



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-141-100 and 141-740
<b>Regulation title</b>	Family Access to Medical Insurance Security Plan
<b>Action title</b>	Citizenship/Nationality Documentation for FAMIS and FAMIS MOMS
<b>Final agency action date</b>	
<b>Document preparation date</b>	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The state regulations affected by this action are FAMIS Eligibility Requirements (12 VAC 30-141-100) and FAMIS MOMS Eligibility Requirements (12 VAC 30-141-740).

Currently, individuals eligible for FAMIS and FAMIS MOMS must be either a U.S. citizen, U.S. national, or qualified noncitizen. U.S. citizens and nationals may establish that they meet this eligibility requirement by submitting a written declaration of citizenship or nationality as required by § 1137(d) of the *Social Security Act*. Individuals eligible for Medicaid must provide documentary evidence of citizenship or nationality and documentation of personal identity in addition to the written declaration. Currently, documentary evidence is not required for eligibility under FAMIS and FAMIS MOMS.

This action implements a mandate in Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Public Law 111-3) that applies the Medicaid citizenship

verification requirements to the Children's Health Insurance Program (CHIP). Upon implementation of this regulation, FAMIS and FAMIS MOMS applicants will be required to provide documentary evidence of citizenship or nationality and documentation of personal identity in order to meet the citizenship eligibility requirement unless otherwise exempt. CHIPRA also gives states an additional option for meeting this requirement through an agreement with the Social Security Administration.

Section 2105(c) of *Social Security Act* (42 U.S.C.1397ee(c)) is amended by adding the following new provision, effective January 1, 2010:

(9) CITIZENSHIP DOCUMENTATION REQUIREMENTS.—

(A) IN GENERAL.—No payment may be made under this section with respect to an individual who has, or is, declared to be a citizen or national of the United States for purposes of establishing eligibility under this title unless the State meets the requirements of section 1902(a)(46)(B) with respect to the individual

Section 1902(a)(46)(B) as amended by CHIPRA reads as follows:

(B) provide, with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this title, that the State shall satisfy the requirements of—

- (i) section 1903(x); or
- (ii) subsection (ee);

While Section 211 of CHIPRA has added more options for applicants seeking to establish nationality, DMAS must change its regulations to provide the choice of options to such applicants, *i.e.* the Agency has no discretion about adding the specified options into its regulations.

The *Code of Virginia* (1950) as amended, §32.1-351, grants to the Board of Medical Assistance Services the authority to administer and amend the Family Access to Medical Security Insurance Plan (FAMIS). The *Code of Virginia* (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to administer and amend the Family Access to Medical Security Insurance Plan according to the Board's requirements. The federal Children's Health Insurance Program (CHIP) as established by § 2101 of the *Social Security Act* [42 U.S.C. 1397aa] provides governing authority for payments for services.

This action meets the exemption provided by the *Code of Virginia* § 2.2-4006 (A)(4)(c) because it conforms 12VAC 30-141-100 and 12VAC 30-141-740 to the requirements of the federal statute which become effective January 1, 2010, and does not materially differ. Additionally, the Agency has no discretion concerning the implementation of this federal requirement.

**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 entitled **FAMIS Citizenship/Nationality Documentation** with the attached amended state regulation pages (12VAC 30-141-100 and 141-740) and adopt the action which is to become effective January 1, 2010, 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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.