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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC30-141-740 and 12 VAC30-141-760
Regulation title(s)	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS MOMS Eligibility for State Employees
Date this document prepared	March 31, 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*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

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) and the CHIP waiver program for pregnant women known as FAMIS MOMS. FAMIS MOMS is only available to pregnant women who are uninsured, including those who have access to employer sponsored health insurance, but by income are eligible to enroll. Current Virginia regulations exclude state employees who have access to subsidized health insurance coverage from enrolling themselves or their dependents in the FAMIS MOMS program, even if they are otherwise eligible by income and residency. The proposed regulation removes this exclusion to allow low-income pregnant state employees or their pregnant dependents, who are otherwise eligible for FAMIS MOMS, to be enrolled in the program.

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 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.

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 (CMS) has approved the CHIP state plan amendment to allow dependents of state employees to enroll in FAMIS. In addition, DMAS has submitted an amendment to the Section 1115 HIFA waiver to CMS to allow qualified pregnant state employees and their pregnant dependents to enroll in FAMIS MOMS.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is intended to remove a barrier – high out-of-pocket costs – to help lower-income families access health care services. The new rules will allow pregnant women in families with incomes between 143% and 200% FPL to enroll in FAMIS MOMS.

Pregnant women in working families who cannot afford health 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 which typically adds up to a substantial proportion of earned income. This

regulatory action will allow pregnant women who have 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. The action will remove the current exclusion of such women from enrollment. This will allow employees of the Commonwealth to be treated the same as other low income families with access to employer-sponsored health insurance who, by current policy, may apply for coverage under FAMIS MOMS.

As a result of this regulatory action, more lower-income pregnant women will be able to obtain insurance coverage for critically important prenatal care. 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. 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 that are being considered, the substantive changes to existing sections that are being considered, or both.

The sections of the Family Access to Medical Insurance Security Plan that are affected by this action are: Eligibility Requirements (12 VAC 30-141-740) and Pregnant Women Ineligible for FAMIS (12 VAC 30-141-760).

The intent of this action is to expand health care coverage options to more pregnant women in lower-income families.

The proposed regulatory action allows applicable qualified state employees, and their otherwise-eligible dependents, to enroll in FAMIS MOMS beginning in March, 2015. (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.) 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.

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.

The FAMIS MOMS program provides low-income pregnant women, who are over-income for Medicaid, an option for obtaining health insurance and therefore access to critically important

prenatal care. Individuals may purchase coverage through the federal health insurance marketplace. This is generally only available during the designated open enrollment period; a woman who is not pregnant at this time may not choose to seek coverage. Individuals may also purchase coverage at other times of the year – during specified special enrollment periods. Pregnancy, however, does not trigger a special enrollment period. Therefore, a woman cannot obtain insurance through the marketplace when she becomes pregnant, unless it is during the open enrollment period. The alternative of using the federal health insurance marketplace is therefore limited in its utility for this population of people.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency has sought feedback on this proposed action from stakeholders through two public meetings. Both meetings were announced publicly through the Virginia Town Hall, the Commonwealth Calendar, and social media (FAMIS and Cover Virginia Facebook pages and twitter). These announcements also invited comments to be submitted by fax, phone, or email. Stakeholders who attended the meetings or provided written comments on the proposed action were supportive.

The agency is seeking additional comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to mail, email, or fax to Joanne Boise, Maternal and Child Health Policy Analyst, DMAS, 600 East Broad Street, Richmond, VA 23219; joanne.boise@dmas.virginia.gov; or (804) 225-2334 (phone); (804) 786-6134 (fax). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.