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Proposed Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-141-100 and 12 VAC 30-141-120
Regulation title(s)	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS Eligibility for Children of State Employees
Date this document prepared	February 26, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Regulations currently in place describe the implementation and oversight of the state's Children's Health Insurance Program (CHIP), known in Virginia as the Family Access to Medical Insurance Security (FAMIS) Plan. FAMIS is only available to children who are uninsured. Families who have access to employer sponsored health insurance, but by income are eligible to enroll their children in FAMIS, may do so. However, current regulations exclude state employees who have access to subsidized health insurance coverage from enrolling their dependent children on the FAMIS Plan, even if they are otherwise eligible by income and residency. The proposed regulation removes this exclusion to allow low-income state employees, whose children are otherwise eligible for FAMIS, to be enrolled in the program.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Children's Health Insurance Program (CHIP)" means the federal program under Title XXI of the Social Security Act that provides funds to states to enable them to initiate and expand the provision of child health insurance to uninsured, low-income children.

"Family Access to Medical Insurance Security Plan (FAMIS)" means the CHIP program operated by the Commonwealth.

"Patient Protection and Affordable Care Act (PPACA)" means Public Law 111–148, passed by Congress in 2010.

"DMAS" means the Department of Medical Assistance Services.

"DHRM" means the Department of Human Resources Management.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 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* (1950) as amended, § 32.1-324, authorizes the Director of 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* (1950) as amended, § 32.1-351, authorizes the Department of Medical Assistance Services, or the Director, as the case may be, to develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the Family Access to Medical Insurance Security Plan, and revise such plan and promulgate regulations as may be necessary. Title XXI of the Social Security Act § 2105 [42 U.S.C. 1397ee] provides governing authority for payments for services.

The Patient Protection and Affordable Care Act (PPACA) (2010) permits states to extend eligibility in the Children's Health Insurance Program (CHIP) to children of state employees who are otherwise eligible under the state child health plan, known in Virginia as FAMIS. A critical issue reported to the Governor by the agency's Director is the denial of access for the children of Virginia state employees to the FAMIS program. Virginia's workforce includes a significant number of lower income employees. Last year, more than 9,600 full-time state employees qualified for the Earned Income Tax Credit, a federal tax subsidy for lower-income working families. Full-time state employees may cover their dependent children through their employee health insurance, but for many families this is not an affordable option. Employees who choose this option face an increase in their insurance premium contributions of approximately $100 to $200 per month. Even with the most comprehensive coverage, employees must also pay co-pays of up to $40 for doctor visits. These health care premiums and cost sharing represent a significant reduction in take home pay for many state workers. Some may be forced to opt for employee-only coverage, thereby leaving their children with no health insurance; others may struggle to pay for rent or other necessities because of the additional cost for their children's insurance. This reduced access to covered medical services creates increased health risks for the children of Virginia state workers.

Current DMAS regulations exclude state employees from FAMIS eligibility. DMAS now seeks to remove this barrier to the FAMIS program and open up low cost comprehensive health care coverage for the dependent children of Virginia state employees. (This rule change will only affect state employees who are qualified for employer-sponsored health insurance; wage employees are not eligible to receive a state contribution toward the cost of their health coverage.)

In light of this situation the Governor charged the Secretary of Health and Human Resources to create a plan to provide Virginians with greater access to health care for uninsured citizens.

As a result, DMAS developed and promulgated emergency regulations that became effective on January 1, 2015. The NOIRA for permanent regulations was published in the Register on January 26, 2015. A public comment ran from January 26 through February 25, 2015, with no comments received. These proposed regulations follow the January 1, 2015 emergency regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

The proposed regulatory action is intended to remove a barrier – high out-of-pocket costs – to access to health care services for more lower-income families.

At this time, a child who is a member of a family that is eligible for subsidized coverage under any Virginia state employee health insurance plan is not eligible for FAMIS. This policy was originally enacted to be compliant with section 2110(b)(2)(B) of the Social Security Act which categorically excluded dependents of State employees in the definition of a “targeted low-income child”.

