

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 185

*An Act to amend and reenact § 32.1-330 of the Code of Virginia, relating to long-term services and supports screening; screening after admission; coverage of institutional long-term services and supports.*

[S 1457]

Approved March 22, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-330 of the Code of Virginia is amended and reenacted as follows:**

**§ 32.1-330. Long-term services and supports screening required.**

A. As used in this section, "acute care hospital" includes an acute care hospital, a rehabilitation hospital, a rehabilitation unit in an acute care hospital, or a psychiatric unit in an acute care hospital.

B. Every individual who applies for or requests community or institutional long-term services and supports as defined in the state plan for medical assistance services may choose to receive services in a community or institutional setting. Every individual who applies for or requests community or institutional long-term services and supports shall be afforded the opportunity to choose the setting and provider of long-term services and supports.

C. Every individual who applies for or requests community or institutional long-term services and supports shall be screened prior to admission to such community or institutional long-term services and supports to determine his need for long-term services and supports, including nursing facility services as defined in the state plan for medical assistance services. The type of long-term services and supports screening performed shall not limit the long-term services and supports settings or providers for which the individual is eligible.

D. If an individual who applies for or requests long-term services and supports as defined in the state plan for medical assistance services is residing in a community setting at the time of such application or request, the screening for long-term services and supports required pursuant to subsection C shall be completed by a long-term services and supports screening team that includes a nurse, social worker or other assessor designated by the Department who is an employee of the Department of Health or the local department of social services and a physician who is employed or engaged by the Department of Health.

E. If an individual who applies for or requests long-term services and supports as defined in the state plan for medical assistance services is receiving inpatient services in an acute care hospital at the time of such application or request and will begin receiving long-term services and supports as defined in the state plan for medical assistance services pursuant to a discharge order from an acute care hospital, the screening for long-term services and supports required pursuant to subsection C shall be completed by the acute care hospital in accordance with the screening requirements established by the Department.

F. If an individual who applies for or requests long-term services and supports as defined in the state plan for medical assistance services is receiving skilled nursing services that are not covered by the Commonwealth's program of medical assistance services in an institutional setting following discharge from an acute care hospital, the Department shall require qualified staff of the skilled nursing institution to conduct the long-term services and supports screening in accordance with the requirements established by the Department, with the results certified by a physician prior to the initiation of long-term services and supports under the state plan for medical assistance services.

G. *If an individual is admitted to a skilled nursing facility for skilled nursing services and such individual was not screened but is subsequently determined to have been required to be screened prior to admission to the skilled nursing facility, then the qualified staff designated in subsection F may conduct a screening after admission. Coverage of institutional long-term services and supports under this subsection by the Commonwealth's program of medical assistance services indicated by the screening shall not begin until six months after the initial admission to the skilled nursing facility. During this six-month period, the nursing home in which the individual resides shall be responsible for all costs indicated for institutional long-term services and supports that would otherwise have been covered by the Commonwealth's program of medical assistance services, without accessing patient funds. Six months after the date of admission to the skilled nursing facility, and as indicated through the eligibility determination, the Commonwealth's program of medical assistance services shall assume coverage of such services. To the extent that sufficient evidence is provided to indicate that the admission without screening was of no fault of the skilled nursing facility, the Department shall begin coverage of institutional long-term services and supports under this subsection by the Commonwealth's program of medical assistance services immediately upon the completion of the functional screening indicating nursing facility level of care pending the financial eligibility determination.*

*H.* In any jurisdiction in which a long-term services and supports screening team described in subsection D or E has failed or is unable to perform the long-term services and supports screenings required by subsection D or E within 30 days of receipt of the individual's application or request for long-term services and supports under the state plan, the Department shall enter into contracts with other public or private entities to conduct such long-term services and supports screenings in addition to or in lieu of the long-term services and supports screening teams described in subsections D and E.

~~H.~~ *I.* The Department shall require all individuals who perform long-term services and supports screenings pursuant to this section to receive training on and be certified in the use of the long-term services and supports screening tool for eligibility for community or institutional long-term services and supports provided in accordance with the state plan for medical assistance services prior to conducting such long-term services and supports screenings.

~~I.~~ *J.* The Department shall report annually by August 1 to the Governor and the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health regarding (i) the number of long-term services and supports screenings for eligibility for community and institutional long-term services and supports conducted pursuant to this section and (ii) the number of cases in which the Department or the public or private entity with which the Department has entered into a contract to conduct such long-term services and supports screenings fails to complete such long-term services and supports screenings within 30 days.

**2. That the Department of Medical Assistance Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**