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Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	112 VAC 30-141
Regulation title	Family Access to Medical Insurance Security Plan (FAMIS): Coverage for pregnant women: FAMIS MOMS
Action title	FAMIS MOMS
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This final action completes the implementation of a new program to provide health care coverage to pregnant women with income over the Medicaid limit but less than or equal to 166 percent of the Federal Poverty Level utilizing Title XXI funds.

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 Document with the attached final regulations Family Access to Medical Insurance Security (FAMIS) – FAMIS MOMS (12 VAC 30-141-10; 30-141-100; 30-141-120; 30-141-150; 30-141-180; 30-141-650 and 12 VAC 30-141-670 through 12 VAC 30-141-880) and adopt the action stated therein. I certify that this final

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 source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia (1950) as amended, § 32.1-351, grants to the BMAS the authority to administer and amend the Title XXI Plan (FAMIS). The Code of Virginia (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to “adopt, promulgate and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-400 et. seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.” The 2005 Appropriations Act, Chap. 951, Item 324(L) mandated that DMAS promulgate regulations to “expand medical coverage to pregnant women who are over the age of 19 with annual family income in excess of the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Level.” Section 2102(a)(7) of the federal Social Security Act requires states “to assure the quality and appropriateness of care” in Title XXI SCHIP programs.

In addition, this final regulation incorporates a final exempt change arising from a mandate of the 2006 General Assembly, Item 301 D: “The Department of Medical Assistance Services shall have the authority to amend the Family Access to Medical Insurance Security Plan and related regulations to expand medical coverage to pregnant women who are over the age of 19 who are ineligible for Medicaid and have annual family income less than or equal to 166 percent of the Federal Poverty Level.” Because the Agency has no discretion concerning the implementation of this change, it is exempt from the Administrative Process Act (Code of Virginia § 2.2-4000, et. seq.) pursuant to Code of Virginia § 2.2-4006(4)(a); therefore the Agency is incorporating this change into this final regulation. The General Assembly appropriated \$1,218,528 for 2006-2007, and \$1,620,952 for 2007-2008, in order to accommodate this expansion of eligibility for FAMIS MOMS.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to implement a program to provide health care coverage to pregnant women with income over the Medicaid limit but less than or equal to 166 percent of the Federal Poverty Level utilizing Title XXI funds.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the non-State Plan regulations that is affected by this change is: Family Access to Medical Insurance Security Plan (12 VAC 30-141).

Coverage of pregnant women with income above the Medicaid limit but less than or equal to 166 percent of the Federal Poverty Limit (FPL) represents a new population of individuals to be covered by Virginia's Title XXI program. Therefore, 12 VAC 30-141-810 to 1660 are new regulations specifically developed to support the FAMIS MOMS program. Because FAMIS MOMS is part of Virginia's Title XXI program, these regulations are closely modeled after the existing FAMIS regulations (12 VAC 30-141-10 to 660). In many sections the only difference between the new FAMIS MOMS regulations and the existing FAMIS regulations is the name of the program or the reference to a pregnant woman instead of to a child. Some elements in the FAMIS MOMS definition section (12 VAC 30-141-670) reflect additions to, or deletions from, the definitions provided in 12 VAC 30-141-10 (FAMIS Definitions).

Because Medicaid will cover pregnant women with income less than or equal to 133 percent of the Federal Poverty Level (FPL), the additional pregnant women covered by FAMIS MOMS (133% up to 166% FPL) is expected to be small. Therefore, regulations 12 VAC 30-141-740 D (Eligibility requirements - Income), 12 VAC 30-141-800 (Co-payments), and 12 VAC 30-141-820 (Benefit package) are modeled after the Medicaid program for pregnant women. This similarity to the much larger Medicaid program is intended to provide access to comprehensive health care services while minimizing confusion and error rates for local Department of Social Services eligibility workers, medical providers, managed care organizations, and community programs, as they provide services to the small population of women covered by FAMIS MOMS. Certain FAMIS regulations are not being carried over into the FAMIS MOMS regulations because they do not apply to the new program. Specifically, these FAMIS regulations include:

- 12VAC30-141-30 B & C (Duties of the Outreach Oversight Committee)
- 12VAC30-141-100 D(3) (Grandfathered CMSIP children)
- 12VAC30-141-100 G(2a) & (2c) (Four month waiting period)
- 12VAC30-141-110 B (12 months of continuous coverage in FAMIS)
- 12VAC30-141-150 N (Redetermination of eligibility)
- 12VAC30-141-170 (Employer Sponsored Health Insurance)

However, several changes are being made to the mainline FAMIS regulations in order to reflect the impact of the new FAMIS MOMS program: 12 VAC 30-141-10 (Definitions), 12 VAC 30-141-100 (Eligibility requirements), 12 VAC 30-141-120 (Children ineligible for FAMIS), and 12 VAC 30-141-150 (Application requirements). First, a new definition of “Application for health insurance” is added and the definition of “Child health insurance application” is deleted, as the new application form developed and approved by DMAS will be for use by both children and pregnant women applying for coverage. All other references to “Child health insurance application” are being changed to “application for health insurance” (12 VAC 30-141-150 (B), (C), (G), and (J) are amended). Second, 12 VAC 30-141-100(G)(2) is amended to exclude a pregnant child from the required four-month waiting period exclusion from FAMIS since the child was covered by health insurance. This will allow a pregnant child to be enrolled in the FAMIS program and receive appropriate prenatal care instead of either delaying services for up to four months or enrolling in the FAMIS MOMS program with no waiting period, but having coverage end two months following the end of the pregnancy. Third, while access to the State Health Plan for state employees remains a barrier to enrollment in both FAMIS and FAMIS Moms, DMAS has received recent confirmation from CMS that participation in Virginia’s Local Choice Program no longer meets the current federal definition of access to the State Health Plan. Therefore, access to the State Health Plan through the Local Choice program is not included as a condition of eligibility in the FAMIS MOMS program and is also removed from the mainline FAMIS regulations. Elimination of this unnecessary barrier to enrollment is intended to increase program participation and enhance the coordination and coherence between the two programs. These references are found in 12 VAC 30-141-10 (Definitions), 12 VAC 30-141-100 (C)(7) (Eligibility requirements), and 12 VAC 30-141-120 (A)(2) (Children ineligible for FAMIS). Finally, DMAS noted that the Virginia Code reference concerning the judgment rate of interest found in 12 VAC 30-141-180 was incorrect; this reference is corrected in this proposed regulation.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the Commonwealth of FAMIS MOMS is that this program expands health care services to pregnant women and has the potential to improve birth outcomes for newborns, increasing the overall health of the citizens of Virginia. By addressing the health care needs of a broader spectrum of pregnant women and newborns, FAMIS MOMS has the potential to identify and respond to medical problems earlier on in pregnancy and during the post-partum period, resulting in both enhanced outcomes for mothers and newborns, as well as potential cost savings in addressing problems earlier rather than later, where there is the potential for more serious and costly medical needs. This regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Changes were made to the final regulation based upon public comments received by the Agency. The following changes were made:

12 VAC 30-141-10 (Definitions): DMAS made non-substantive edits to the definition of "Application for health insurance" to make the language less cumbersome and more readable.

12 VAC 30-141-100(G)(2)(a) & (b) (Eligibility requirements): In response to public comment, DMAS deleted the reference to ESHI in subsection (a), and added the words ", FAMIS, FAMIS MOMS" and a reference to paid premiums "under Title XXI through the SCHIP premium assistance program" to the list of programs excluded from the definition of "health insurance" in subsection (b).

12 VAC 30-141-100(H) (Eligibility requirements): In response to public comment, DMAS added this section to address a potential gap in coverage for babies being born at the end of the month.

12 VAC 30-141-120 (Children ineligible for FAMIS): DMAS made a non-substantive edit to subsection (A)(2), changing "he shall be ineligible for FAMIS" to "the child shall be ineligible for FAMIS" in order to make it clear that the reference is to the child.

