



Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC <u>30</u> - <u>60</u>
Regulation title	Standards Established and Methods Used to Assure High Quality of Care
Action title	Uniform Assessment Instrument Pediatric Guidance
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

These suggested regulations incorporate guidance material concerning the interpretation and application of the Uniform Assessment Instrument (UAI) when an individual 21 years of age or younger is being evaluated for long term care services, either nursing facility or home and community based services. When the Department of Medical Assistance Services (DMAS) first adopted the use of the Uniform Assessment Instrument in 1994, primarily adults (persons 21 years of age and older) used long term care services. With advances in neonatal and pediatric medicine over the intervening 18 years, more children (persons from birth through the age of 21 years) are surviving and growing into adulthood. Some of these children would have expired 18 years ago due to birth defects, accidents, or severe illnesses. As a result, these children and their families are requesting long term care services, both in nursing facilities and in their communities through DMAS' waiver programs. In response to these community needs and with the assistance of the Virginia Department of Social Services and the Virginia Department of Health, DMAS has developed a guidance document intended to support the local pre-admission screening teams in evaluating children for Medicaid-reimbursed long term care services.

Statement of final agency action

Please 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.

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages entitled Uniform Assessment Instrument Pediatric Guidance (12 VAC 30-60-303) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Cynthia B. Jones, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The *Code of Virginia* states:

"§ 32.1-330. Preadmission screening required.

All individuals who will be eligible for community or institutional long-term care services as defined in the state plan for medical assistance shall be evaluated to determine their need for nursing facility services as defined in that plan. The Department shall require a preadmission screening of all individuals who, at the time of application for admission to a certified nursing facility as defined in § [32.1-123](#), are eligible for medical assistance or will become eligible within six months following admission. For community-based screening, the screening team shall consist

of a nurse, social worker and physician who are employees of the Department of Health or the local department of social services or a team of licensed physicians, nurses, and social workers at the Woodrow Wilson Rehabilitation Center (WWRC) for WWRC clients only. For institutional screening, the Department shall contract with acute care hospitals."

This pre-admission screening requirement originated in the *Code of Virginia* in 1984 (*1984 Acts of the Assembly*, Chapter 781).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this fast track action is to provide the force and effect of administrative law to guidance material designed to assist preadmission screening teams and hospital-based screeners, pursuant to § 32.1-330 of the *COV*, accurately and consistently apply the Uniform Assessment Instrument (UAI) to individuals, 21 years of age or younger, who are applying for medical assistance coverage of long term care services. Over the 18 years since DMAS first adopted the UAI for screening of adults, the numbers of young people requiring long term care services have steadily increased. Since all persons who may need long term care services covered by DMAS must first be screened, the need to apply the UAI to children has also increased.

This regulatory action is not required to accurately and consistently protect the health, safety or welfare of citizens. However, its adoption will ensure the consistent and equitable use of existing policies for all applicants, regardless of their ages, of long term care services.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulatory action is expected to be noncontroversial because it has been specifically requested by community pre-admission screeners who seek to assist individuals who are seeking Medicaid funding for their long term care needs. DMAS posted a notice of periodic review on the Town Hall for a comment period from March 26, 2012 through April 16, 2012. A supportive comment was received from the Virginia Department of Social Services.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The section of the State Plan for Medical Assistance that is affected by this action is the Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-303).

Effective 6/29/1994, DMAS adopted the current criteria and standards set out in 12 VAC 30-60-300 and 60-303 regarding individuals' assessments for long term care services. The purpose of that action was to establish an equitable, consistent, and uniform set of standards to be applied throughout localities statewide to determine which individuals qualified for Medicaid coverage of their long term care services.

These standards and criteria are still in use today and are not being changed by this action. For an individual to be determined eligible for nursing facility care, he must need help with a specified part of his Activities of Daily Living (ADLs) and must also have medical or nursing needs. For an individual to be determined as eligible for community-based care services, he also must need help with a specified part of his ADLs, also have medical or nursing needs, and be at risk of nursing facility placement within 30 days of the assessment in the absence of community services.

