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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 30-10-240; 12 VAC 30-10-430; 12 VAC 30-10-520; 12 VAC 30-10-670; 12 VAC 30-10-751; 12 VAC 30-10-810
Regulation title(s)	Amount, Duration, and Scope of Services; Payment for Nursing Facility Services; Medicaid Quality Control; Required Provider Agreement; Appeals Process; Enforcement of Compliance for Nursing Facilities; Resident Assessment for Nursing Facilities
Action title	Requirements for LTC Facilities
Final agency action date	June 21, 2017
Date this document prepared	June 21, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The following changes are needed to update DMAS nursing facility requirements for Medicaid participation so that they are in line with CMS requirements. A series of CMS revisions to CFR Part 483 (Requirements for States and Long Term Care Facilities) necessitates changes to what are now outdated CFR citations in DMAS regulations.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 Requirements for LTC Facilities (12 VAC 30-10-240; 12 VAC 30-10-430; 12 VAC 30-10-520; 12 VAC 30-10-670; 12 VAC 30-10-751; 12 VAC 30-10-810) 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.

6/21/2017

/s/ Cynthia B. Jones

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, 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.

Several of the changes are made under a new CMS final rule: 81 FR 68688 (published October 4, 2016). During a review of the impact of this final rule, other VAC sections were observed to need changes to ensure that they contain current citations to the applicable Code of Federal Regulations sections. These changes are being made in accordance with VA Code § 2.2-4006(A)(4)(c).

Other changes in style are being made in accordance with VA Code § 2.2-4006(A)(3), such as changing "ICF/MR" to "ICF/IID".

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.

VAC Section and Change	CFR Section Requiring Change
12VAC30-10-240 – Change reference to 42 CFR 483.10(c)(8)(i) to “42 CFR 483.10(f)(11)”.	This change is required by 81 FR 68688 (October 4, 2016).
12VAC30-10-430 – Change reference to 431.800(e), (g), (h), (j) and (k) to "42 CFR 431.808, 42 CFR 431.818, CFR 431.830, 42 CFR 431.832, 42 CFR 431.834, and 42 CFR 431.836".	These changes are required by Federal Register at 55 FR 22165 (May 31, 1990).
12VAC30-10-520 – Change terminology from “ICF/MR” to “ICF/IID” and Subpart “D” to Subpart “I”. Add reference to "including the provision of care". Change terminology from “home(s)” to “facility(ies)” and "patient" to "individual".	The first change is a change in style. The second change updates a reference to the CFR. This section was re-designated by 56 FR 48918 (September 26, 1991). The third set of changes reflect a change in style.
12VAC30-10-670 – In subsection B, change citation of “42 CFR 483.12” to “42 CFR 483.15”. Add reference regarding VAC sections. Add reference to preadmission "screening". Change the citation of “42 CFR 483 Subpart 81 C” to “42 CFR 483 Subpart C”.	This first change is required by 81 FR 68688 (October 4, 2016). The second change is a change in form to provide reference to state requirements. The third change is a change in style. The final change corrects a technical error.
12VAC30-10-751 – Add the phrase "newly admitted". Remove the listing of 1-6 under subsection E. Change references of “HCFA” to “CMS”. Change CFR citation of “42 CFR 488.452 (1995)” to “42 CFR 488.452” in subsection F.	The first change is a change in style. The second change is being made is to be consistent with 42 CFR 488.406(b). The third change is a change in style. The last change is being made to remove an out-of-date year reference.
12VAC30-10-810 – Change "Health Care Financing Administration" to "CMS". Change the reference of “Transmittal #241 of the State Operations Manual (§ 1919(e)(5)(A))” to “Appendix R ‘Resident Assessment Instrument for Long-Term Care Facilities’ of the CMS State Operations Manual.”	The first change is a change in style. The second change is being made to update the reference to the Resident Assessment Instrument (RAI).

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; nor 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.