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Regulatory
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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -141
Regulation title	Family Access to Medical Insurance Security (FAMIS)
Action title	MCO Coverage for FAMIS Newborns
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) *Please explain why this is an “emergency situation” as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at *COV 2.2-4011(ii)* as discussed below.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Family Access to Medical Insurance Security (FAMIS): MCO Coverage for FAMIS Newborns (12 VAC 30-141-660) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-351, grants to the Board of Medical Assistance Services the authority to administer and amend the 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 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.

Chapter 879, Item 305(E) of the 2008 General Assembly states, "The Department of Medical Assistance Services shall have the authority to provide eligibility in the Family Access to Medical Insurance Security (FAMIS) Plan to infants born to mothers enrolled in FAMIS, for the month of birth plus two additional months, even if eligibility is not yet established for the newborn. If federal funds are not available for those months of eligibility, the department shall use state funding. The department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act." This action fulfills Item 305(E) of Chapter 879.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to ensure that infants born to Family Access to Medical Insurance Security (FAMIS) recipients receive health care coverage immediately following birth.

Need

Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is needed to help ensure that infants born to Family Access to Medical Insurance Security (FAMIS) recipients receive health care coverage immediately following birth. This is a critical period for early treatment of medical conditions and for establishing a medical home for preventive health care and management of special health care needs. The proposed regulations will enable DMAS to provide uninterrupted comprehensive coverage for newborns of FAMIS enrollees through the mother's health care plan.

Federal Medicaid rules (Title XIX of the Social Security Act) permit Medicaid coverage for infants born to Medicaid enrollees for up to one year without an application. However, there is currently no such rule for FAMIS (Title XXI of the Social Security Act). There is no automatic eligibility for the newborn of a Title XXI mother under federal rules, not even for the newborn's hospital charges (the mother's charges are covered). An application must be submitted to determine eligibility. Most children born to FAMIS recipients eventually have eligibility established for Medicaid or FAMIS retroactive to the date of birth, but some do not.

Approximately 85 percent of FAMIS enrollees receive services through a managed health care plan. The contract under which MCOs provide services to FAMIS enrollees requires the plans to provide coverage for the month of birth plus two additional months for infants born to FAMIS enrolled mothers. The majority of these newborns are subsequently enrolled in Medicaid or FAMIS. However, a small number do not become enrolled in either program. If eligibility is never established the children are disenrolled from the FAMIS managed care plan after the second full month following the birth month. The proposed regulatory action is needed to allow DMAS to pay the capitation fees with state only dollars if federal match is not available for the month of birth plus two additional months.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The state regulation that is affected by this action is Assignment to Managed Care (12 VAC 30-141-660). The proposed provision will not use federal funds provided under Title XXI of the Social Security Act for the State Child Health Insurance Plan (also known as the Family Access to Medical Insurance Security Plan or FAMIS).

Currently, the contract under which MCOs provide services to FAMIS newborns requires the MCOs to provide coverage for the month of birth plus two additional months, even if the newborn is never enrolled in FAMIS. If the infant is subsequently enrolled in Medicaid rather

than FAMIS, federal reimbursement is adjusted retrospectively to reflect the Medicaid federal match. If eligibility is not established, no authorized funds are available for payment to the MCOs.

The new policy authorizes the use of state general funds to cover MCO services to FAMIS newborns for the birth month plus two additional months if federal funds are not available. Most newborns of FAMIS enrollees are subsequently enrolled in either Medicaid or FAMIS and receive retroactive coverage for the first three months. For these newborns, any general funds used to provide coverage upon birth will continue to be replaced by Medicaid or FAMIS funds with a federal match.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12VAC30-141-660.A		<p>Provides health care coverage under the mother's managed care plan for newborns of mothers enrolled in FAMIS, for the month of birth plus two additional months. Authorizes DMAS to use state funding if federal funds are not available.</p> <p>This change is needed to align FAMIS contracts for managed care services with Medicaid contracts for the purpose of facilitating continuity of care for newborns.</p>

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

DMAS considered providing health care coverage for newborns of all FAMIS enrollees only after an application is filed and eligibility for Medicaid or FAMIS is established. This alternative would delay assignment of the infant to the mother's health plan, resulting in disruption of care for infants born to these mothers during the critical first months of life. Under this alternative, payment for the infant's medical bills in the first months of life would be authorized retrospectively on a fee-for-service basis once eligibility for Medicaid or FAMIS is established. Health care costs in the first year of life are generally highest for the birth month, reflecting hospital and physician charges for the birth.

In evaluating the alternatives, DMAS considered how best to ensure health care coverage for infants at birth, increase access to care, promote continuity of care, and increase consistency of administrative practices between the FAMIS and Medicaid.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include 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 meeting is to be held to receive comments on this notice.

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Molly Carpenter, Division of Maternal and Child Health, Virginia Dept. of Medical Assistance Services, 600 East Broad St., Richmond, VA 23219.

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DMAS will use the participatory approach to develop a proposal if it receives at least 25 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential 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; or 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.