



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-141-175 12 VAC 30-141-670 through 12 VAC 30-141-880
Regulation title	Family Access to Medical Insurance Security Plan (FAMIS)
Action title	Changes to the FAMIS MOMS and FAMIS Select Waivers
Date this document prepared	

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*.

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 NOIRA is to obtain input from the public for continuation and expansion of the FAMIS MOMS and FAMIS *Select* programs. Regulatory action is needed to incorporate changes that may be required or recommended for continuation of these programs under a federal demonstration waiver.

Legal basis

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 Family Access to Medical Security Insurance Plan (FAMIS). The *Code of Virginia* (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to administer and amend the Family Access to Medical Insurance Security Plan (FAMIS) according to the Board's requirements. The federal Children's Health Insurance Program (CHIP) as established by § 2101 of the *Social Security Act* [42 U.S.C. 1397aa] provides governing authority for payments for services.

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 FAMIS MOMS and FAMIS Select programs are authorized by the Centers for Medicare & Medicaid Services (CMS) under an 1115(a) demonstration waiver that expires June 30, 2010. DMAS may request continuation of the demonstration beyond this date. One requirement for continuation is to obtain input from all interested parties regarding the possibility of continuation of the demonstration program. CMS is expected to require some changes as a condition of continuation of the waiver.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The state regulations that are affected by this action are FAMIS Select (12 VAC 30-141-175) and FAMIS MOMS (12 VAC 30-141-670 through 12-VAC-141-880).

FAMIS Select is an optional program available to children determined eligible for Family Access to Medical Insurance Security (FAMIS), whereby the Department of Medical Assistance Services (DMAS) provides premium assistance to the family to cover the child through a private or employer-sponsored health plan instead of directly through the FAMIS program. No changes to this program are anticipated. Wrap-around coverage will continue to be provided for immunizations only.

FAMIS MOMS provides health care coverage for pregnant women without creditable insurance coverage in families with income above the Medicaid limit of 133% of the federal poverty level (FPL) up to and including 200% FPL. DMAS anticipates no change in the following policies:

- FAMIS MOMS will continue to provide coverage with federal reimbursement at the Title XXI rate for pregnant women without creditable insurance coverage in families with income above the Medicaid limit of 133% FPL up to and including 200% FPL.
- FAMIS MOMS will continue to use the Medicaid methodology for determining income eligibility.
- FAMIS MOMS will continue to provide benefits that are identical to benefits provided to pregnant women under the Medicaid state plan.

DMAS anticipates that the changes to the FAMIS MOMS program may include, but may not be limited to, the following:

- Consistent with the requirements of the Medicaid program, FAMIS MOMS and FAMIS Select applicants will be required to provide documentation of citizenship and identity. DMAS plans to implement this requirement through a separate regulatory action effective January 1, 2010, as mandated in Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Public Law 111-3).
- Consistent with the requirements of the Medicaid program, FAMIS MOMS and FAMIS Select applicants will be required to provide their Social Security number in order to facilitate compliance with the new requirement to document citizenship.
- Infants born to FAMIS MOMS will be deemed eligible for FAMIS coverage for the first year of life.

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, please 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 the alternative of adopting the new premium assistance alternative available under CHIPRA. This alternative would require an employer contribution toward the premium of at least 40 percent. This alternative was rejected because it would exclude many families from participation and be more complex to administer.

DMAS considered the alternative of providing health care coverage for pregnant women with family income up to 185% FPL through the Medicaid program. Medicaid currently covers pregnant women and their newborns up to 133% FPL. This alternative was rejected because services would be reimbursed at the lower Title XIX federal match rate. Under the waiver, services are reimbursed at the higher Title XXI match rate.

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 hearing is to be held to receive comments on this notice.

The agency 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 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 comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Molly Carpenter at Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia 23219, telephone: (804) 786-1493, fax: (804) 225-3961, email: molly.carpenter@dmas.virginia.gov. 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 hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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 is using the participatory approach in the development of the proposed regulatory changes. DMAS encourages input from all interested parties through the Virginia Regulatory Town Hall. DMAS plans to involve the Children's Health Insurance Program Advisory Committee (CHIPAC). CHIPAC was created by the Virginia General Assembly to assess the policies, operations, and outreach efforts for FAMIS and FAMIS Plus and to evaluate enrollment, utilization of services, and the health outcomes of children eligible for such programs.

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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.