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## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC30-141-740 and 12 VAC30-141-760
<b>Regulation title(s)</b>	Family Access to Medical Insurance Security (FAMIS) Plan
<b>Action title</b>	FAMIS MOMS Eligibility for State Employees and Dependents
<b>Date this document prepared</b>	9/5/17

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The state's Children's Health Insurance Program (CHIP) is known in Virginia as the Family Access to Medical Insurance Security (FAMIS) Plan and the CHIP waiver program for pregnant women is known as FAMIS MOMS. FAMIS MOMS is only available to pregnant women, according to their income who are uninsured. Pregnant, low-income state employees and their pregnant dependents, who are otherwise eligible for FAMIS MOMS, have been permitted to enroll in the program under the authority of the federal Centers for Medicare and Medicaid services, and this regulatory package represents changes to the Virginia Administrative Code to reflect coverage that is already provided.

### 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.

"FAMIS MOMS" means the CHIP waiver program serving low-income pregnant women with benefits the same as those for pregnant women in Medicaid.

"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.

### Statement of final agency 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 Regulatory Review Summary with the attached regulations entitled "FAMIS MOMS Eligibility for State Employees and Dependents" 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, of the Administrative Process Act.

September 5, 2017

Date

/Signature/

Cynthia B. Jones, Director  
Dept. of Medical Assistance Services

### Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency'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. 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. 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.

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 program through a section 1115 Health Insurance Flexibility and Accountability (HIFA) Demonstration called “FAMIS MOMS and FAMIS Select” (No. 21 – W -00058/3). The Center for Medicare and Medicaid Services has approved the HIFA waiver amendment to allow state employees and their dependents, who otherwise qualify, to enroll in FAMIS MOMS.

### 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.*

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Before Virginia changed its FAMIS MOMS program, lower-income families faced a barrier when access health care services. The barrier was high out-of-pocket costs which for low income pregnant women could be a substantial part of their income. The change permitted pregnant women in families who have access to state employee benefits, and who have incomes greater than 143% and less than or equal to 200% FPL, to enroll in FAMIS MOMS.

Pregnant women in working families who cannot afford insurance due to high out-of-pocket costs suffer from lack of access to health care. While state employees may be covered through their subsidized employee health insurance, for many low-income families this is not an affordable option due to high out-of-pocket costs such as premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. The FAMIS MOMS change permitted pregnant women who had access to subsidized health insurance through state employment, and are otherwise eligible (e.g. by virtue of family income, residency) to be enrolled for health coverage under the FAMIS MOMS program. By removing the exclusion of such women from enrollment, it allowed the Commonwealth's employees to be treated the same as other families with access to employer-sponsored health insurance.

As a result of the FAMIS MOMS change, a greater number of lower-income pregnant women were permitted to obtain insurance coverage for critically important prenatal care. This was 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 might otherwise not be able to afford. It does not otherwise affect the health, safety, or welfare of other citizens of the Commonwealth.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

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DMAS submitted a HIFA 1115 Waiver amendment, which was approved by CMS, that expands coverage for FAMIS MOMS to include pregnant women with access to state employee health benefit coverage in accordance with the hardship exception specified in section 2110(b)(6)(C) of the *Social Security Act*.

To meet the financial hardship test, the Commonwealth showed that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the pregnant woman exceeded 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 federal Financial Hardship test.

Under the FAMIS MOMS change, applicable qualified state employees, and their otherwise-eligible dependents, have been permitted to enroll in FAMIS MOMS. (This change only affected 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, but are eligible to enroll in FAMIS MOMS if they otherwise qualify.)

In order to alert potentially eligible employees about this policy change, DMAS and the Department of Human Resources Management (DHRM) implemented 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.

## 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 the FAMIS MOMS change was that more low-income working families had access to the FAMIS MOMS program, with significantly reduced out-of-pocket expenses for pregnancy-related care, perhaps resulting in more disposable income for such families to cover their basic necessities or other expenses. Businesses that offer health insurance to their employees could have seen a reduction in their health insurance costs if any of their employees had spouses employed by the state, and could enroll their eligible dependents in FAMIS MOMS. The primary disadvantage for the affected families is the administrative process of having to rejoin the state health benefit plan within the 60-day qualifying event period once the pregnancy ends.

One advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. The Commonwealth agencies that currently cover a pregnant woman on the state health plan might have been able to reduce their benefit option to that of an employee only, or

employee plus spouse (depending on their family size and situation), thus reducing the state's share of premium for family coverage. Since the state employee health plan is self-insured, a reduction in the costs of claims incurred for pregnant women covered under the state health plan would contribute additional savings if those women were enrolled in FAMIS MOMS instead.

Another advantage to the Commonwealth is the sharing of the costs, with DMAS' Federal Financial Participation, of care of these women and their infants. The Federal Financial Participation rate for FAMIS MOMS is 88%.

Another advantage to the Commonwealth is reduction of the social and economic costs associated with reducing the number of births to uninsured women. To the extent that FAMIS MOMS participants deliver fewer preterm or low birth weight infants, the program contributes to reduced medical costs for women in the income range served. In 2013, 7.1% of babies born to FAMIS MOMS were of low birth weight, compared to 8% of all births in Virginia; 7.9% of babies born to FAMIS MOMS were delivered preterm, compared to 11% of all births in Virginia (*Calendar Year 2013 Improving Birth Outcomes through Adequate Prenatal Care*: Delmarva Foundation 2014).

There is no identified disadvantage to the Commonwealth.

### 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.*

This 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 this regulatory action.

### Family Impact

*Please assess the impact of the proposed 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; nor 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. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

**Changes made since the proposed stage**

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

No changes have been made since the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

No comments were submitted during the public comment period.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
12 VAC30-141-740		Eligible pregnant women must 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	This exclusion is deleted to reflect current practice.

		agency	
12 VAC30- 141-760		Pregnant women 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 to reflect current practice.