



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code</b>	12 VAC 30-120-280 and 370 and 30-141-660
<b>Regulation title</b>	Waivered Services and Family Access To Medical Insurance Security Plan (FAMIS)
<b>Action title</b>	Exclusion of Birth Injury Fund Participants from Medicaid and FAMIS Managed Care and Primary Care Case Management
<b>Document preparation date</b>	

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

In 1987, the Virginia General Assembly established the Virginia Birth-Related Neurological Injury Compensation Program (Code of Virginia § 38.2-5000, *et seq.*) This program (referred to as the "Birth Injury Fund") provides payment for the high cost medical needs of children who sustain brain injuries during their birth. A small number of children who participate in this fund have concurrent coverage under the managed care or primary care case management (PCCM) component of either the Virginia Medicaid program or Virginia's Family Access To Medical Insurance Security Plan (FAMIS). Primary care physicians and managed care organizations providing care to either FAMIS and/or Medicaid recipients have had difficulty coordinating benefits for children covered by the Birth Injury Fund. In order to address this difficulty, this regulation excludes Birth Injury Fund enrolled children from Medicaid and FAMIS managed care and PCCM.

**Statement of agency final 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 with the attached amended State Plan pages Waivered Services and Family Access To Medical Insurance Security Plan (FAMIS): Exclusion of Birth Injury Fund Participants from Primary Care Case Management and Managed Care and FAMIS (12 VAC 30-120-280, 30-120--370 and 12 VAC 30-141-660) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_ Date

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

**Legal basis**

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, §§ 32.1-325 and 32.1-351, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and the Title XXI Plan (FAMIS), respectively. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements, and § 32.1-351(K) provides the Board this same authority with respect to the Title XXI Plan. The Medicaid authority as established by §1902(a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

**Purpose**

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

This regulatory action is not expected to have a direct effect on the health, safety, and welfare of either Medicaid recipients or the citizens of the Commonwealth. This regulation proposes to exempt Medicaid and FAMIS children enrolled in the Birth Injury Fund from concurrent

enrollment in managed care or primary care case management. This action will promote consistency of coverage with providers to ensure continuity of care and will prevent potential decision barriers to continued medical treatment.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

DMAS is proposing this action as a fast track action as the most expedient way to address the difficulties inherent in coordinating payment between two programs that cover the same children in certain instances. DMAS does not expect objections to this proposed action since it resolves an outstanding issue that affects a small number of children in Virginia.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The non-State Plan regulations affected by this suggested amendment are Waivered Services (12 VAC 30-120-280 and 370) and Family Access To Medical Insurance Security Plan (FAMIS) (12 VAC 30-141-660).

The Birth Injury Fund ("BIF" or "the Fund") was established by the General Assembly to address the needs of children who suffered severe brain injury due to birth trauma. There are significant difficulties in establishing comprehensive coverage for enrollees in Medicaid or FAMIS enrollees who receive their medical care through primary care case management (PCCM) or managed care organizations (MCOs) that are also participants in the BIF. In addition, with respect to MCOs, not all medical providers used by the Fund meet the all of the credentialing requirements of the various Medicaid and FAMIS MCOs, further complicating MCO coordination of benefits.

This regulatory change will not have an impact on any BIF participant's Medicaid or FAMIS eligibility. It will not exclude BIF participants from enrollment in Medicaid or FAMIS. This action simply excludes BIF participants from Medicaid or FAMIS PCCM or managed care while maintaining their Medicaid or FAMIS enrollment through the fee-for-service model. This action will assure access and continuity of care for BIF enrollees, as well as ending any conflict or confusion concerning appropriate providers or coordination of benefits.

**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 to the Commonwealth of these suggested regulatory that BIF participants that are also enrolled in Medicaid or FAMIS will have comprehensive coverage without disruption. In addition, this action will simplify DMAS contract administration for Medicaid and FAMIS primary care physicians and managed care organizations.

There are no disadvantages to the general public in the implementation of these suggested changes, and the Department projects no negative issues in implementing these proposed changes.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<b>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</b>	None. This regulatory change moves children out of PCCM or managed care organizations and into fee-for-service Medicaid and FAMIS. No financial impact is expected from this change because the Commonwealth would be paying about the same amount for the care of these children.
<b>Projected cost of the regulation on localities</b>	Same as above.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Primary care physicians and managed care organizations enrolled as providers in either the Medicaid program or the FAMIS program.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	The BIF currently has approximately 90 participants statewide. DMAS believes that less than ten enrollees per year will be affected.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	None; DMAS expects that this will simplify financial administration for the affected entities.

**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.*

There are no viable alternatives concerning this action.

**Impact on family**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

This regulatory action will have no negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC 30-120-280		MEDALLION Clients: List of individuals excluded from participation in the PCCM program (MEDALLION)	Adds to the MEDALLION exclusion list those children enrolled in the Birth Injury Fund program
12VAC 30-120-370		None	Children covered by the Birth Injury Fund are added to the list of children excluded from the Medallion II managed care program.
12VAC 30-141-660		None	Children covered by the Birth Injury Fund are excluded from automatic assignment to a managed care organization, and are placed into fee-for-service.