



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30-141
<b>Regulation Title:</b>	Family Access to Medical Insurance Security Plan
<b>Action Title:</b>	FAMIS
<b>Date:</b>	8/11/02; GOV ACTION NEEDED BY AUG 29

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, pursuant to Item 324 F of the 2002 *Virginia Acts of Assembly* (Chapter 899). This Item provided that "[n]otwithstanding the provisions of § 2.2-4011, Code of Virginia, the authority of the Department to issue emergency regulations for the Family Access to Medical Insurance Security Plan (FAMIS) shall be extended through July 31, 2003". Since the Director intends to continue regulating this subject, DMAS is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

This regulatory action proposes to amend the Family Access to Medical Insurance Security Plan (FAMIS) regulations consistent with discussions with advocacy groups.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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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 Virginia Plan for Title XXI of the Social Security Act. The *Code of Virginia* (1950) as amended, § 32.1-351, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

### Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The entire Chapter 141 has been substantially revised to incorporate program changes. A discussion of the changes follows.

#### DEFINITIONS.

The definitions have been revised as is appropriate to reflect other changes in the regulations.

#### ADMINISTRATION and OUTREACH/PUBLIC PARTICIPATION. (12 VAC 30-141-20 and 30)

Reference to premiums (other than with respect to ESHI) has been removed from the Director's authority section because the FAMIS program will no longer be charging premiums to enrollees or their families.

REVIEW OF ADVERSE ACTIONS (12 VAC 30-141-40, 50, 60, and 70).

These sections provide for the handling of reviews of adverse actions. In the current FAMIS program, these sections list the managed care entities, the Central Processing Unit, and DMAS as the entities that may take adverse actions and to which requests for review of such actions may be submitted. These sections also specify the timeframe for sending written notices of adverse action. The revised language adds local departments of social services to the list of entities that can take adverse actions and to which requests for review can be submitted. The revised language also provides for enrollees to have a timely review of their files and other applicable information, to fully participate in the review process, and to receive written final decisions within 90 calendar days unless the applicants/enrollees request or cause delays. Review procedures stipulate that a managed care entity's review policies and procedures must copy the Commonwealth's MCHIP regulations. This change is necessary to support standardized procedures for program enrollees in managed care.

ELIGIBILITY DETERMINATION AND APPLICATION REQUIREMENTS. (12 VAC 30-141-100 through 150). The following changes and clarifications have been made to facilitate the application and enrollment process for children's health insurance.

12 VAC 30-141-100. Eligibility requirements. This section has been revised to address the use of a single "Child Health Insurance Application" form that will be accepted by either the FAMIS Central Processing Unit or local departments of social services. Previously, separate application forms were required for FAMIS and for Medicaid and only the FAMIS CPU was permitted to determine FAMIS eligibility. Under these new regulations, local departments of social services will also determine eligibility for the FAMIS program. When a child health insurance application is received by a local department of social services, the local agency will first determine the child's eligibility for Medicaid and if the child is determined Medicaid ineligible, the local agency will proceed with a FAMIS eligibility determination and enroll eligible children in FAMIS.

Revisions have also been made to clarify that a child is considered to be uninsured if the child's insurance does not have a network of providers in the area where the child lives. The good cause reasons for allowing a child to be enrolled in FAMIS when child health insurance has been discontinued in the six month period prior to the application month have been added. One of the good cause reasons addresses the discontinuance of insurance due to "affordability." Good cause reasons for discontinuing health insurance previously were not included in the regulations.

12 VAC 30-141-110. Duration of eligibility. Technical changes have been made to this section to include an adult relative caretaker among the persons who may be responsible for reporting changes that affect a child's eligibility.

12 VAC 30-141-120. Children ineligible for FAMIS. A previous provision which prohibited children from participation in FAMIS when their absent parent was eligible for coverage under the State Employee Health Insurance Plan has been eliminated. Under this regulatory action, absent parents are not included in the child's family unit and information on their employment status is not collected on the new application form. Technical changes have also been made to

this section to permit the adult relative caretaker to file an application on behalf of a child under age 18.

12 VAC 30-141-150. Application requirements. This section has been revised to (i) allow Child Health Insurance applications to be accepted at the FAMIS CPU and at local departments of social services, (ii) allow eligibility determinations for FAMIS to occur at either local departments of social services or at the FAMIS CPU, (iii) allow an adult relative caretaker to sign an application on behalf of a child, (iv) specify the time standards for processing applications received at local departments of social services and the FAMIS CPU, and (v) require that all FAMIS cases be maintained at the FAMIS CPU.

