COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

Jay Jones
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

MEMORANDUM

TO: **Syreeta B. Stewart**
Regulations and Guidance Documents Supervisor
Department of Medical Assistance Services

FROM: **Elizabeth M. Guggenheim**
Senior Assistant Attorney General
Office of the Attorney General

DATE: **July 8, 2026**

SUBJECT: **Fast-Track Regulation: Repeal of Nursing Facility-Specific Drug Utilization Review and Updates to Nursing Facility Survey and Certification**

You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the statutory authority to promulgate these regulations and if they comport with applicable state law. I have reviewed the attached fast-track regulations posted to the Virginia Regulatory Town Hall that would repeal nursing facility (NF) specific drug utilization review (DUR) language because the language is obsolete - the Centers for Medicare and Medicaid (CMS) repealed the requirement in 1994. The proposed language aligns with DMAS' current State Plan. This regulatory action would also amend sections to reflect that the Division of Licensure and Certification is now referred to as the Office of Licensure and Certification (OLC).

Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services pursuant to 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 and has not exceeded that authority.

Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-7363.

cc: Kim F. Piner, Esq.
Chief, Senior Assistant Attorney General

Attachment

VIRGINIA REGULATORY TOWN HALL

Proposed Text

highlight

Action: Repeal of Nursing Facility-Specific Drug Utilization Review and ...
Stage: Fast-Track 6/5/26 10:11 AM

12VAC30-20-110 Nursing facility resident drug utilization review

~~1. Definitions. The following words and terms, when used in this regulation, shall have the following meanings unless the context clearly indicates otherwise:~~

~~"DMAS" means the Department of Medical Assistance Services consistent with the Code of Virginia, Chapter 10, Title 32.1, §§ 32.1-323 et seq.~~

~~"Drug utilization review" means a formal continuing program for assessing medical and/or drug use data against explicit standards and, as necessary, introducing remedial strategies.~~

~~"Drug Utilization Review Committee (DUR Committee)" means a committee composed of knowledgeable health care professionals who make recommendations for developing and modifying drug therapy review standards or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.~~

~~"Exceptional drug utilization pattern" means 1) a pattern of drug utilization within a nursing facility that differs substantially from predetermined standards established pursuant to § 3(B); 2) individual resident's drug use patterns that differ from the established standards; or 3) individual resident's drug use patterns that exhibit a high risk for drug therapy induced illness.~~

~~"Retrospective drug review" means the drug utilization review process that is conducted using historic or archived medical and/or drug use data.~~

~~"Targeted facility" means a nursing facility where residents' patterns of drug utilization demonstrate an exceptional drug utilization pattern as defined herein.~~

~~2. Scope~~

~~A. Medicaid shall conduct a drug utilization review program for covered drugs prescribed for nursing facility residents. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. The primary objectives are 1) improvement in the quality of care; 2) conserving program funds and individual expenditures; and 3) maintaining program integrity (i.e., controlling problems of fraud and benefit abuse).~~

~~B. Retrospective drug utilization review will be conducted on an ongoing basis in targeted nursing facilities demonstrating exceptional drug utilization patterns.~~

~~C. With the aim of improving prescribing practices, the program shall provide for ongoing educational outreach programs to educate practitioners on common drug therapy problems.~~

~~3. Utilization Review Process~~

~~A. The program shall provide, through its drug claims processing and information retrieval systems, for the ongoing periodic examination of claims data and other records for targeted facilities to identify patterns of inappropriate or medically unnecessary care for individuals receiving benefits under Title XIX of the Social Security Act.~~

~~B. The program shall, on an ongoing basis, assess data on drug use against predetermined standards (as described in this section) including, but not limited to, monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug/drug interactions, incorrect drug dosage or duration of treatment, clinical abuse/misuse, fraud, and, as necessary, introduce to physicians and pharmacists remedial strategies in order to improve the quality of care.~~

~~C. The Department of Medical Assistance Services may assess data on drug use against such standards as the American Hospital Formulary Service Drug Information (1995, as amended), United States Pharmacopeia-Drug Information (1995, as amended), American Medical Association Drug Evaluations (1993, as amended), and peer-reviewed medical literature.~~

~~4. Drug Use Review Committee~~

~~A. DMAS shall provide for the establishment of a drug use review committee (hereinafter referred to as the "DUR Committee"). The Director of DMAS shall determine the number of members and appoint the members of the DUR committee.~~

