (CPR). CPR is a national legal advocacy organization that promotes the full inclusion of people with disabilities in all aspects of life. We have a unique perspective on the Preadmission and Resident Review (PASRR) rules, since we have been engaged in enforcing these rules in several states on behalf of both people with intellectual and developmental disabilities (IDD) and persons with mental illness (MI) who are referred to, admitted to, or remain in Medicaid-certified nursing facilities. Recently, we have become actively engaged in protecting these individuals from infection and death due to the rapid spread of COVID-19 in nursing facilities. In our state alone, as in many other states, approximately half of all COVID-19 related deaths involve persons in nursing facilities. Thus, the fundamental purpose of the PASRR program, and its implementing regulations – to prevent unnecessary admission of persons with MI or IDD to nursing facilities and to ensure that those who are admitted receive appropriate services – could never be more urgent.

We support one underlying goal of the proposed rules – to update the PASRR regulations and to clarify the PASRR process. We also recognize a second goal -- to better align the PASRR regulations with the purpose of the PASRR program; with current programmatic standards, including the ADA, the *Olmstead* decision, and CMS Guidance on these requirements; with professional mental health and IDD standards favoring community services; and with the trend in virtually all states to reduce reliance on segregated settings for persons with IDD and MI. We believe the proposed rules undermine and certainly are not consistent with the second goal, and will likely result in more people with IDD and MI being admitted to nursing facilities, less people being discharged, and few specialized services being provided to these who remain in nursing facilities. In this unique moment, when we have seen so clearly how nursing facility admissions often result in death, it is particularly inappropriate for CMS to adopt the proposed rules. Instead, we urge CMS to reconsider and revise the proposed rules in light of the current pandemic, and then reissue them for public comment.

There are three glaring concerns with the proposed rules that undermine the purpose of the PASRR program, that contravene the requirements of the ADA and *Olmstead*, and that are inconsistent with contemporary professional standards for people with IDD and MI:

First, the proposed rule substantially reduces the utility of PASRR preadmission screening (Level I) and evaluation (Level II) to prevent unnecessary admissions to nursing facilities. PASRR evaluations are supposed to determine if the person needs nursing facility level of services and/or could be better served in an alternative setting, like an integrated setting in the community. The proposed rule allows States to avoid all *preadmission* evaluations for readmissions, nursing facility transfers, acute hospital discharges, and “provisional admissions.” This last category is particularly troubling since it includes admissions for respite, crisis or protective services, and convalescent care. **ADD any data that you have on these categories.** **CPR:** In Texas, which has adopted all of these categorical admission options, the State’s own data indicates that 97% of all admissions of individuals with IDD were not subject to preadmission evaluation, either because they were categorical admissions (90%) or exempt admissions (7%). Data from other States, like Illinois, is almost as dramatic.

Once a person is admitted, even if the PASRR evaluation is conducted weeks or months later, the opportunity for diversion is lost, the likelihood of a prompt return to the community drastically reduced, and the probability of long-term institutionalization significantly increased. As a result, the proposed rules substantially undermine the diversion goals and elements of the PASRR program.

Second, the proposed rule sharply limits the PASRR Level II evaluation with respect to placement in an alternative, community setting. The proposed rule authorizes the admission of individuals who do not have a *currently available community option*, even if the person could be served in an integrated setting, or even who could be better served in the community. Moreover, while the proposed rule requires that states provide individuals (or guardians) “information about community options”, there is no requirement for informed choice, no specification of the type, amount, or frequency of such information, and, contrary to *Olmstead*, an assumption that institutionalization is appropriate unless the person expresses a preference for community placement, instead of an assumption that community placement is appropriate unless the person opposes such placement.

Third, the proposed rule significantly diminishes the specialized services that must be provided to persons with IDD or MI. It substantially restricts the assessments used for determining if specialized services are needed, focusing almost exclusively on ADL and IADL assessments instead of a broad range of social, vocational, educational, and communication areas, as in the current regulations. It allows States to drastically limit the type of specialized services that they will provide, and eliminates any standard for determining what services should be provided. **FOR IDD ORGANIZATIONS:** The proposed rule is particularly problematic for individuals with IDD, by significantly diluting the evaluation criteria for specialized services, and deleting the active treatment standard for providing these services, allegedly to avoid an institutional standard of care, even though they only apply to an institutional setting – nursing facilities.

**FOR BRAIN INJURY ORGANIZATIONS:** Finally, the decision to omit individuals with traumatic brain injuries (TBI) is inappropriate and illogical, particularly since a TBI that occurs before age 22 is a developmental disabilities or related condition. Thus, the mere fortuity of when the TBI occurs determines whether the PASRR rules apply. INSERT your experience with persons with TBI in nursing facilities

For these reasons, and in light of what we now know even more clearly from the pandemic about the consequences of nursing facility admission, we urge you to reconsider the proposed rule, substantially revise it to remove its decided institutional bias, and revise it to align with prior CMS Guidance and directives from Congress and the Supreme Court. This simply is not the time to make it easier to admit, and harder to discharge, individuals with disabilities to nursing facilities.

Thank you for your attention.