

The Power and Possibility of PASRR Webinar Series

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The Power of PASRR & YOU!

OCR Guidance and Resources for Long Term Care Facilities: Using the MDS to Facilitate Opportunities To Live In the Most Integrated Setting

This webinar will discuss the findings of the recently released report by the Office of Civil Rights that provides an analysis of the proper administration of MDS 3.0, Section Q by Nursing Facilities. The opportunities for improvement by Nursing Facilities indicates implications to State Medicaid Agencies and Nursing Facilities with regard to the 1999 *Olmstead v. L.C.* Decision as rendered by the United States Supreme Court.

Learning Objectives

- Understanding of Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act as interpreted by the U.S. Supreme Court in the Olmstead Decision
- Understanding of the roles and responsibilities the Nursing Facilities and the State Agencies have in being compliant with the SCOTUS decision in the Olmstead case.
- Gain knowledge of the OCR's recent analysis of the proper administration of Section Q of the MDS by Nursing Facilities (NF) and how the miss application may result in putting the NF and the State Agency at risk of non-compliance with civil rights obligations of individuals living in the most integrated setting possible.
- Participants will understand the role of the State Agencies in building relationships between the Local Contact Agency , the Transition Coordinator and the NF.
- Participants will gain a comprehensive knowledge of Section Q of the MDS 3.0 and how the entire section is intended to be administered as well as where the current gaps and training opportunities are as identified by the OCR.
- Participants will understand how the PASRR can be used as a tool for effective planning when transitioning an individual from a NF to the community.

The Olmstead Decision



THE U.S. SUPREME COURT MAKES A RULING

Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act as interpreted by the U.S. Supreme Court in the Olmstead Decision

Olmstead v. L.C.

- Lois Curtis and Elaine Wilson, who had mental illness and developmental disabilities, and were voluntarily admitted to the psychiatric unit in the State-run Georgia Regional Hospital.
- Mental health professionals stated that each was ready to move to a community-based program. However, the women remained confined in the institution, each for several years after the initial treatment was concluded.
- They filed suit under the Americans with Disabilities Act (ADA) for release from the hospital.

Decision of the U.S. Supreme Court in *Olmstead v. L.C.*

- On June 22, 1999, the U.S. Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of title II of the Americans with Disabilities Act.
- The Court held that public entities must provide community-based services to persons with disabilities when
 - (1) such services are appropriate;
 - (2) the affected persons do not oppose community-based treatment; and
 - (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.

Impact of the Decision

- The court said that, under the Americans with Disabilities Act, it is a form of discrimination to isolate and segregate persons in institutions when they can live like other people in the community and enjoy the benefits of society.
- Olmstead applies to people with either physical or mental disabilities that substantially limit one or more major life activities. This includes people with disabilities who reside in institutions now and people with disabilities whose needs might make them consider an institution. Many places can be considered institutions, including state hospitals, voc rehab training centers, and nursing homes.

Implementation of the Olmstead Decision

- President Bush issued his Executive Order on Community-Based Alternatives for Individuals with Disabilities on June 18, 2001.
- The President ordered the Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of Social Security to work cooperatively together and with the states by providing technical assistance to help them assess compliance with Olmstead and achieve the goals of Title II of the ADA.
- The Olmstead decision itself does not require an Olmstead plan, but the Supreme Court held that a State could successfully defend itself if it has a comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated.

Initiatives Specific to Nursing Facilities

- Section Q of MDS 3.0
- Money Follows the Person

Questions / Dialogue Regarding the Olmstead Decision?

Revised MDS 3.0. Section Q



**INTENTION IS TO PROVIDE INFORMATION TO
NURSING FACILITY RESIDENTS ON
COMMUNITY BASED LIVING OPTIONS**

MDS 3.0. Section Q- Background

- Revised Section Q (MDS 3.0, 2010) designed to identify residents who may be interested in talking to someone about moving back into the community. Provides a framework for compliance with the Olmstead decision
- Gives residents a voice and a choice for discharge planning options
- Promotes person centered care approach to discharge planning
- Increases communication and collaboration between providers of services

Purpose of MDS 3.0 Section Q

- MDS 3.0 standardizes long-standing requirements for nursing facilities and states to ensure individuals are appropriately assessed and reside in settings of their choice and appropriate to their needs.
- Promotes linkages and information exchange between nursing facilities, local contact agencies, transition coordinators, and other community-based long-term care providers.

Purpose of MDS 3.0 Section Q, continued...