~~B. The membership of the DUR Committee shall include health care professionals who have recognized knowledge and expertise in one or more of the following areas:~~

~~1. The clinically appropriate prescribing of covered drugs;~~

~~2. The clinically appropriate dispensing and monitoring of covered drugs;~~

~~3. Drug use review, evaluation, and intervention; and~~

~~4. Medical quality assurance;~~

~~5. Clinical practice and drug therapy in the long-term care setting.~~

~~C. The membership of the DUR Committee shall include physicians, pharmacists, and other health care professionals, including those with recognized expertise and knowledge in long term care.~~

~~D. Activities of the DUR Committee shall include, but not be limited to, the following:~~

~~1. Retrospective drug utilization review as defined in § 2 (B) of this regulation;~~

~~2. Application of standards as defined in § 3 (C) of this regulation; and~~

~~3. Ongoing interventions for physicians and pharmacists, targeted toward therapy problems of individuals identified in the course of retrospective drug use reviews.~~

~~E. The DUR Committee shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and recommend modifications as necessary.~~

~~5. Medical Quality Assurance~~

~~A. Documentation of drug regimens in nursing facilities shall, at a minimum:~~

~~1. Be included in a plan of care that must be established and periodically reviewed by a physician;~~

~~2. Indicate all drugs administered to the resident in accordance with the plan with specific attention to frequency, quantity, and type and identify who administered the drug (include full name and title); and~~

~~3. Include the drug regimen review prescribed for nursing facilities in regulations implementing 42 CFR 483.6.~~

~~B. Documentation specified in paragraph A will serve as the basis for drug utilization reviews provided for in these regulations.~~

Viginia is in compliance with drug regimen review procedures prescribed by the Secretary for nursing facilities in regulations at Title 42, Chapter IV, Subchapter C, Part 456, Subpart K § 456.703, § 456.703(b), therefore, prospective and retrospective DUR program drugs dispensed to residents of a nursing facility are not required.

12VAC30-20-272 Survey and certification education program

The state has in effect the following survey and certification periodic education program for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies.

The ~~state survey agency~~ Office of Licensure and Certification (OLC) of the Virginia Department of Health periodically conducts provider training programs and orientation of OBRA regulations and the survey process through programs or mailings. The ~~state survey agency~~ OLC participates in the Medicaid agency's training of facilities regarding the Resident Assessment Instrument.

12VAC30-20-274 Process for the investigation of allegations of resident neglect and abuse and misappropriation of resident property

The state has in effect the following process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide or a resident in a nursing facility or by another individual used by the facility in providing services to such a resident.

When the above described incidences involve a nurse aide, they are reported to the Board of Health Professions~~,~~ and the Board of Nursing. In addition, such allegations are frequently received by the facility administration which reports the allegations to the ~~state survey agency~~ OLC. The ~~state survey agency~~ OLC conducts the follow-up investigations.

12VAC30-20-275 Procedures for scheduling and conduct of standards surveys

The state has in effect the following procedures for the scheduling and conduct of standard surveys to assure that it has taken all reasonable steps to avoid giving notice.

On-site survey schedules are only accessible to staff of the ~~Department of Health, Division of Licensure and Certification~~ OLC, which conducts the surveys. After the onsite review is initiated by the ~~Division inspection staff~~ OLC, the Virginia

Department of Health notifies the state agency for the aging ombudsman~~, the state fire marshal,~~ and other agencies as needed.

12VAC30-20-277 Programs to measure and reduce inconsistency

The state has in effect the following programs to measure and reduce inconsistency in the application of survey results among surveyors.

The ~~state survey agency~~ OLC conducts routine training programs, routine informational memorandums and procedural clarifications, routine team meetings, and ongoing supervisory review and monitoring of staff training needs.

12VAC30-20-278 Process for investigations of complaints and monitoring

A. The state has in effect the following process for investigating complaints of violations of requirements by nursing facilities and monitors onsite on a regular, as needed basis, a nursing facility's compliance with the requirements of § 1919(b), (c), and (d) for the following reasons:

(i) The facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) The facility was previously found not to be in compliance with such requirements and has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) The state has reason to question the compliance of the facility with such requirements.

B. All complaints are investigated by the ~~Virginia Department of Health, Office of Health Facilities Regulation~~ OLC, per nature of the complaint.