



COMMONWEALTH of VIRGINIA  
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**MEMORANDUM**

**TO: EMILY MCCLELLAN**  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM: JENNIFER L. GOBBLE** *JLG*  
Assistant Attorney General

**DATE: October 31, 2016**

**SUBJECT: Proposed Regulations FAMIS MOMS Eligibility (State Employees; Dependents)**

I have reviewed the attached proposed regulations that would remove an exclusion to allow otherwise eligible pregnant, low-income state employees and their otherwise eligible pregnant dependents to be enrolled in the FAMIS MOMS program.

Based on my review, it is this Office's view that the Director of the Department of Medical Assistance Services ("DMAS"), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 32.1-351, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act, and has not exceeded that authority.

In accordance with Virginia Code § 32.1-351, the Director is authorized to promulgate regulations as may be necessary for the implementation and administration of the FAMIS Plan. The agency background document indicates that the Centers for Medicare and Medicaid Services approved the waiver amendment submitted by DMAS to extend coverage of the FAMIS MOMS program to otherwise eligible pregnant, low-income state employees and their otherwise eligible pregnant dependents.

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner  
Senior Assistant Attorney General

## Proposed Text

### Action:

CH 0141 FAMIS MOMS Eligibility for State Employees ...

Stage: Proposed

12VAC30-141-740

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth;

4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;

5. Be uninsured, that is, not have comprehensive health insurance coverage; and

~~6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and~~

~~7. 6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.~~

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 e. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identify unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

H. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

12VAC30-141-760

12VAC30-141-760. Pregnant women ineligible for FAMIS MOMS.

A. If a pregnant woman is:

1. Eligible for Medicaid, or would be eligible if she applied for Medicaid, she shall be ineligible for coverage under FAMIS MOMS. A pregnant woman found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS MOMS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, she shall be ineligible for FAMIS MOMS;~~

~~3. 2.~~ An inmate of a public institution as defined in 42 CFR 435.1009, she shall be ineligible for FAMIS MOMS; or

~~4. 3.~~ An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, she shall be ineligible for FAMIS MOMS.

B. If a pregnant woman age 18 or older or, if under age 18, a parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the pregnant woman shall be ineligible for FAMIS MOMS.

C. If a pregnant woman age 18 or older, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a pregnant woman who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the pregnant woman for whom the application is made shall be ineligible for FAMIS MOMS. The pregnant woman age 18 or older, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

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