- Meaningfully engages residents in their discharge planning goals
- Directly asks the resident if they want information about long-term care community options
- Promotes discharge planning collaboration between nursing facilities and local contact agencies for residents who may require medical and supportive services to return to the community

Purpose of MDS 3.0 Section Q, Continued...

- Nursing facility staff are required to contact their Local Contact Agency for those residents who express a desire to learn about possible transition back to the community and what care options and supports are available.
- Local Contact Agencies respond to nursing facility staff referrals by providing information to residents about available community-based long-term care supports and services.

Questions Regarding MDS3.0. Section Q?

Money Follows the Person

- Federal funds to assist states with transitioning individuals from Nursing Facilities to the Community
- Eligible recipients are Medicaid clients that have resided in a Nursing Facility for at least 90 Medicaid days.
- A funding mechanism for the Local Contact Agency and Transition Coordinator expenses.
- Pays for care and services (LTSS) in an HCBS environment for 1 year.

Questions / Dialogue Regarding Money Follows the Person?

OCR Report on Proper Administration of MDS 3.0, Section Q



**GUIDANCE AND RESOURCES FOR LONG TERM
CARE FACILITIES: USING THE MINIMUM
DATA SET TO FACILITATE OPPORTUNITIES
TO LIVE IN THE MOST INTEGRATED SETTING
U.S. DEPARTMENT OF HUMAN SERVICES, OFFICE FOR
CIVIL RIGHTS
MAY 20, 2016**

The OCR's Findings of Proper Administration of MDS Section Q by Nursing Facilities- Questions Q0400, Q0500, and Q0600

- In a report published by the OCR (*GUIDANCE AND RESOURCES FOR LONG TERM CARE FACILITIES: USING THE MINIMUM DATA SET TO FACILITATE OPPORTUNITIES TO LIVE IN THE MOST INTEGRATED SETTING*), May 20, 2016 it was stated “The OCR has found that many long term care facilities are misinterpreting the requirements of Section Q of the MDS. This misinterpretation can prevent residents from learning about opportunities to transition from the facility into the most integrated setting...”
- There are three questions within Section Q that are designed to assist the residents with learning about HCBS options and therefore assist the nursing facility and the State remain in compliance with antidiscrimination requirements. If the nursing facility does not administer this section correctly it could result in the facility and the State being in non compliance with such laws.

MDS Section Q, Q0400

- “Is active discharge planning already occurring for the resident to return to the community?”
- OCR reports that many facilities have not properly defined the word ‘active’ when responding to this fundamental question of the MDS. Active discharge planning means that a plan is currently being implemented such as current goals are stated, home evaluations are taking place, securing the needed care and services such as Durable Medical Equipment, medication management, housing/transportation needs, and other LTSS are all being actively integrated into the daily life of the resident.
- This is critical as the response to MDS question Q0400 is the basis for the next two questions of Section Q.
- OCR recommends that facilities answer “no” to Q0400 unless a referral to the Local Contact Agency has been made and the LCA has met with the resident. MDS Question Q0400 should only be answered “yes” for reasons such as:
- The resident is currently being assessed for transition by the LCA
- The resident has a Transition Plan in place, which has all of the required elements and has been incorporated into the resident’s Discharge plan

OCR Recommendations for MDS Question Q0400

- OCR recommends that facilities answer “no” to Q0400 unless a referral to the Local Contact Agency has been made and the LCA has met with the resident. MDS Question Q0400 should only be answered “yes” for reasons such as:
 - The resident is currently being assessed for transition by the LCA
 - The resident has a Transition Plan in place, which has all of the required elements and has been incorporated into the resident’s Discharge plan; or,
 - The resident has an expected discharge date of three months or less, has a discharge plan in place with all the required elements, and the discharge plan could not be improved upon with a referral to the Local Contact Agency.

MDS Section Q, Q0500

- If the response to MDS Section Q, Q0400 is “no” then question Q0500 is asked-
- “Do you want to talk to someone about the possibility of leaving this facility and returning to live and receive services in the community?” This question is only asked if Question 0400 is responded to with a “no”.
- Question Q0500 is the trigger that engages the LCA as the facility is required to make a referral if the resident/ representative answers “yes” to this question.
- The LCA will then make contact with the resident within two business days of receipt of the referral.
- The facility is to present this question very objectively without regard to their own belief of whether the resident is able/capable of living in a community setting, discharge is not possible because of belief that resources are not available, if the family members do not want the resident to move, and without prejudice to business impact.

