



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30 -100-170
<b>Regulation title</b>	State Programs – State/Local Hospitalization (SLH)
<b>Action title</b>	Eligibility Requirements for the State/Local Hospitalization Program
<b>Date this document prepared</b>	February , 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The Department of Medical Assistance Services (DMAS) is proposing a change to eligibility requirements for the State and Local Hospitalization program. Currently, individuals eligible for coverage in any other Medicaid program are ineligible to participate in SLH. The proposed change will allow individuals eligible in limited benefit Medicaid programs, such as the Qualified Medicare Beneficiaries (QMBs) to be evaluated for coverage in SLH if a medical need arises that cannot be covered by the limited Medicaid benefit program.

### 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 Regulatory Review Summary with the attached amended regulations for State/Local Hospitalization Program (SLH) 12VAC30-100-170, and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true and correctly dated.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, 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 law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, §32.1-344, establishes within the Department of Medical Assistance Services the State/Local Hospitalization Program for indigent persons and permits the Director of DMAS to administer the program and expend state and local funds in accordance with the provisions of this chapter. The *Code of Virginia* (1950) as amended §§32.1-346-347, authorizes the Board of Medical Assistance Services to promulgate regulations to establish uniform eligibility criteria by defining those person who will qualify for payment for medical care under the Program. The *Code of Virginia* §32.1-324 permits the Director of DMAS to adopt these regulations in lieu of the Board.

**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 regulatory change is to permit limited coverage Medicaid recipients who are eligible for limited benefits, such as Medicare premiums, co-payments and deductibles, or both and family planning services to apply for SLH benefits when they have a healthcare need that their limited Title XIX Medicaid benefits does not address, but which the SLH program might meet. This change will be a direct benefit to the health, safety, and welfare of these citizens of the Commonwealth who are eligible for only limited Medicaid benefits by providing SLH services to individuals who would otherwise have no available means to pay for their medical care needs.

### 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 60-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 objection 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.*

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial clarification. The result of the clarification is to better articulate the intent of the original language by precluding duplicity of services (the receipt of both Medicaid coverage and SLH coverage at the same time) and preserving the limited appropriation for those in need of this coverage. The requested change in regulation regarding SLH Program eligibility is required to correct the unintended consequence from a change that occurred in the Medicaid Program after SLH regulations were revised by the General Assembly in 1989. The revised SLH regulations were based on the Medicaid Program of that same era. At that time there was no difference in the level of coverage provided to Medicaid recipients regardless of the Medicaid covered group in which the individual was eligible. However, a subsequent change in federal regulations created the limited coverage Medicaid Groups. The limited coverage groups were added to the Virginia Medicaid Program effective January 1, 1993. After review of the issue, this is a change for which there is no other means of resolution except to promulgate in a change in language.

### 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.)*

The section of the Virginia Administrative Code regarding State/Local Hospitalization Program that is affected by this action is State Programs - Eligibility Requirements for SLH (12 VAC 30-100-170).

Current SLH policy precludes eligibility to those individuals who are found eligible for any benefits of the Medicaid Program. The requested change in regulation regarding SLH Program eligibility is required to correct the unintended consequence from a change that occurred in the Medicaid Program after SLH regulations were revised by the General Assembly in 1989. The revised SLH regulations were based on the Medicaid Program of that same era. At that time there was no difference in the level of coverage provided to Medicaid recipients regardless of the Medicaid covered group in which the individual was eligible. However, a subsequent change in

federal regulations created the limited coverage Medicaid Groups. These groups were added to the Virginia Medicaid Program effective January 1, 1993.

While full benefit Medicaid and SLH recipients are provided the same level of coverage, limited coverage Medicaid recipients are only provided coverage of Medicare premiums, co-payments and deductibles, or both, and family planning services. SLH coverage is limited to persons receiving out-patient/in-patient hospital treatment, ambulatory surgical services or health department clinics visits. The period that is covered is limited to the number of days for which services were received. The proposed change to this regulation will remove a barrier that occurred unintentionally when the federal government added limited coverage groups to the Medicaid Program.

