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Emergency Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-130-140; 12VAC30-130-150; 12VAC30-130-160; 12VAC30-130-170; 12VAC30-130-180; 12VAC30-130-190; 12VAC30-130-200; 12VAC30-130-210; 12VAC30-130-220; 12VAC30-130-230; 12VAC30-130-240; 12VAC30-130-250; 12VAC30-130-260
VAC Chapter title(s)	Definitions; *Change* Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Mental Retardation to Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Intellectual Disability, or Related Conditions (Level I); Level II Determination; Categorical Determinations; Annual Resident Review; *Change* Determinations and Placement of Individuals with Mi or Mr/Rc to Determinations and Placement of Individuals with MI, ID or RC; *Change* Pasarr Evaluation Criteria to PASRR Evaluation Criteria; Specialized Services; Placement Options; *Change* Evaluating the Need for Nf Services and Nf Level of Care (Pasarr/Nf) to Evaluating the Need for NF Services; *Change* Evaluating Whether an Individual with Mi Requires Specialized Services (Pasarr/Mi) to Evaluating the Need for Specialized Services; *Change Evaluating Whether an Individual with Mr/Rc Requires Specialized Services (Pasarr/Mr) to Evaluating Whether an Individual with ID/RC Requires Specialized Services; Appeals
Action title	Preadmission Screening and Resident Review (PASRR) Update
Date this document prepared	1/5/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Code of Virginia, §§ 32.1-330, 32.1-330.01, and 32.1-330.3 were amended in accordance with 2020 HB/SB 902 to allow qualified nursing facility staff to complete the Long-Term Services and Supports (LTSS) screening for individuals who apply for or request LTSS, and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital. The amendments to the Code include the protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community based services.

The Code of Virginia § 32.1-330.3 was amended and reenacted, effective July 1, 2020, and HB/SB 902 grants the Board of Medical Assistance Services the authority to “promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The purpose of this action is to amend sections 12VAC30-130-140; 12VAC30-130-150; 12VAC30-130-160; 12VAC30-130-170; 12VAC30-130-180; 12VAC30-130-190; 12VAC30-130-200; 12VAC30-130-210; 12VAC30-130-220; 12VAC30-130-230; 12VAC30-130-240; 12VAC30-130-250; and 12VAC30-130-260 of the PASRR regulations in order to align the regulations with new requirements in the Code and also update terminology to align with terms currently used by the Centers for Medicare and Medicaid Services (CMS) and the Preadmission Screening and Resident Review (PASRR) Technical Assistance Center (PTAC).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

CBT = Community-based team

CMS = Centers for Medicare and Medicaid Services

DBHDS = Department of Behavioral Health and Developmental Services

DPH = Department of Health Professions

DMAS = Department of Medical Assistance Services

FFP = Federal financial participation

IDA = Intellectual Disability Authority

NF = Nursing Facility

PASRR = Preadmission Screening and Resident Review

PTAC = PASRR Technical Assistance Center

RC = Related Condition

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

HB/SB 902 grants the Board of Medical Assistance Services the authority to “promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled “Preadmission Screening and Resident Review (PASRR) Update.”

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

HB/SB 902 amends and reenacts §§ 32.1-330, 32.1-330.01, and 32.1-330.3 of the Code of Virginia, and requires these changes. Enactment language requires DMAS to promulgate regulations to be effective within 280 days of enactment.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

In responding to the legislative mandate of the General Assembly, the purpose of this regulatory action is to establish regulatory requirements for (i) allowing qualified nursing facility staff to complete the LTSS screening for an individual who applies for or requests LTSS, and who is receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital; and (ii) protecting an individual's choice for institutional or community based services and choice of provider.

This regulation is essential to protect the health, safety, and welfare of Medicaid members in that it broadens access to the screening that is required before a member can receive LTSS.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Current DMAS regulations require that individuals have a LTSS screening packet completed prior to admission to a NF. For individuals in a hospital, the hospital screening team must complete all required forms in the LTSS screening packet. Completion of the Level I Preadmission Screening and Resident Review (PASRR), a federally-required instrument, to assess for a mental illness or intellectual disability is a part of the LTSS screening packet. By federal law and state regulations, an individual shall not be admitted to a NF unless a Level I screening has been completed

Multiple sections of the regulations require amendments in order to align with new sections of the Code, new amendments to the LTSS screening state regulations, and terms and definitions currently used by CMS and PTAC.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The Code of Virginia and state regulations currently do not allow for nursing facility staff to conduct LTSS screenings, which includes the Level I screening, for individuals who apply for or request LTSS, and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital. The primary advantages of this regulatory

action are: 1) compliance with SB/HB 902; 2) broader access to required screening for LTSS services; and 3) the protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community based services.

