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Fast-Track 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	8/16/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Code of Virginia was amended at §§ 32.1-330, 32.1-330.01 and 32.1-330.3 in accordance with 2020 HB/SB 902, and therefore this Fast-Track regulatory action follows an emergency regulation 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 included 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 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 to align the regulations with new requirements in the Code and to 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.

CMS = Centers for Medicare and Medicaid Services
DMAS = Department of Medical Assistance Services
LTSS = Long-Term Services and Supports
NF = Nursing Facility
PASRR = Preadmission Screening and Resident Review
PTAC = PASRR Technical Assistance Center
RC = Related Condition

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On August 16, 2022, DMAS adopted final amendments to the regulatory action entitled, "Preadmission Screening and Resident Review (PASRR) Update."

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

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.

This regulatory action is expected to be non-controversial because it will align the regulations with new requirements in the Code and will update terminology to align with CMS and PTAC terms that are currently in practice.

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 and 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.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

In 2020, the General Assembly enacted changes to Va. Code § 32.1-330 through SB/HB 902, which necessitates regulatory changes that would implement the following requirements (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, and if needed Level II, screening is a required part of the LTSS screening packet.

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, intellectual disability, or related condition 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, and if needed, Level II evaluation and determination 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.

Prior to changes to Va. Code § 32.1-330, that were enacted by the General Assembly in 2020, state regulations did not allow for nursing facility staff to conduct LTSS screenings 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 to the public and the Commonwealth are: 1) compliance with SB/HB 902 from the 2020 General Assembly; 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.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for

the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no DMAS costs associated with these changes.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	The benefit of this regulatory change is to expand access to the screening that is required before a member can receive LTSS.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs to localities as a result of these changes.

Benefits the regulatory change is designed to produce.	The benefit of this regulatory change is to expand access to the screening that is required before a member can receive LTSS.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No individuals, businesses, or other entities will be affected by this regulatory change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	No individuals, businesses, or other entities will be affected by this regulatory change.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs associated with this regulatory change.
Benefits the regulatory change is designed to produce.	The benefit of this regulatory change is to expand access to the screening that is required before a member can receive LTSS.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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, and, if needed, Level II evaluation and determination is a required part of the LTSS screening packet.

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

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

No alternatives can achieve the objective of 2020 HB/SB 902. This regulatory action is not expected to affect small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Medical Assistance Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to: Jimeequa Williams, Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond,

VA 23219, (804) 225-3508, Jimeequa.Williams@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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.

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 Supplement, new admission, qualified mental health professional, readmission, and state mental health or mental retardation authority. 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. The term non-Medicaid eligible individuals was deleted Rationale: To improve clarity and accuracy and align the terminology with new requirements in the Code and terms currently used by CMS and PTAC.
12VAC30-130-150	N/A	Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Mental Retardation (Level I)	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

			Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.
12VAC30-130-160	N/A	Level II Determination	Amendments were made to A, B, C, and D. Updated terminology. Rationale: To improve clarity, accuracy, readability and text consistency with CMS and PTAC.
12VAC30-130-170	N/A	Categorical Determinations	Amendments were made to A. Updated terminology. Rationality: To improve accuracy and text consistency with CMS and PTAC.
12VAC30-130-180	N/A	Annual Resident Review	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. 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.