The intent of the original SLH regulatory language was to preserve the limited appropriation for the SLH program when individuals were eligible for the same benefits and for a more extensive time period under the Medicaid Program. Therefore, an individual who applied for SLH was screened and if eligible, approved for Medicaid coverage instead of SLH coverage. The individual benefited as care under the Medicaid Program was not limited to payment of the number of days for an in-patient in a hospital stay. The broad scope of the current language bars all limited coverage Medicaid eligible individuals from receiving benefits they both applied for and needed, as it does not distinguish between the levels of Medicaid coverage. Since limited groups do not have the same coverage, Medicaid eligibility does not benefit the individual by providing assistance for his or her most immediate needs. For example, a person breaks a leg and is only eligible for a Medicaid limited benefit group that would not cover the hospital bills; SLH would cover the hospitalization, but current regulation prohibits this individual from receiving SLH benefits, as he is Medicaid eligible.

This change would allow individuals to receive SLH benefits who receive Plan First (Family Planning Waiver services) coverage or who are Qualified Medicare Beneficiaries. Plan First recipients are only eligible to receive family planning services. Qualified Medicare Beneficiaries could receive SLH coverage for the time period prior to receipt of their limited Medicaid coverage, since federal regulations indicate that coverage can not begin until the month after they are determined eligible.

This change may add a limited number of individuals to the population of SLH eligible persons. However, only those individuals who meet SLH eligibility criteria, and are not yet receiving Medicaid payment of Medicare premiums, co-insurance and deductibles or both or are eligible for Plan First coverage (Family Planning Waiver services) would be eligible for SLH; therefore, the number added to this stratum will be diminished. Additionally applications for Medical Assistance Programs are processed chronologically, and there is no guarantee that SLH funding will be available to cover medical costs at any given point in time.

The recommended clarification of language will preserve the intent of the original regulation, and allow certain limited coverage Medicaid eligible individuals who do not have access to benefits under SLH to gain access to that coverage. Amending the language will provide medical assistance to those individuals who are requesting SLH and are eligible to receive coverage that would otherwise not be available to pay for their medical needs.

## 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.*

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The disadvantage to the public or to the Commonwealth is that this regulation could increase the need relative to limited funding however; the advantage is to the private citizen by removing an unintended barrier to services for which they should have access.

## 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.*

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SLH is a state only funded program with no federal involvement.

## 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.*

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No localities are particularly affected by this change as implementation is statewide.

## 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.*

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There is no adverse impact on small business. The amendments to the language for persons eligible for Title XIX services enhance the ability of citizens to participate in the SLH Program.

### Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

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There is no budgetary or fiscal impact with this change as funding for the program is limited. Citizens applying for SLH assistance are only approved for this program to the extent that there are existing appropriations. Once each year's appropriations are depleted, no further individuals are approved for this payment source.

### 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.*

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DMAS determined after reviewing SLH Program regulations that there were no alternatives that would remove the unintended barrier to eligibility and yet, preserve the intent of the original language.

### 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.*

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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, but may increase disposable family income for low income families by providing coverage not otherwise available to the individual to cover medical costs.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

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

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For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-100-170		All Medicaid eligible individuals barred from SLH coverage.	<p>Only full coverage Medicaid eligible individuals and those determined eligible for Medicaid payment of Medicare premiums, co-insurance and deductibles would not be eligible for SLH coverage.</p> <p>Individuals eligible for Medicaid coverage as a Qualified Medicare Beneficiary may be determined eligible for SLH Program for the months prior to enrollment as QMB.</p>

This change in regulation will better articulate the intent of the regulation to preclude duplication of services and preservation of a limited funding pool. Additionally, it will clarify the regulation to not penalize individuals eligible in limited coverage Medicaid groups that do not have access to the type of coverage provided under the SLH Program and full coverage Medicaid covered groups.