



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	DEPT. OF MEDICAL ASSISTANCE SERVICES
VAC Chapter Number:	12 VAC 30-141
Regulation Title:	Family Access to Medical Insurance Security
Action Title:	FAMIS
Date:	11/27/2002; GOV APPROVAL NEEDED BY 01/06/02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The purpose of this proposed regulation is to promulgate new permanent regulations to implement changes in the FAMIS program. These regulations incorporate the many programmatic changes set forth in the emergency regulations promulgated by the agency which became effective on September 1, 2002, while also revising certain of the regulatory provisions set forth therein for purposes of clarity, completeness, and to conform these regulations with other applicable laws and regulations, including: clarifying changes; conforming the definitions and regulations, concerning who is authorized to sign an applications, to the agency's Medicaid regulations, as there is now a single application; revising the appeals process to conform with federal regulatory requirements and programmatic changes; and setting forth the managed care enrollment process.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

DMAS promulgated emergency regulations, effective September 1, 2002, that substantially revised the FAMIS program and published a Notice of Intended Regulatory Action on August 26, 2002. The comment period for the Notice of Intended Regulatory Action ended on September 25, 2002.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

These regulations are essential to protect the health of the children who participate in the FAMIS program. These regulations establish the FAMIS program's eligibility criteria, establish the covered services and the limitations on the covered services, establish the cost sharing requirements that apply to eligible families, and establish provider participation requirements.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulations that are affected by this regulatory action are the Family Access to Medical Insurance Security (FAMIS) regulations (12 VAC 30-141).

The entire Chapter 141 was substantially revised to incorporate programmatic changes. Many of these changes were incorporated in the emergency regulations issued by the agency and effective September 1, 2002. A discussion of the changes follows.

DEFINITIONS.

The definitions have been revised as is appropriate for clarification purposes and 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 this 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 MCHIPs, 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 an MCHIP's review policies and procedures must comply the Commonwealth's MCHIP regulations and DMAS reviews and approves the procedures for adverse actions by MCHIPs for compliance therewith. This change is necessary to support standardized procedures for program enrollees in MCHIPs.

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 Health Insurance Plans (MCHIPs) 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 MCHIP 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 which benefits and delivery system will be provided in areas without MCHIPs.

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.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

These changes generally benefit the public by improving access to health insurance coverage to eligible children through discontinuing premiums, providing for a single Medicaid and FAMIS

application, authorizing persons, other than a parent or guardian, to file an application for a child, and by expanding the staff determining the eligibility.

The expedited appeals processes outlined in 12 VAC 30-141-70 is expected to create a negative fiscal impact to both the Commonwealth and to localities, in the form of increased costs.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

DMAS has estimated that the fiscal impact of the most significant items contained in this 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.

The expedited appeals processes outlined in 12 VAC 30-141-70 is expected to create a negative fiscal impact to both the Commonwealth and to localities, in the form of increased costs. The agency is not able to predict the extent of the fiscal impact at this time, because there have been no expedited appeals of this nature to date. However, any impact is expected to be minimal.

DMAS estimated that the administrative costs associated with the collection of the premiums that were already in effect exceeded the amounts collected. Therefore, DMAS estimates that discontinuing premiums will reduce the use of General Funds, although the fiscal impact is expected to be minimal.

The reduction of co-payments for vision services and an increase in the maximum reimbursement amount for orthodontic services (to be effective December 1, 2002, and subject to CMS approval of such state plan amendment) are estimated to have no fiscal impact to the Commonwealth, as capitation rates paid for FAMIS children assigned to MCHIPs have not changed.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

DEFINITIONS

Deleted/Added/Revised language and definitions for purposes of clarity and to conform the definitions to certain changes made in the regulations.

REVIEW OF ADVERSE ACTIONS (12 VAC 30-141-40 through 70)

12 VAC 30-141-40 B. - Reference to suspension of services was deleted and reference to a reduction of services was added to conform these regulations with the requirements under 42 CFR 457.1120 and the FAMIS State Plan provisions at 12.2.

12 VAC 30-141-40 F. Inserted the following language, “ There will be no opportunity for review based on which type of delivery system...is assigned,” to accurately reflect the agency’s policy, and inserted the following language, “There will be no opportunity for review if the sole basis...,” to conform the regulations to the requirements of 42 CFR 457.1120 and the FAMIS State Plan provisions at 12.1 and 12.2.

30-141-70 D. 6-8. Language was added language regarding expedited appeals to conform the regulations with the requirements of 42 CFR 457.1120 and the FAMIS State Plan provisions Plan at 12.1 and 12.2.

ELIGIBILITY DETERMINATION AND APPLICATION REQUIREMENTS (12 VAC 30-141 - 100 through 150)

The definitions, relating to the regulations detailing who is authorized to sign an application for FAMIS, were revised to conform to the agency’s Medicaid regulations, as there is now a single application for Medicaid and FAMIS.

12 VAC 30-141-120 B. This provision was added to clarify that a child will be ineligible for FAMIS if the child’s parent’s or guardian does not meet the requirements of assignment of rights to benefits or cooperation with the agency with regard to third-party liability.

EMPLOYER-SPONSORED HEALTH INSURANCE (ESHI) (12 VAC 30-141-170)

12 VAC 30-141-170 E. (Cost Effectiveness) was revised to clarify how cost-effectiveness is determined. The revision does not reflect a change in how the cost-effectiveness is and has been determined.

MANAGED CARE ENROLLMENT (12 VAC 30-141-700)

This section was added to clarify the process by which those enrollees in managed care areas are assigned to an MCHIP or PCP, as is applicable, and how enrollees will access benefits during the pre-assignment period.

Alternatives

Please describe the specific 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.

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.

Review of Adverse Actions. As these changes are explicitly mandated by law, there are no available alternatives to consider.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable

regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS will include the monitoring, in collaboration with the affected industries and advocacy groups, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulatory action will have positive effects on the institution of the family and family stability since it provides health insurance for children. 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.