




COMMONWEALTH of VIRGINIA
Office of the Attorney General

Mark R. Herring
Attorney General

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MEMORANDUM

TO: EMILY MCCLELLAN
Department of Medical Assistance Services

FROM: ABRAR AZAMUDDIN 
Assistant Attorney General

DATE: March 4, 2016

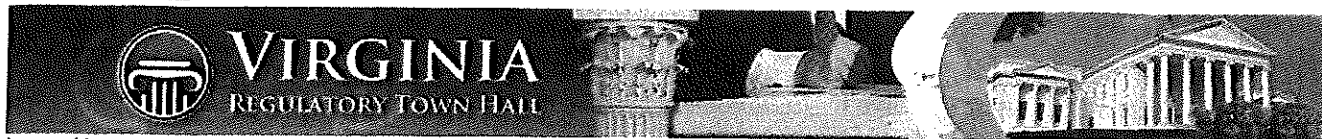
SUBJECT: Fast Track Regulations regarding Hospital Presumptive Eligibility; 12 VAC 30-30-70

I have reviewed the attached proposed regulations, which pursuant to 42 CFR 435.1110, creates a new section in Chapter 30 that requires qualified hospitals to make a temporary Medicaid eligibility determination for individuals who are seeking medical treatment. Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Virginia Code § 32.1-324 and with the authority provided for by Virginia Code § 32.1-325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether it should be promulgated pursuant to the fast track process. Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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 Department of Medical Assistance Services 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 set out in this article with the initial publication of the fast-track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information, please feel free to call me at (804) 786-6004.

cc: Kim F. Piner, Senior Assistant Attorney General



Logged in as

Abrar Azamuddin

Proposed Text

Action: Hospital Presumptive Eligibility**Stage:** Fast-Track

12/22/15 2:26 PM [latest] ▼

THE TEXT OF THIS REGULATION IS IN DRAFT FORM AND SHOULD NOT BE RELIED UPON FOR LEGAL INTERPRETATION.

12VAC30-30-70. Hospital presumptive eligibility.

Qualified hospitals shall administer presumptive eligibility in accordance with the following provisions:

A. A qualified hospital is a hospital that:

1. Has entered into a valid provider agreement with DMAS, participates as a Virginia Medicaid provider, notifies DMAS of its election to make presumptive eligibility determinations, and agrees to make presumptive eligibility determinations consistent with DMAS policies and procedures; and
2. Has not been disqualified by DMAS for failure to make presumptive eligibility determinations in accordance with applicable state policies and procedures, or for failure to meet any standards established by the Medicaid agency.

B. The eligibility groups or populations for which hospitals determine eligibility presumptively are: pregnant women; infants and children under age 19; parents and other caretaker relatives; individuals eligible for family planning services; former foster care children; individuals needing treatment for breast and cervical cancer.

C. The presumptive eligibility determination shall be based on:

1. The individual's categorical or non-financial eligibility for the group (listed in subsection B of this section) for which the individual's presumptive eligibility is being determined;
2. Household income shall not exceed the applicable income standard for the group (listed in subsection B of this section) for which the individual's presumptive eligibility is being determined, if an income standard is applicable for this group;
3. Virginia residency; and
4. Satisfactory immigration status.

D. Qualified hospitals shall ensure that at least 85% of individuals deemed by the hospital to be presumptively eligible will file a full Medicaid application before the end of the presumptive eligibility period.

E. Qualified hospitals shall ensure that at least 70% of individuals deemed by the hospital to be presumptively eligible are determined eligible for Medicaid based on the full application that is submitted before the end of the presumptive eligibility period.

F. The presumptive eligibility period shall begin on the date the presumptive eligibility determination is made. The presumptive eligibility period shall end on the earlier of:

1. The date the eligibility determination for regular Medicaid is made, if an application for Medicaid is filed by the last day of the month following the month in which the determination of presumptive eligibility is made; or

2. The last day of the month following the month in which the determination of presumptive eligibility is made, if no application for Medicaid is filed by that date.

G. Periods of presumptive eligibility are limited to one presumptive eligibility period per pregnancy and one per calendar year for all other covered groups.