12 VAC 30-141-150(B) (Application requirements): The Agency moved the phrase "via the Internet" from the third sentence, which references applying at the local Dept. of Social Services (DSS), to the fourth sentence, which references applying at the FAMIS CPU. The Agency moved this phrase because Internet applications are available for the FAMIS CPU, but not for the local DSS offices.

12 VAC 30-141-740(D)(2) (Eligibility requirements): In response to Item 301 D of the 2006 Appropriations Act, DMAS expanded the income eligibility ceiling of 150% of the Federal Poverty Level (FPL) to 166% of the FPL.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the May 29, 2006, *Virginia Register* (VAR 22:19) for their public comment period from May 29, 2006 through July 28, 2006. All comments were essentially the same, and were received from the Virginia Poverty Law Center, CHIP of Virginia, and from the March of Dimes, collectively referred to as "The Commenters."

Comment: The Commenters strongly support the FAMIS MOMS program and many of the policy decisions incorporated into these regulations, including the provisions in 12 VAC 30-141-100(G)(2)(a)[waiting period]; 12 VAC 30-141-100 (C) (7) and 12 VAC 30-141-120(A)(2) [local choice amendments]; 12 VAC 30-141-800 [cost-sharing].

DMAS Response: DMAS appreciates the support expressed by the Commenters.

Comment: With regard to 12 VAC 30-141-100(G)(2)(b), the Commenters suggest that the Agency change to the more comprehensive language used in 12 VAC 30-141-740 (G)(2)(b). the Commenters suggest that if this is done, the language in 30-141-100(G)(2)(a) can be simplified by deleting the reference to ESHI).

DMAS Response: This change does not alter the content of the regulation but does make the exceptions more clear and provides consistent language in the regulations between the FAMIS and FAMIS MOMS programs. DMAS agrees with this suggestion and will incorporate it in the final regulations.

Comment: With regard to 12 VAC 30-141-740 (C)(1) the Commenters suggest that DMAS do the following: delete the phrase “due to excess income”. The Appropriations Act for 2006-2008 makes clear that the FAMIS MOMS program is available to all pregnant women who are ineligible for Medicaid who otherwise meet FAMIS MOMS eligibility requirements. See Budget Item 301 (D). The General Assembly specifically removed language that had required pregnant women to have income “in excess” of Medicaid’s income limits. Therefore, that language should be deleted from the regulations.

Moreover, Title XXI income eligibility levels operate as “ceilings”, but not “floors”. Without this amendment Virginia would improperly deny lower income pregnant women the services available to higher income pregnant women in the exact same circumstances. This would violate a basic principle in Title XXI that higher income individuals should not be served before those with lower income. See, 42 CFR 457.320(b)(1)12 VAC 30-141-100(G)(2)(b),

DMAS Response: It is correct that the 2006 – 2008 Appropriations Act changes the language regarding eligibility for FAMIS MOMS from pregnant women “with annual family income in excess of the Medicaid limit” to “who are ineligible for Medicaid.” It is also correct that the current language results in a small number of lower income pregnant women being denied both Medicaid and FAMIS MOMS. This occurs because of the difference in the eligibility requirements for legal immigrants between Medicaid and SCHIP. It is possible for certain legal immigrants (Permanent Resident Aliens who have been in the US for more than 5 years but have not worked 40 quarters) to fail to qualify for Medicaid but also fail to qualify for FAMIS MOMS because their income is in the Medicaid range; even though they would meet SCHIP eligibility criteria for immigration status. This unintended gap in coverage does result in some lower income women being denied coverage while higher income women are enrolled.

However, the HIFA waiver approved by the Centers for Medicare and Medicaid Services (CMS) granting Virginia authority to receive federal funds to operate the FAMIS MOMS program still contains language limiting eligibility to those with income above 133% FPL (current Medicaid limit). In preliminary discussions regarding a similar proposed change to the waiver, CMS has expressed some concerns about addressing this issue via the suggested change. At this time, DMAS intends to submit an amendment to the waiver to CMS in the coming months incorporating this change. If approved, FAMIS MOMS regulations can be changed at that time. In this way, federal funding would not be jeopardized for serving this population. If the waiver amendment is not approved, DMAS cannot implement this change unless authorization is received to use state-only funds for covering the full cost of services in these cases.