Virginia’s state employee health benefit policies do not allow adding or dropping dependents to coverage outside of the open enrollment period for the new plan year beginning annually on July first, except in the case of certain qualifying events. Eligibility for Medicaid has been such a qualifying event. Children in very low-income families (at or less than 143% FPL) are already eligible for Medicaid; those who are dependents of state employees can, under current rules, be dropped from state-subsidized coverage and enroll in Medicaid. The new rules will allow children in families with income between 144% and 200% FPL to move from state-subsidized coverage and enroll in FAMIS.

The children of working families who cannot afford insurance due to out-of-pocket costs suffer from lack of access to health care. While state employees may cover their dependent children through their employee health insurance, for many low-income families this is not an affordable option due to premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. This regulatory action will allow children of state employees who are otherwise eligible (e.g. by virtue of family income, residency) to be enrolled for health coverage under the FAMIS Plan. The action will remove the current exclusion of such children from enrollment. This will allow employees of the Commonwealth to be treated the same as other families with access to employer-sponsored health insurance who by current policy may apply for coverage under FAMIS.

The PPACA [P.L.111-148 Title I (E) (I) (A) § 1401] addresses premium tax credits and cost sharing through changes to the Internal Revenue Code. The implementation of these rules has drawn wide attention to the issue of "affordable" health insurance. "Some low-to-moderate income families may be locked out of receiving financial assistance to purchase health coverage through the new health insurance Marketplaces. Eligibility is not solely determined by income. It is also subject to whether a family has access to affordable employer-sponsored insurance. The problem is that the definition of "affordable" -- for both an individual employee and a family – is based only on the cost of the employee-only coverage and does not take into consideration the often significantly higher cost of a family plan." ["The Family Glitch", *Health Affairs* Health Policy Briefs November 10, 2014
http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=129]

Dependents of lower-income state employees may not be insured due to the total cost of state employee health insurance, which is in effect, "the family glitch" described above. More significantly, because they are able to be covered by the state's employee health plan, they are currently categorically ineligible for FAMIS, regardless of their financial eligibility for FAMIS or inability to pay for dependent coverage through the sponsored health plan. This exclusion creates an unnecessary disparity in access to health care for children in working families with low incomes.

According to the 2011-12 National Survey of Children's Health, 5.3% of responding parents reported that their child had one or more unmet needs for health care in the previous twelve months; 6.9% reported that their child did not have a usual source of sick care; and, 9.7% reported that they had experienced problems paying or were unable to pay medical bills (The Child and Adolescent Health Measurement Initiative, 2012). As a result of this regulatory action, more lower-income families will be able to obtain insurance coverage for preventive services and necessary medical care for their children. This regulatory action is essential to protect the health, safety, and welfare of these affected individuals by providing an opportunity to access high quality health care services that they may otherwise not be able to afford.

Substance

Please 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 sections of the Family Access to Medical Insurance Security Plan that are affected by this action are: FAMIS Eligibility Requirements (12 VAC 30-141-100) and Children Ineligible for FAMIS (12 VAC 30-141-120).

The intent of this action is to align Virginia policy with changes in federal laws, and in doing so to offer more options for health care coverage to more children in lower-income families.

The PPACA amended the definition of a targeted low-income child in Section 2110(b)(2)(B) of the *Social Security Act* by permitting States to extend CHIP eligibility to children of State employees who are otherwise eligible under the State child health plan (FAMIS). States now, with an approved CHIP state plan amendment, can enroll such children in these programs. In order to have a state plan amendment approved, the state must meet one of two tests as follows:

- Maintenance of Contribution – to meet this test, the amount of annual expenditures made on behalf of each employee enrolled in health coverage paid for by the agency that includes dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made by the agency for the 1997 State fiscal year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for All-Urban Consumers (all items: U.S. City Average) for such preceding fiscal year. This analysis must include data from all agencies with state employees.