Activities of Daily Living (ADLs) are defined as personal care tasks, such as bathing, dressing, toileting, transferring, eating/feeding. An individual's degree of independence in performing these activities is part of determining his appropriate level of care and service needs.

Based on the ages and developmental stages of infants and young children, they may not be able to perform any or very many of the ADLs for themselves but still be normal and healthy. In other words, a normal, healthy infant's degree of dependence in performing personal care tasks should not qualify him to receive Medicaid-covered long term care services.

In light of the fact that infants and children with disabilities are living longer and requiring more services, DMAS has developed guidance material for use by preadmission screening teams and hospital-based screening teams. This guidance document, which is incorporated by reference in DMAS' existing regulations, has been piloted through a field test by the affected entities which will have to apply it.

DMAS' Division of Long Term Care, in association with community partners at the Virginia Department of Health and the Virginia Department of Social Services, field tested the proposed criteria for children with the community preadmission screening teams as well as hospital-based screening teams. The overall guidance document was well received by the pilot screening teams (who were from 6 different localities and 2 different acute care settings – one of which specialized in the treatment of children) in the Commonwealth.

DMAS performed a survey of the pilot screening teams as part of the post review of the process and received only positive comments from the teams. Some clarifications were made to the criteria based upon the pilot use which have been incorporated into the process. The overall results of the pilot project were positive and the pilot screening teams found the guidelines to be clear, concise, and appropriate for the screening process. DMAS allowed for a 60 day pilot test of the proposed guidelines. Screening teams were instructed to screen children using the existing criteria and then to re-screen the children using the proposed guidelines to see if the outcomes of the screening would differ.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantage to preadmission screening teams is that they will now have the guidance that they have requested to interpret a child's disability to determine the child's degree of dependence with his ADLs. There are no disadvantages for these teams. In fact, the absence of such guidance has been a significant disadvantage for them.

Application of this guidance will result in uniform, consistent, and equitable decisions for all children, across the Commonwealth, who apply for Medicaid coverage of long term care services. It is expected that such uniform application of these standards will reduce potential appeals which create costly administrative expenses for DMAS.

DMAS based this interpretive guidance on a similar action of the Colorado Medicaid program.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements more restrictive than federal. Conducting preadmission screening of individuals who are applying for long term care services is a requirement set out in the *Code of Virginia* at § 32.1-330.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This action will not affect particular localities as these requirements create statewide uniformity of the application of Medicaid criteria for covered long term care services.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

This action does not create more stringent compliance or reporting requirements. It also does not establish performance standards for small businesses. It does not affect small businesses at all. This action does ensure the uniform application of Medicaid criteria for all of the Commonwealth's youngest citizens who apply to it for help in financing needed long term care services.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	\$0
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Pre-admission screening teams (122) and 90 hospitals will be affected by this action.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than	DMAS does not accumulate data on how many of its providers meet the definition of small businesses.

500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	\$0
Beneficial impact the regulation is designed to produce.	Provides for uniform application of pre-admission screening guidelines statewide when applied to children.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

This action does not affect small businesses. These requested criteria will help local preadmission screening teams better and more uniformly evaluate children who are requesting Medicaid coverage of long term care services.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response
Adult Services Program, Virginia Department of Social Services	This commenter fully supports the proposed regulations providing specialized guidance on developmental milestones for preadmission screening teams in completing the Uniform Assessment Instrument for children who are applying for long term care services. The guidelines were developed by an interagency team from Adult Services-DSS, Virginia Department of Health and DMAS and have been tested in the field. The guidelines allow the Pre-Admission Screening teams to assess and more accurately record a child's level of care needs, thereby enhancing the accuracy and effectiveness of the screening process and services provided to eligible children.	DMAS appreciates the assistance and support from VDSS and the Virginia Department of Health in its participation in the field testing process for this new guidance material.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, nor does it decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
60-303		Sets out the existing criteria for long-term care.	Criteria are not changing. Reference to interpretive guidance material is added to assist pre-admission screening teams to interpret a child's abilities in light of the existing Uniform Assessment Instrument.