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TO: EMILY MCCLELLAN
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: DAVIS CREEF 
Assistant Attorney General

DATE: October 25, 2019

SUBJECT: Final/Exempt Regulation: LTSS Screening - Remove Three-Day Allowance After Hospital Discharge

I have reviewed the attached regulation regarding Long-Term Services and Supports (“LTSS”) preadmission screening. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to amend the regulations and if the regulations comport with state and federal law.

The change in this regulation reflects requirements in federal law regarding the timing of preadmission screenings for LTSS. Based on my review, it is my view that the Director of the Department of Medical Assistance Services, acting on behalf of the Board of Medical Assistance Services, under Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority. Based on the foregoing, it is my view that the amendment to this regulation is exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(c). If you have any questions, please contact me at 786-6522.

cc: Kim F. Piner, Esq.

Attachment

Project 6126 - none

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

LTSS Screening - Remove Three-Day Allowance After Hospital Discharge

12VAC30-60-306. Submission of screenings.

A. The screening entity shall complete and submit the following forms to DMAS electronically via ePAS:

1. DMAS-95 - MI/IDD/RC (Supplemental Assessment Process Form Level I), as appropriate;
2. DMAS-96 (Medicaid-Funded Long-Term Care Service Authorization Form);
3. DMAS-97 (Individual Choice - Institutional Care or Waiver Services), as applicable;
4. UAI (Uniform Assessment Instrument);
5. DMAS-108 (Tech Waiver Adult Referral); and
6. DMAS-109 (Tech Waiver Pediatric Referral).

B. For screenings performed in the community, the screening entity shall submit to DMAS via ePAS each screening form listed in subsection A of this section within 30 days of the individual's request date for screening.

C. For screenings performed in a hospital, the hospital team shall submit to DMAS via ePAS each screening form listed in subsection A of this section, which shall be completed prior to the individual's discharge. ~~For individuals who will be admitted to a Medicare-funded skilled NF or to a Medicare-funded rehabilitation hospital (or rehabilitation unit) directly upon discharge from the hospital, the hospital screener shall have up to an additional three days post-discharge to submit the screening forms via ePAS.~~