Comment: With regard to 12 VAC 30-141-740(D)(1), subsection (D)(2), and 12 VAC 30-141-790(J), the Commenters suggest that DMAS delete the phrase “due to excess income” throughout these sections for the same reasons as noted above.

DMAS Response: DMAS declines to incorporate these suggested changes for the reasons stated in the previous response.

Comment: With regard to 12 VAC 30-141-740(D)(2), the Commenters suggest that DMAS change 150% to 166% to implement the eligibility increase mandated by the Appropriations Act for the 2006-2008 Biennium based upon Budget Item 301(D).

DMAS Response: DMAS agrees with the Commenters’ suggestion and is making this change in the final regulation.

Comment: (a) With regard to 12 VAC 30-141-750, the Commenters suggest that coverage for pregnant women under FAMIS Moms should be available for up to three months prior to the date of application (as is the case with Medicaid coverage for pregnant women).

(b) In addition, this section should contain a provision providing automatic eligibility for all newborns of the women enrolled in FAMIS Moms (as is the case with newborns of Medicaid eligible pregnant women). If automatic coverage for the newborns is not possible, there should at least be provisions allowing for retroactive coverage back to the date of the baby’s birth. Such coverage is also needed for other newborns who apply for FAMIS a few months after their birth.

DMAS Response: (a) The FAMIS MOMS program was originally designed to mirror the Medicaid program for pregnant women in some aspects and the FAMIS program for children in others. The beginning date of coverage (the first day of the month in which a signed application is received) is the same for FAMIS MOMS as for children in FAMIS. Unlike Medicaid, there is no retroactive coverage beyond that point.

While this change would be beneficial to some pregnant women who do not enroll in FAMIS MOMS until later in their pregnancy, it would grant a more generous period of coverage to pregnant adults than FAMIS grants to children.

Also, such a change, coupled with the recent expansion of eligibility to 166% FPL from 150% FPL authorized by the General Assembly will increase the cost of the program. Since the FAMIS MOMS program is already exceeding projected enrollment, an expansion of eligibility and months of coverage together could require an increase in the appropriation and would definitely require an amendment to the HIFA waiver. Therefore, DMAS does not plan to request this change from CMS or revise state regulations at this time

(b) DMAS has previously conferred with CMS regarding automatic enrollment of newborns and has been informed that coverage under an SCHIP program requires an application and determination of eligibility.

However, DMAS agrees that the current beginning date of coverage (the first day of the month in which a signed application is received) is problematic for both mothers and hospitals. In situations where the baby is born near the end of the month the mother must submit an application for the baby immediately following their birth in order to ensure that the baby's birth expenses are covered. In the most extreme example, a woman giving birth late in the evening on the last day of the month would have to submit the application before midnight. When this does not happen, the hospital forgoes the ability to bill FAMIS for the baby and the family may be faced with very high medical bills, even though the child would meet FAMIS eligibility criteria.

This problem has existed since the beginning of FAMIS but has been exacerbated with the implementation of the FAMIS MOMS program. DMAS agrees that state regulations and program policy should be amended to address this situation. This regulatory change is being made to Section 12 VAC 30 141-100(H). Also, because this is actually a change to the FAMIS program instead of the FAMIS MOMS program, it does not require an amendment to the FAMIS MOMS HIFA waiver. Authority for FAMIS is granted by CMS through Virginia's State Plan for Title XXI. An amendment to the State Plan including the following language has been submitted to CMS: "Effective 08-01-06, if a child enrolled in FAMIS is born within the three months prior to the month in which a signed application is received, coverage is effective retroactive to their date of birth if they would have met all eligibility criteria during that time."

All changes made in this regulatory action

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

Changes from the emergency regulation to the proposed regulations are in bold.