Medicaid Expansion of Eligibility to 133% of the Federal Poverty Level (FPL). The 2002 *Acts of Assembly* (Chapter 899, Item 324 D), increased the income limits for children ages six through 18 from 100% to 133% of the Federal Poverty Level (FPL). DMAS addressed this provision in its modification to 12 VAC 30-40-280 which was submitted to the Registrar of Regulations for publication at VR 18:23, page 3099 (July 29, 2002).

COST SHARING and EMPLOYER-SPONSORED HEALTH INSURANCE. (12 VAC 30-141-160 and 170)

One of the DMAS goals is to enroll all eligible children in Virginia in the FAMIS and Medicaid programs so that all eligible children in Virginia will have health care coverage. It was determined that premiums constituted a hardship for FAMIS families and was serving as a barrier to children enrolling in the program. When the premiums were removed for FAMIS families, they were also removed for ESHI participants to ensure consistency across the program.

This section has been revised to eliminate the provision that required families with incomes above 150% of the Federal Poverty Level (FPL) to pay monthly premiums. In addition, because monthly premium payments will no longer be required, the provisions regarding disenrollment for failing to pay premiums has also been removed.

12 VAC 30-141-170. Employer-Sponsored Health Insurance (ESHI). This section has been revised to eliminate the provision that required ESHI families with incomes above 150% of the FPL to pay monthly FAMIS premiums. Previously, DMAS took into account any monthly premium the family would have paid had they not opted to participate in the ESHI component, and this amount was subtracted from the premium assistance which DMAS paid to the family to enable the family to enroll in their employer's plan. Because the elimination of these FAMIS premiums requires a change in the formula used to calculate the cost-effectiveness of ESHI, this part of the regulations has been revised as well.

BENEFITS AND REIMBURSEMENT. (12 VAC 30-141-200 through 500)

12VAC 30-141-200. This VAC section establishes two benefit packages for FAMIS children. The first, based on the state employee plan under Title XXI, is available in areas where managed care entities (MCEs) operate. The second benefit package, based on modified Title XIX

benefits, is available to primary care case management (PCCM) and fee-for-service areas. This section also states that FAMIS children not in an MCE area will be enrolled in the FAMIS PCCM or fee-for-service program and will receive modified Title XIX look-alike benefits. This change is needed to clarify the managed care delivery system in effect in areas of the state where an MCE is not a choice.

QUALITY ASSURANCE AND UTILIZATION CONTROL. (12 VAC 30-141-560 through 650)

This section establishes the legal liability for any adult who attempts to obtain benefits to which the enrollee is not entitled. Providers found to have billed DMAS inappropriately, have failed to maintain records and documentation of delivered services, or have billed DMAS for medically unnecessary services will be required to refund payments received. This section also establishes providers' right to appeal pursuant to the Administrative Process Act and the DMAS' provider appeals regulations.

DMAS has estimated that the fiscal impact of the most significant new items contained in this emergency regulation (waiting period exception, caretaker/relative signing applications) to be \$220,645 (\$76,202 GF)(\$144,443 NGF) in FY 2003. The estimated fiscal impact of the expansion of Medicaid eligibility to 133% of the Federal Poverty Level, as contained in a previously referenced regulatory action, is \$381,482 (\$131,922 GF)(\$249,560 NGF) in FY 2003.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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Cost Sharing Issues. Lower monthly premiums for enrolled FAMIS children were considered by the agency. A one-time enrollment fee was also considered. A cost-benefit analysis of premium collections showed that the costs of collecting the premiums that were already in effect exceeded the amounts collected. Therefore, DMAS believes that the administrative costs of collecting a lower premium or one-time fee would exceed the amount of revenue collected from the premiums/fees. Discontinuing premiums is the most cost-effective option to remove the premium/fee financial barrier, to enrollment of children, from the FAMIS program.

Removing the FAMIS premium requirement for ESHI families means that families will no longer be contributing as much towards the cost of their employer-sponsored health insurance coverage. Thus, it may have an impact on the number of families that meet the cost-effectiveness test. However, families that do meet the cost-effectiveness test will find the ESHI option more affordable.

### Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

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These regulations are expected to have a large impact on applicants/enrollees or their families. These changes do not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 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; strengthen or erode the marital commitment; or increase or decrease disposable family income. These regulations will provide to more potentially eligible individuals, health insurance for children who have not previously had access to such coverage. This is expected to strengthen families.