The Relationship Between the State Agency, Local Contact Agency, and the Nursing Facility

- Each state Medicaid agency is responsible for selecting and contracting with the organizations that it chooses to serve as the Local Contact Agency (LCA).
- If an individual in a Nursing Facility responds that they would like more information on living in the community, specifically MDS Section Q. Q0500, the Nursing Facility is required to make a formal referral to the LCA within 10 business days.
- The Nursing Facility, the resident, and the LCA work together to assess whether HCBS options exist for the individual as specified in the Olmstead decision
- The State should give weighted time and resources to foster the relationship between the LCA and the Nursing Facilities within each geographic area.
 - Recommendations by the OCR include that the facility and the LCA have regular opportunities for the LCA to discuss with staff and residents the HCBS that are available to individuals in their service area

MDS 3.0, Section Q, Q0600

- Question Q0600, “Has a referral been made to the Local Contact Agency?”
- This question is to be answered based not only as a function of question Q0500 but is a dynamic question.
- If a resident expresses interest in learning more about community based living at any time the facility is to respond with a referral to the LCA unless Q0400 deems it not appropriate to do so (resident has an active discharge plan occurring).
- A referral to the LCA is to be made within ‘reasonable amount of time’. The RAI manual defines ‘reasonable’ as being 10 business days.
- Proper staff training and facility relationship with the LCA is crucial.

Recommendations From The OCR To Improve The Administration of MDS 3.0, Section Q

- Nursing Facilities to review and revise policies and procedures on
 - Discharge Planning
 - MDS administration
 - Local Contact Agency referral process
 - All policies and procedures should comply with the OCR document and practices should be consistent with such guidance

Each Nursing Facility should train staff members on Section Q (including direct care staff, IDT team members, and senior management) with the assistance of the LCA and the State RAI Coordinator

Recommendations From The OCR To Improve The Administration of MDS 3.0, Section Q, continued...

- The OCR also recommends that each facility train all staff members on:
 - the Local Contact Agencies which serve the facility's geographic areas;
 - the services the LCA provide and the role they play in assisting individuals interested in living in a community setting;
 - when and how to contact the LCA;
 - how to work collaboratively with the LCA for the benefit of residents of the facility; and
 - home and community-based services provided by state agencies

Questions / Discussion Regarding the OCR Report?

The Role of the PASRR Screen



**USING ALL AVAILABLE TOOLS FOR OPTIMAL
TRANSITION PLANNING**

Using The PASRR Assessment For Transition Planning

- Once the LCA has contacted the resident (Q0500) a partnership with the Nursing Facility, the LCA, the Transition Coordinator, and the resident shall take place for an optimal transition to take place.
- According to a study published in the journal, *Health Affairs* in 2009, more than 500,000 persons with a mental illness reside in a nursing facility on a given day.
- Review of the Level I and if applicable the Level II will assist with proper HCBS / LTSS infrastructure to be established.
- Individuals with needs identified on the PASRR will require additional resources and may be at higher risk for a negative experience if resources are not made available at time of transition.

Questions / Discussion Regarding the PASRR Assessment as a Tool for Transition Planning?

The OCR Has Identified Opportunities



**WHAT CAN THE STATE AGENCIES DO WITH
THIS INFORMATION TO MINIMIZE RISK OF
DISCRIMINATION?**

Shared Risk- Shared Solution

- The OCR Report illuminated gaps in the nursing facilities proper administration of the MDS 3.0, section Q.
- These gaps could lead to segregation and discrimination per the Olmstead decision, putting the State Agencies and the Nursing Facilities at risk for discriminatory practice.
- The State Agencies, the Local Contact Agencies, and the Nursing Facilities can take this opportunity to improve on practices by joint training sessions.
- “When you know better, you do better!”

Regulatory Compliance

- Nursing Facilities are required to follow minimum conditions of participation and are surveyed for regulatory compliance every 9 – 15 months.
- Regulations F276-287, Care Plans and Assessments, assesses accuracy of care plans and MDS assessments
- Random MDS Focused Surveys

Conclusions

- The 1999 Olmstead decision by the U.S. Supreme Court resulted in stating that the segregation of individuals with a disability is discrimination and a violation of civil rights.
- In 2016 the OCR found that there is a large opportunity for Nursing Facilities to improve on properly administering the MDS 3.0, Section Q. Failure to make these improvements may result in the unnecessary placement of a resident in a long term care facility and may constitute discrimination. This event would put the State Agencies and the Nursing Facilities at risk of violating the Olmstead decision.
- The State Agencies and the Nursing Facilities must work together to improve compliance and to optimize the best possible outcome per the individuals wishes.

Further Discussion and Questions?

Follow up OCR Guidance and Resources for Long Term Care Facilities: Using the Minimum Data Set to Facilitate Opportunities To Live In The Most Integrated Setting

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