



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 5-410
<b>Regulation title</b>	Regulations for Licensure of Hospitals in Virginia
<b>Action title</b>	Adoption of new regulations defining "rural hospital" for hospitals in locations reclassified as metropolitan statistical areas
<b>Document preparation date</b>	November 23, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposed new regulation will define a "rural hospital" in Section 12 VAC 5-410-10 of the *Virginia Administrative Code*. A "rural hospital" has not previously been defined in state statute or regulation.

### 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.*

Enter statement here  
N.A.

## 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.*

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Enter statement here

Following the 2000 Census, the Federal Office of Management and Budget (OMB) reclassified a number of rural Virginia counties as Metropolitan Statistical Areas (MSA). The MSA reclassification was effective October 1, 2004. The Code of Federal Regulations (CFR) has provisions for hospitals that wish to be reclassified as rural. One of the conditions of reclassification is that the hospital be designated as a rural hospital by state law or regulation (42 CFR 412.103(a)(2)). However, the reclassification provisions only applied to prospective payment hospitals, not to Critical Access Hospitals (CAH). In the "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Final Rule" published in the August 11, 2004 Federal Register, the Center for Medicare and Medicaid Services (CMS) revised CFR 485.610 by adding a new paragraph (b)(3) to provide special treatment for CAHs. Under the new paragraph, a CAH that is located in a county that in FY 2004 was not part of an MSA as defined by the OMB, but as of FY 2005 was included as part of an MSA as a result of the most recent census data, would nonetheless be considered to meet the rural location requirement and could continue operating as a CAH from October 1, 2004, until the earlier of the date on which the CAH obtains a rural designation under Sec. 412.103(a)(2) or December 31, 2005. The August 11 Federal Register notice also amended Sec. 412.103 to clarify that such a CAH is eligible for rural designation under that section.

## 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.*

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Enter statement here

The Social Security Act distinguishes between urban and rural hospitals for the purposes of reimbursement from Medicare and Medicaid and for other purposes. "Rural" is defined at Section 1886(d)(2)(D) of the Act as outside of an area designated by the Office of Management and Budget as a Metropolitan Statistical Area (MSA). The OMB designations are based on the U.S. Census, changes to which in 2000 created new MSA designations for a number of rural counties in Virginia. Virginia hospitals in counties formerly classified as rural may lose federal benefits contingent on the rural designation unless they are designated as rural in state statute or regulation.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. 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.*

Enter statement here

Critical Access Hospitals in counties reclassified by the OMB as an MSA will lose their federal status as CAHs unless they can cite a state regulation or statute that classifies the hospital or the county as rural before December 31, 2005. No such regulation or statute currently exists in Virginia.

### 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.)*

Enter statement here

The proposed regulation will amend 12 VAC 5-410-10 to include a definition of "rural hospital" and will ensure that federal reclassification of rural areas to MSAs will not have an adverse impact on Virginia hospitals that receive federal benefits based on their rural classification.

### 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.*

Enter statement here

- 1) The primary advantage to the public is that hospitals in rural areas that have been reclassified as MSAs following the 2000 Census will continue to be able to receive federal grant assistance for rural hospitals. These grants support hospital operations and help ensure the financial viability of rural hospitals. In regard to Critical Access Hospitals, the primary advantage to the community will be that the hospital will not lose its CAH designation and thus will continue to receive a higher reimbursement rate from Medicare than it would if it were not a CAH. The higher reimbursement rate will help

ensure financial stability for the hospital. The proposed regulation presents no known disadvantages to the public.

- 2) The primary advantage to the Commonwealth is the financial stability of rural hospitals that provide essential health care services to Virginians in rural and medically underserved areas of the Commonwealth. The proposed regulation presents no known disadvantages to the Commonwealth.
- 3) All pertinent matters of interest are included in this document.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	No state funds will be needed for the proposed regulation and it will have no financial impact on the Commonwealth.
<b>Projected cost of the regulation on localities</b>	0
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Critical Access Hospitals in Virginia and other rural hospitals with 49 or fewer beds will benefit from the proposed regulation.
<b>Agency's best estimate of the number of such entities that will be affected</b>	21 hospitals
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	0

Enter any other statement here

**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.*

Enter statement here

Legislation could accomplish the same goal only if it were enacted before January 1, 2006.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

Enter statement here

This regulation would have the effect of assisting families in rural communities by maintaining the financial viability of hospitals that currently benefit from a federal rural classification.

**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.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12 VAC 5-410-10	n.a.	n.a.	The proposed regulation would add a definition to the definitions in Section 10 of Chapter 410, REGULATIONS FOR THE LICENSURE OF HOSPITALS IN VIRGINIA.

Enter any other statement here

Please see the proposed regulation in the attachment.