- Financial Hardship – to meet this test, the state needs to show that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the child would exceed 5 percent of such family's income for the year involved.

An analysis of annual aggregate out-of-pocket expenses for employees of the Commonwealth of Virginia, University of Virginia, and Virginia Commonwealth University Health System Authority demonstrated that Virginia currently meets the Financial Hardship test. The requisite CHIP state plan amendment has been submitted to the Centers for Medicare and Medicaid Services and was approved in February, 2015.

The proposed regulatory action allows state employees to enroll their otherwise-eligible dependent children in the FAMIS plan by removing the language that prohibits this. Since emergency regulations went into effect in January 2015, state employees who do not currently cover their dependent children on their health benefits have been able to enroll their dependent children in FAMIS, if all eligibility standards are met. DMAS and the Department of Human Resources Management (DHRM) are implementing communication strategies to include: agency website postings of a Fact Sheet, electronic newsletters to state benefit administrators, inclusion in the annual notice to all state employees about premium assistance, and the state employee open enrollment newsletter for 2015. It is estimated that five percent of the eligible State workforce will be impacted by this change, with a resulting 5,000 children enrolled in FAMIS.

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.

The primary advantage of this proposed action to the public is that more low-income working families will have access to the FAMIS program, with significantly reduced out-of-pocket expenses for health care. This will result in more disposable income for such families to cover their basic necessities or other discretionary expenses. Businesses that offer health insurance to their employees may see a reduction in their health insurance costs if any of their employees have a spouse employed by the state, and can enroll their eligible children in FAMIS. The primary disadvantage for families is the administrative process of dropping their child from state sponsored insurance during the open enrollment period (if already covered) and having to apply for FAMIS.

The primary advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. Those employees who currently cover their children on the state health plan could reduce their benefit option to that of an employee only, or employee plus spouse, thus reducing the state's share of premium for family coverage. Since the state employee health plan is self-insured, the actual costs of claims incurred for children covered under the plan would generate additional savings if those children were enrolled in FAMIS instead. According to DHRM staff, the state health plan's actuary estimates that the reduced cost to the state employee health plan for each child up to age 19 (i.e., the FAMIS age limit) who leaves the plan averages $2,877. The employer's average share (both general and non-general funds) of this amount is $2,418.

Therefore, if 100 children leave the state plan for FAMIS coverage, the savings to the plan is projected to be $287,700; and the employer's share is estimated to be $241,800. DHRM notes that it has no reliable way to predict how many children will leave the health plan for FAMIS coverage. DHRM also cannot predict the specific health status or age of the children who leave, so actual savings may vary from this estimate.

Another advantage to the Commonwealth is reduction of the social and economic costs associated with reducing the number of uninsured children. It is estimated that about 100,000 children remain uninsured in Virginia. This regulatory action aims to reduce that number by 5%.

DMAS does not anticipate any disadvantages to the public, the agency, or the Commonwealth.

The proposed regulatory action fulfills the intent of Governor McAuliffe's *A Healthy Virginia* Plan to allow FAMIS coverage for children of state employees. It also has the potential to be considered a positive benefit for many state employees that may aid in workforce satisfaction and retention.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

