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Exempt Action
Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-60-306
Regulation title(s)	Submission of Screenings
Action title	LTSS Screening – Remove Three-Day Allowance After Hospital Discharge
Final agency action date	9/11/2019
Date this document prepared	9/11/2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please 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.

Federal law requires that individuals who are seeking nursing facility placement be screened prior to admission in order to determine if the facility placement is medically appropriate. For hospitals that are discharging Medicaid members to a nursing facility, Virginia regulations currently permit the hospitals up to three days after discharge to submit the required screening forms via the automated system. This has created a situation where Medicaid members are being discharged from hospitals and in need of nursing facility care, and facilities are prohibited from admitting them in the absence of the federally required screening.

The purpose of this action is to remove the hospital's post-discharge three-day screening period to ensure that nursing facilities can directly admit Medicaid members and fully comply with federal screening regulations.

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 Summary with the attached amended regulations entitled "LTSS Screening – Remove Three-Day Allowance After Hospital Discharge" and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

9/11/2019
Date

/signature/
Karen Kimsey, 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.

Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services. The Administrative Process Act [Va. Code § 2.2-4006(c)] authorizes state agencies to promulgate Final Exempt regulations that are "[n]ecessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation." Removing the three-day post discharge period for hospitals to complete the required screening is necessary for nursing facilities to meet federal screening requirements and this action ensures that the VAC does not differ materially from those requirements.

Federal regulations at 42 CFR 483.20(k) state that:

(k) *Preadmission screening for individuals with a mental disorder and individuals with intellectual disability.* (1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—

…

(ii) Intellectual disability, as defined in paragraph (k)(3)(ii) of this section, unless the State intellectual disability or developmental disability authority has determined **prior to admission**—

(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, whether the individual requires specialized services for intellectual disability.

(Emphasis added.)

In the absence of a screening prior to nursing facility admission, DMAS is not eligible to receive Federal Financial Participation (FFP) for any nursing facility services provided prior to the completion of the required screening. Federal regulations at 42 CFR 483.122(b) state that:

> When a preadmission screening has not been performed prior to admission …. FFP is available only for services furnished after the screening or review has been performed.

Federal regulations require that all Medicaid members be screened prior to admission in order to determine whether they have mental illness (MI) or intellectual disability (IID). This determination must be made prior to placement in order to ensure that the admitting nursing facility (NF) is a medically appropriate setting. This is required at 42 CFR 483.126:

> Placement of an individual with MI or IID in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF.

DMAS is required by the Virginia Code [§ 32.1-330(A) (Preadmission screening required)] to pre-screen all members and potential members prior to admission to a nursing facility:

> A. 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 institutional screening, the Department shall contract with acute care hospitals.

Where the hospital completes the screening at or prior to the time of discharge, this provides the essential data required to determine whether the admitting nursing facility is the appropriate setting, as federally required. The current three-day post-discharge period prevents the identification of the admitting nursing facility as an appropriate setting if the screening was not completed prior to hospital discharge.

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.

Hospitals complete an individual's screening for Medicaid long-term services and supports by entering or uploading completed screening forms to the Agency's electronic screening portal (ePAS). The uploaded ePAS forms are the official screening record, and provide the data that is required to determine that the individual has met the level of care required for nursing facility or for home and community based waiver services. The uploaded ePAS forms determine if the admitting facility is the appropriate setting for the individual, per federal requirements.

The hospital's screening is not complete until it uploads the screening forms to ePAS. Until the hospital completes this last step, nursing facilities have no official screening to validate the individual's admission or to comply with federal screening requirements to support Medicaid reimbursement. The Code of Federal Regulations requires preadmission screening be completed prior to new admissions to a nursing facility (see 42 CFR 483, Subpart C, sections 483.100-483.138), and any reimbursement that DMAS may pay a facility prior to the availability of the official ePAS document would be subject to retraction. DMAS would be subject to a retraction of the federal percentage of those same funds in a federal audit.

DMAS' current regulations permit hospitals up to three days post-discharge to enter or upload the screening forms to ePAS. This three-day period creates a potential lag between an individual's hospital discharge and their admission to a nursing facility, with possible gaps in needed services that could put the individual at risk of harm. It also puts at risk any reimbursement that nursing facilities earn by providing services to Medicaid members prior to the availability of the official ePAS screening form.

As noted, the member's mental or intellectual capacities, functional abilities, medical nursing needs, risk of institutionalization, or the appropriateness of the member's placement in a nursing facility cannot be determined until a screening is completed. The only alternative is to remove the three-day extension and ensure that hospitals complete the screenings by the time of the patient's discharge. This Final Exempt action is designed to resolve this obstacle to medical care, to ensure the health and safety of Medicaid members and ensure that nursing facilities are able to fulfill their obligations under federal screening regulations.

Periodic Review

Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include 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 the 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.

This regulatory action is not the result of a periodic review or small business impact review.