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## Emergency Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC30-60-301; 12VAC30-60-302; 12VAC30-60-303; 12VAC30-60-304; 12VAC30-60-305; 12VAC30-60-306; 12VAC30-60-308; 12VAC30-60-310; 12VAC30-60-313; 12VAC30-60-315
<b>VAC Chapter title(s)</b>	Long Term Services and Supports (LTSS) Screening
<b>Action title</b>	2020 Long Term Services and Supports (LTSS) Screening Changes
<b>Date this document prepared</b>	November 18, 2020

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 are being 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 is amended and reenacted, effective July 1, 2020, and 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 12VAC30-60-301; 12VAC30-60-302; 12VAC30-60-303; 12VAC30-60-304; 12VAC30-60-305; 12VAC30-60-306; 12VAC30-60-308; 12VAC30-60-310; 12VAC30-60-313; and 12VAC30-60-315 of the LTSS screening regulations in order to align the regulations with new requirements in the Code.

**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 LTSS Screening teams
- CMS = Centers for Medicare and Medicaid Services
- DMAS = Department of Medical Assistance Services
- ePAS = electronic preadmission screening
- HCBS= Home and community based services
- LTSS = long term services and supports
- NF = nursing facility
- PASRR = Preadmission Screening and Resident Review
- UAI = Uniform Assessment Instrument

**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).

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled “Long Term Services and Supports (LTSS) Screening” and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

**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.

**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 POLICY

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. The Uniform Assessment Instrument (UAI) is one of the required forms in the LTSS screening packet. Va. Code 32.1-330 and DMAS regulations designate the UAI as Virginia’s screening tool to evaluate an individual’s functional eligibility for

community or institutional long-term care services. CMS approved the UAI as the single comprehensive pre-screening tool to determine an individual’s care needs. 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 also a part of the LTSS screening packet.

An individual’s level of care for NF is determined through the LTSS screening packet. The LTSS screening is also used to determine whether a NF is the appropriate setting for the individual, i.e., that the NF has the capacity to provide to the individual the services and level of care they require. The LTSS screening team administers the required choice of setting forms (i.e. HCBS or NF care) and choice of provider.

Va. Code 32.1-330 requires that all individuals who conduct LTSS screenings receive training on and be certified in the use of the UAI. Current authorized LTSS screeners include hospital LTSS screening teams and community-based LTSS Screening teams (CBT) consisting of (i) a registered nurse, nurse practitioner (ii) a social worker or other assessors designated by DMAS; and (iii) a physician.

**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 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 advantage of this regulatory action is 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.

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
12VAC30-601-301	N/A	Definitions	<p>Revisions were made to the terms and or definitions of: at risk, choice community-based team, DMAS designee, ePAS, functional capacity, home and community-based services provider, hospital team, minimum data set, private pay individual, referral for LTSS screening, representative, request date for LTSS screening, request for LTSS screening, screening entity, submission, and uniform assessment instrument.</p> <p>The definition for preadmission screening was removed and replaced with long-term services and supports screening.</p> <p>New terms and definitions added include: acute care hospital, long-term services and supports screening team, and nursing facility LTSS screening team</p> <p>Rationale: To improve clarity and accuracy and incorporate terms needed for the new category of LTSS screeners.</p>
12VAC30-60-302	N/A	Access to Medicaid-Funded Long-Term Services and Supports	Amendments made to A, B, D, and E. Updated terminology. Removed requirement for individuals to be

			<p>screened if they are financially eligible for Medicaid or anticipated to become financially eligible within six months of NF admission. Added requirement for every individual who applies for or requests Medicaid community or institutional LTSS to be screened prior to admission to institutional LTSS, including NF services.</p> <p>Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.</p>
12VAC30-60-303	N/A	Screening Criteria for Medicaid-Funded Long-Term Services and Supports	<p>Updated terminology and provided additional descriptive information for specific services.</p> <p>Rationale: To improve clarity, accuracy, grammar, and readability.</p>
12VAC30-60-304	N/A	Requests and Referrals for Screening for Adults and Children Living in the Community and Adults and Children in Hospitals	<p>Amendments made A, B, C.</p> <p>Updated terminology.</p> <p>Added requirement that every individual who applies for or requests LTSS shall have choice in the setting and provider and choice must be documented.</p> <p>Added requirement that Medicaid payment for services cannot be considered without agreement of the individual or individual's representative.</p> <p>Deleted all references to an individual becoming financially eligible for Medicaid within six months of the screening or after admission to a NF.</p> <p>Added section D of requirements for the completion of LTSS screenings for individuals needing LTSS after a skilled or rehabilitation nursing facility services admission.</p> <p>Changed the former D to E.</p> <p>Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.</p>
12VAC30-60-305	N/A	Screening in the Community and Hospitals for Medicaid-Funded Long-Term Services and Supports	<p>Amendments made to A, B, and C.</p> <p>Updated terminology.</p> <p>Added clarifying language to requirements for community LTSS screenings for adults and children.</p> <p>Added section D of requirements for the completion of LTSS screenings for individuals receiving skilled or rehabilitation nursing services in a setting not covered by Medicaid and after discharge from an acute care hospital.</p>

			Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.
12VAC30-60-306	N/A	Submission of Screenings	Amendments made to A, B, C, and D Updated the title of required forms. Added new requirement for LTSS screenings performed in a skilled or rehabilitation NF.  Rationale: To improve accuracy and consistency with the Code of Virginia.
12VAC30-60-308	N/A	Nursing Facility Admission and Level of Care Determination Requirements	Added requirement that NF screening teams shall be responsible for screening individuals admitted directly from a hospital for skilled nursing or rehabilitation and have a change in level of care requiring LTSS.  Rationale: Text consistency with the Code of Virginia.
12VAC30-60-310	N/A	Competency Training and Testing Requirements	Added requirement that each person who passes the competency training will be provided a certification number.  Rationale: To improve clarity and accuracy.
12VAC30-60-313	N/A	Individuals Determined Not to Meet Criteria for Medicaid-Funded Long-Term Services and Supports	Updated terminology.  Rationale: To improve clarity and accuracy.
12VAC30-60-315	N/A	Periodic Evaluations for Individuals Receiving Medicaid-Funded Long-Term Services and Supports	Amendments made to B. Added requirements for NF staff completing periodic evaluations for individuals admitted to skilled or rehabilitation services in a NF.  Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.