Also, please note that additional changes are being made to the FAMIS regulations in a companion final regulation concerning the private health insurance premium assistance program, FAMIS Select. In addition, the prior authorization requirements described in 12VAC 30-141-500

(FAMIS benefits reimbursement) are currently being amended by a separate Fast-Track regulatory package.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-141-10		Definitions	Adds a definition for “Application for health insurance.” The definition for “Child health insurance application” is deleted, and the eligibility limitation on Local Choice employees is removed. Non-substantive edit made to "Application for health insurance."
12 VAC 30-141-100		Eligibility requirements	Amended to exclude a pregnant child from the required four-month waiting period found in FAMIS and the eligibility limitation on Local Choice employees is removed.
12 VAC 30-141-120		Children ineligible for FAMIS	Removes State Health Plan coverage from Local Choice limitation. Non-substantive edit made to subsection (A)(2).
12 VAC 30-14-150		Application requirements Reference to “internet”	Changes references from “Child health insurance applications” to “ an application for health insurance ” Reference is changed to “Internet” In the proposed version of subsection (B), the new reference to Internet applications was relocated from the second sentence of (B) to the third sentence of (B), for clarity. Also, in subsection C, the sentence “An individual who is 18 years of age shall not be refused the right to complete a-child health insurance application for himself” is changed to “An individual who is 18 years of age shall not be refused the right to complete a-child an application for health insurance application for himself”
12 VAC 30-141-180		Liability for excess benefits	Corrects reference to judgment rate of interest from § 6.1-330.49 to § 6.1-330.54

12 VAC30-141-650		Provider review section: references “12 VAC 30-50-500 through 12 VAC 30-50-560.”	Corrects reference to: “12 VAC 30-20-500 through 12VAC 30-20-560.”
	12 VAC30-141-670	N/A	Adds FAMIS MOMS Definitions section.
	12 VAC30-141-680	N/A	Adds Administration and general background section.
	12 VAC30-141-690	N/A	Adds Outreach and public participation section.
	12 VAC30-141-700	N/A	Adds Review of adverse actions section.
	12 VAC30-141-710	N/A	Adds Notice of adverse actions section.
	12 VAC30-141-720	N/A	Adds Request for review section.
	12 VAC30-141-730	N/A	Adds review procedures section. In subsection (D)(8), the reference to “fee-for-service and PCCM” is changed to “fee-for-service or PCCM”
	12 VAC30-141-740	N/A	Adds Eligibility requirements section. In the proposed version of section (C)(1), the words “DMAS FAMIS CPU” are replaced with the words “DMAS eligibility staff” for clarity. Plural references in (C)(3) & (4) are changed to singular, and in (G)(2)(b), first sentence, “nor” is changed to “or.”
	12 VAC30-141-750	N/A	Adds Duration of eligibility section.
	12 VAC30-141-760	N/A	Adds Pregnant women ineligible for FAMIS MOMS section.
	12 VAC30-141-770	N/A	Adds Nondiscriminatory provisions section.
	12 VAC30-141-780	N/A	Adds No entitlement notice section.
	12 VAC30-141-790	N/A	Adds application requirements section.
	12 VAC30-141-800	N/A	Adds Co-payments section.
	12 VAC30-141-810	N/A	Adds Liability for excess benefits section.
	12 VAC30-141-820	N/A	Adds Benefit packages section.
	12 VAC30-141-830	N/A	Adds Benefits reimbursement section.

	12 VAC30-141-840	N/A	Adds Quality Assurance section.
	12 VAC30-141-850	N/A	Adds Utilization control section.
	12 VAC30-141-860	N/A	Adds Recipient audit unit section.
	12 VAC30-141-870	N/A	Adds Provider review section.
	12 VAC30-141-880	N/A	Adds Assignment to managed care section. In subsection A, reference to “Title XXI benefits” is changed to “Medicaid-like benefits.”

Family impact

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

This regulatory action does not have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents, strengthening or eroding the marital commitment; nor increasing or decreasing disposable family income.