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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-141
VAC Chapter title(s)	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS Plan Update
Date this document prepared	December 18, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will do the following:

- Repeal redundant and unnecessary language in 12 VAC 30-141-50 through 12 VAC 30-141-70, 12 VAC 30-141-670, and 12 VAC 30-141-710 through 12 VAC 30-141-730. In accordance with Governor Youngkin's Executive Order #19, DMAS completed an internal review and determined that some of the content of these regulation sections already exist in other Virginia Administrative Code (VAC) sections, specifically in 12 VAC 30-110, 12 VAC 30-120, and other sections of 12 VAC 30-141.

- Make technical updates and amendments to multiple sections of Chapter 141. These updates represent current practices that are already in place.

Specifically, the proposed changes:

- Update or repeal the appeals-related requirements in 12 VAC 30-141-40 through 12 VAC 30-141-70, 12 VAC 30-141-700, and 12 VAC 30-141-710 through 12 VAC 30-141-730, because they are unnecessary and duplicative.

- Make clarifications and remove obsolete and/or outdated language referencing payments and copayments in 12 VAC 30-141-50, 12 VAC 30-141-150, 12 VAC 30-141-175, 12 VAC 30-141-180, and 12 VAC 30-141-810.

- Remove outdated prior authorization language from 12 VAC 30-141-500 and 12 VAC 30-141-830.

- Repeal 12 VAC 30-141-670 because the definitions are duplicative and DMAS is merging chapter definitions into a single section at 12 VAC 30-141-10.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CHIP = Children's Health Insurance Program
DMAS = Department of Medical Assistance Services
FAMIS = Family Access to Medical Insurance Security Plan
MCO = Managed Care Organization
VAC = Virginia Administrative Code

Statement of Final Agency Action

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.

On December 18, 2023, DMAS adopted final amendments to the regulatory action entitled, "FAMIS Plan Update."

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and directs that such Plan include a provision for the Family Access to Medical Insurance Security (FAMIS) program. The Code of Virginia § 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance when the Board is not in session, subject to such rules and regulations as may be prescribed by the Board. The Code of Virginia § 32.1-351, authorizes DMAS, or the Director, to develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for FAMIS, to revise such plan, and to promulgate regulations as may be necessary.

Section 1115 of the Social Security Act [42 U.S.C. 1315] provides states with the opportunity to implement demonstration projects that extend benefits to additional population groups with the intent of promoting program objectives, including those of Title XXI. Virginia implements the FAMIS MOMS and FAMIS Select programs through a Section 1115 Demonstration.

This action is expected to be non-controversial because it will carry-out technical program updates that are currently in practice and it will also remove outdated sections from the VAC.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory action is being promulgated to make technical program updates and changes and to repeal obsolete, out-of-date, and unnecessary regulations.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulatory changes clarify that appeals of adverse benefit determinations by a Managed Care Organization (MCO) may be made in accordance with 12 VAC 30-120-420 and appeals of adverse actions or an MCO's internal appeal decision of an adverse benefit determination may be made in accordance with 12 VAC 30-110-10 through 12 VAC 30-110-370. Consequently, the proposed changes update or repeal the appeals-related requirements in 12 VAC 30-141-40 through 12 VAC 30-141-70, 12 VAC 30-141-700, and 12 VAC 30-141-710 through 12 VAC 30-141-730.

These changes also make clarifications and remove obsolete and/or outdated language referencing payments and copayments in 12 VAC 30-141-50, 12 VAC 30-141-150, 12 VAC 30-141-175, 12 VAC 30-141-180, and 12 VAC 30-141-810.

Outdated prior authorization information is being removed from 12 VAC 30-141-500 and 12 VAC 30-141-830.

The changes also repeal 12 VAC 30-141-670 because they are duplicative and DMAS is merging chapter definitions into a single section at 12 VAC 30-141-10.

These regulatory changes are intended to make technical program updates, in addition to reducing the overall regulatory burden on the public in accordance with Executive Order 19. The regulations are necessary for the protection of public health, safety, and welfare of Medicaid and FAMIS members.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of these changes is that they update the regulations to align with current practices and remove outdated and unnecessary language from the VAC. These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory action will make updates to align with current practice and repeal redundant and unnecessary regulations.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	This regulatory action will make updates to align with current practice and repeal redundant and unnecessary regulations.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	None
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	This regulatory action will make updates to align with current practice and repeal redundant and unnecessary regulations.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives can achieve the purpose of this regulatory repeal.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory action is not expected to affect small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Jimeequa Williams, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-225-3508, Jimeequa.Williams@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-141-10		Definitions	Update program definitions to clarify that FAMIS MOMS and/or pregnant women are included in the definition of terms within the chapter.
12 VAC 30-141-40		Appeal of adverse actions or adverse benefit determinations	Clarifies that appeals of adverse actions or adverse benefit determinations may be made in accordance with 12 VAC 30-120-420 and 12 VAC 30-110-10 through 12 VAC 30-110-370.
12 VAC 30-141-50		Notice of adverse action or adverse benefit determination	Repeal of duplicative requirements.
12 VAC 30-141-60		Request for appeal	Repeal of duplicative requirements.
12 VAC 30-141-70		Appeal procedures	Repeal of duplicative requirements.
12 VAC 30-141-150		Application requirements	Update requirements to reflect program information currently provided to applicants and other individuals upon request.
12 VAC 30-141-175		FAMIS Select	Update requirements to reflect FAMIS Select program information currently provided to families who indicate an interest in FAMIS Select.
12 VAC 30-141-180		Liability for excess benefits	Clarify requirements regarding liability for excess benefits.
12 VAC 30-141-500		Benefits reimbursement	Update requirements; remove outdated requirements no longer in effect.
12 VAC 30-141-670		Definitions	Repeal of duplicative definitions.
12 VAC 30-141-700		Appeal of adverse actions or adverse benefit determinations	Clarifies that appeals of adverse actions or adverse benefit determinations may be made in accordance with 12 VAC 30-120-420 and 12 VAC 30-110-10 through 12 VAC 30-110-370.
12 VAC 30-141-710		Notice of adverse action or adverse benefit determination	Repeal of duplicative requirements.
12 VAC 30-141-720		Request for appeal	Repeal of duplicative requirements.
12 VAC 30-141-730		Appeal procedures	Repeal of duplicative requirements.
12 VAC 30-141-810		Liability for excess benefits	Clarify requirements regarding liability for excess benefits.
12 VAC 30-141-830		Benefits reimbursement	Update requirements; remove outdated requirements no longer in effect.