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## Fast-Track 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>	8/9/2022

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.*

This fact track regulatory action follows an emergency regulation, which amended the Code of Virginia, §§ 32.1-330, 32.1-330.01 and 32.1-330.3 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 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 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
- eMLS = Electronic Medicaid LTSS 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

**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.*

I hereby approve the foregoing Regulatory Review Summary entitled "2020 Long Term Services and Supports (LTSS) Screening Changes" 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.

7/15/2022  
Date

  
Dept. of Medical Assistance Services

**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 provides 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.

**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.*

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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.*

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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.

**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.*

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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 and if needed, Level II, Preadmission Screening and Resident Review (PASRR), a federally-required assessment, to assess for a mental illness, intellectual disability or related condition 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 LTSS Screening. 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.

This regulatory action will amend current DMAS policy by adding procedures for screening private pay individuals who are admitted to a nursing facility from a hospital who later need LTSS.

### 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 to the public, the agency, or the Commonwealth.

### 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.*

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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.*

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**Impact on State Agencies**

<p><i>For your agency:</i> 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</p>	<p>There are no DMAS costs associated with these changes.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit of this regulatory change is to provide individual choice for the setting and provider of LTSS services.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no costs to localities as a result of these changes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of this regulatory change is to provide individual choice for the setting and provider of LTSS services.</p>

**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 provide individual choice for the setting and provider of LTSS services.

**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.

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.*

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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.*

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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: Jimiequa Williams, Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, (804) 225-3508, [Jimiequa.Williams@dmas.virginia.gov](mailto:Jimiequa.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.*

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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, eMLS, 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, consistency, 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	<p>Amendments made to A, B, D, and E. Updated terminology. Removed requirement for individuals to be 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>



			Rationale: To improve clarity, accuracy, grammar, and readability.
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.                  Updated terminology.                  Added requirement that every individual who applies for or requests LTSS shall have choice in the setting and provider and choice must be documented.                  Added requirement that Medicaid payment for services cannot be considered without agreement of the individual or individual's representative.                  Deleted all references to an individual becoming financially eligible for Medicaid within six months of the screening or after admission to a NF.                  Added section D of requirements for the completion of LTSS screenings for individuals needing LTSS after a skilled or rehabilitation nursing facility services admission.                  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.                  Updated terminology.                  Added clarifying language to requirements for community LTSS screenings for adults and children.                  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> <p>Rationale: To improve clarity, accuracy, readability and text consistency with the Code of Virginia.</p>
12VAC30-60-306	N/A	Submission of Screenings	<p>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.</p> <p>Rationale: To improve accuracy and consistency with the Code of Virginia.</p>
12VAC30-60-308	N/A	Nursing Facility Admission and Level of Care Determination Requirements	<p>Added requirement that NF screening teams shall be responsible for screening private pay individuals admitted directly from a hospital for skilled nursing or rehabilitation and have a change in level of care requiring LTSS.</p>

			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.