There are no disadvantages that result from this regulatory action.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The 2020 General Assembly directed DMAS to promulgate regulations to implement the requirements of (i) allowing qualified nursing facility staff to complete the LTSS screening for individuals who apply for or request LTSS, and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital; (ii) protecting individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community based services; and (iii) requiring that qualified NF staff receive training and be certified in the use of the LTSS screening tool and conduct screenings in accordance with state regulations. Completion of the Level I screening is a required part of the LTSS screening packet.

No other alternatives to regulatory action would meet the requirements of the legislative mandate.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12VAC30-130-140	N/A	Definitions	Revisions were made to the terms and or definitions of: community services board, dementia, diagnostic and statistical manual of mental disorders, interfacility transfer, level I identification, level II evaluation, mental illness, MI/MR

			<p>Supplement, new admission, qualified mental health professional, readmission, and state mental health or mental retardation authority.</p> <p>The following terms and definitions were removed and replaced: mental retardation was removed and replaced with the new term of intellectual disability and updated definition, nursing home preadmission screening committee was removed and replaced with the new term of long term services supports screening team and updated definition.</p> <p>The term non-Medicaid eligible individuals was deleted</p> <p>Rationale: To improve clarity and accuracy and align the terminology with new requirements in the Code and terms currently used by CMS and PTAC.</p>
12VAC30-130-150	N/A	Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Mental Retardation (Level I)	<p>Amendments were made to A, B, C, D, E, and F. Updated terminology. Added clarifying language to the requirements for the Medicaid LTSS screening process for individuals applying for admission to a Medicaid-certified NF</p> <p>Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.</p>
12VAC30-130-160	N/A	Level II Determination	<p>Amendments were made to A, B, C, and D. Updated terminology.</p> <p>Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.</p>
12VAC30-130-170	N/A	Categorical Determinations	<p>Amendments were made to A. Updated terminology.</p> <p>Rationality: To improve accuracy and text consistency with CMS and PTAC.</p>
12VAC30-130-180	N/A	Annual Resident Review	<p>Amendments were made to A and B. Updated terminology. Clarified that a review must be conducted promptly after a NF has provided notification of a significant change in a resident's physical or mental condition.</p>

			Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-190	N/A	Determinations and Placement of Individuals with Mi or Mr/Rc	Amendments were made to A, B, C, D, E, F, and G. Updated terminology. Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-200	N/A	Pasarr Evaluation Criteria	Amendments were made to A, B, C, D, E, F, and G. Updated terminology. Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-210	N/A	Specialized Services	Amendments were made to A, B and C. Updated terminology. Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-220	N/A	Placement Options	Amendments were made to A and B. Updated terminology. Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-230	N/A	Evaluating the Need for Nf Services and Nf Level of Care (Pasarr/Nf)	Amendments were made to A, B, C, and D. Updated terminology. Added clarifying language that an individual has the option of placement in a home and community based services program and a noninstitutional placement. Added a requirement that PASRR evaluators should confirm that the individual has been accurately assessed as meeting the NF level of care. Rationale: To improve clarity, accuracy, readability and text consistency with Code, CMS and PTAC.
12VAC30-130-240	N/A	Evaluating Whether an Individual with Mi Requires Specialized Services (Pasarr/Mi)	Amendments were made to A. Updated terminology. Rationale: To improve clarity and accuracy.
12VAC30-130-250	N/A	Evaluating Whether an Individual with Mr/Rc Requires Specialized Services (Pasarr/Mr)	Amendments were made to A and B. Updated terminology. Rationale: To improve clarity and accuracy.
12VAC30-130-260	N/A	Appeals	Amendments were made to A. Updated terminology.

			Rationale: To improve clarity and accuracy.
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