The proposed regulatory action has no requirements that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no identified disproportionate impact on any locality due to the proposed regulatory action.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail to Joanne Boise at Department of Medical Assistance Services, Division of Maternal and Child Health, 600 East Broad Street, Richmond, VA 23219, by fax to 804.225.3961, or by e-mail to joanne.boise@dmas.virginia.gov. Comments may also be submitted by phone to Ms. Boise at 804.225.2334, or through the Public Forum feature of the Virginia Regulatory Town Hall web site at: http://www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (https://www.virginia.gov/connect/commonwealth-calendar). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<table>
<tr><td>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</td><td>
<table>
<tr><td></td><td colspan="3">Adding 5,000 FAMIS Enrollees 1/1/15</td></tr>
<tr><td></td><td>Total Funds</td><td>General Funds</td><td>Non General Funds</td></tr>
<tr><td>SFY 2015</td><td>$255,687</td><td>$89,490</td><td>$166,196</td></tr>
<tr><td>SFY 2016</td><td>$12,900,451</td><td>$2,289,830</td><td>$10,610,621</td></tr>
<tr><td>SFY 2017</td><td>$13,619,988</td><td>$1,634,399</td><td>$11,985,589</td></tr>
</table>
</td></tr>
<tr><td>Projected cost of the new regulations or changes to existing regulations on localities.</td><td>No impact is expected for localities.</td></tr>
<tr><td>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</td><td>All state agencies and institutions of higher education, including the Virginia Commonwealth University Authority.</td></tr>
<tr><td>Agency's best estimate of the number of such entities that will be affected. Please 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.</td><td>All state agencies and institutions of higher education, including the Virginia Commonwealth University Authority, will be affected.

The regulation is not expected to negatively affect any small businesses.</td></tr>
<tr><td>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:
a) the projected reporting, recordkeeping, and other</td><td>There are no projected costs to affected individuals, businesses, or other entities.</td></tr>
</table>

administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	
Beneficial impact the regulation is designed to produce.	The regulations are intended to offer lower-income state employees with an option to provide health insurance for their children that reduces their out-of-pocket expenses. The regulations may also produce some cost savings to the Commonwealth by reducing the expenses associated with coverage of dependent children through the state health plan.

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. 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 regulation.

A suggested alternative to the proposed regulatory action would be to enroll dependent children of state employees in FAMIS *Select*, the premium assistance program operated under a Title XXI Section 1115 Health Insurance Flexibility and Accountability (HIFA) waiver (42 U.S.C. 1315). FAMIS *Select* reimburses families up to $100 per covered child per month – not to exceed the full cost of the family premium – for coverage through either a private or employer's health plan. This option is not deemed to be an appropriate alternative for several reasons: (1) other than the employee's share of premium, it will not reduce the employee's out-of-pocket expenses, as the family would still be subject to meeting copayments and deductibles; (2) it will not result in appreciable savings to the Commonwealth, as children would be enrolled in the state health benefit program rather than FAMIS, and some share of their medical expenses would be paid by the Commonwealth; and (3) children are not eligible for FAMIS *Select* until they have been found eligible for FAMIS – and without this regulatory action, children of state employees remain categorically ineligible for FAMIS.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no requirements in the proposed regulation that adversely affect small businesses.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable.

Public comment

Please <u>summarize</u> all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

No comments were received during the public comment period.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children. These changes do not strengthen or erode the marital commitment. These changes do encourage economic self-sufficiency, self-pride, and the assumption of responsibility for one's children by providing improved access to comprehensive health care services while reducing out-of-pocket costs of certain low-income parents. These changes are likely to reduce the costs of health insurance and health care services for affected families who choose to enroll their eligible children in FAMIS, and therefore increase their disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the ***pre****-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-141-100		Eligible children must not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(I)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency	This exclusion is deleted, allowing dependents of state employees who otherwise meet eligibility requirements to be enrolled in FAMIS. Some low-income state employees will opt to enroll their children in FAMIS, which is likely to reduce their out-of-pocket expenses for medical care (by reducing their contribution to insurance premium, copayments, and deductibles). This will also reduce the state's share of the cost associated with the employee's health insurance plan.
12 VAC 30-141-120		Children are ineligible for FAMIS if they are a member of a family eligible for coverage under any Virginia state employee health insurance plan	The categorical ineligibility is deleted, allowing dependents of state employees who otherwise meet eligibility requirements to be enrolled in FAMIS. Some low-income state employees will opt to enroll their children in FAMIS, which is likely to reduce their out-of-pocket expenses for medical care (by reducing their contribution to insurance premium, copayments, and deductibles). This will also reduce the state's share of the cost associated with the employee's health insurance plan.

There is no difference between the emergency regulation and this proposed permanent regulation.