



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-141
Regulation title	Family Access to Medical Insurance Security Plan (FAMIS)
Action title	FAMIS MOMS Federal Poverty Level Change
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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulatory action would permit some pregnant, qualified legal aliens with family income below 133% of the federal poverty level (FPL) who do not meet Medicaid alien status requirements for full coverage to be enrolled in the FAMIS MOMS program and receive health care coverage for prenatal care and delivery. Currently, these women are eligible under Medicaid for coverage of emergency services, for delivery only. The proposed amendment would ensure that pregnant women with family income in the lowest range (below 133% FPL) are eligible for coverage that is comparable to coverage available to women with higher family income (133% to 200% FPL).

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 Agency Background document with the attached regulations entitled FAMIS MOMS Federal Poverty Level Changes (12VAC 30-141-100 and 12VAC 30-141-740) 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. I hereby certify that these regulations are full, true, and correctly dated.

Date

Gregg A. Pane, M.D., MPA, Director
Dept. of Medical Assistance Services

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of 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 Security Insurance Plan according to the Board’s requirements. The child health assistance authority as established by § 2101 of the *Social Security Act* [42 U.S.C. 1397aa] provides governing authority for payments for services.

The 2006 Session of the General Assembly amended language in the Appropriations Act for FAMIS MOMS coverage by replacing the phrase, "with annual family income in excess of the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Level" with the phrase, "who are ineligible for Medicaid and have annual family income less than or equal to 166 percent of the Federal Poverty Level." The amendment explanation states that, in addition to increasing the income eligibility limit, "The amendment also includes language that clarifies that the FAMIS MOMS program may provide coverage to lower income pregnant women who do not qualify for Medicaid for non-financial reasons." Item 296.D of the 2011 *Acts of Assembly* maintains this authority with the phrase, "who are ineligible for Medicaid and have annual family income less than or equal to 200 percent of the Federal Poverty Level."

Federal matching funds for FAMIS MOMS coverage are authorized under a Title XXI section 1115 demonstration waiver. Virginia’s waiver was originally approved to cover pregnant

women with income above the Medicaid income eligibility level only. On February 4, 2011, the Centers for Medicare & Medicaid Services issued revised Special Terms and Conditions (STC) for the waiver. The revised language changed the description of the demonstration from “services to pregnant women without creditable coverage in families with incomes from 133 through 200 percent of the Federal poverty level (FPL)” to read, “services to pregnant women without creditable coverage in families with incomes through 200 percent of the Federal poverty level (FPL).”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The goal of this amendment is to conform policy to the Title XXI principle that within a defined group of covered individuals, standards do not cover individuals of higher income families without covering individuals with a lower family income. Under current policy, some categories of legal aliens are covered under FAMIS MOMS if they have family income between 133% and 200% FPL but are not covered if their income is less than 133% FPL.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Fast-track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial amendment to existing regulations. This regulatory action will allow DMAS to claim Federal Financial Participation (federal matching dollars) for medical services including prenatal care.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

The state regulations that are affected by this action are Eligibility Requirements for FAMIS (12 VAC 30-141-100) and Eligibility Requirements for FAMIS MOMS (12 VAC 30-141-740).

This change affects pregnant women who do not meet the alien status requirements for full Medicaid coverage but do meet the FAMIS MOMS alien status requirements. FAMIS MOMS requirements reflect Title XXI rather than Title XIX requirements. While the size of the affected population is unknown, it is expected to be small. The following table lists the differences between the qualified alien status policies for full Medicaid coverage and FAMIS MOMS coverage for individuals who entered the U.S. on or after August 22, 1996:

Qualified Alien Group	Meets Medicaid alien status requirement for full coverage	Meets FAMIS MOMS alien status requirement
veterans or active military	yes, with no time limit	yes, with no time limit
refugees; asylees; deportation withheld; Cuban/Haitian entrants; victims of a severe form of trafficking; and Iraqi and Afghan Special Immigrants	yes, for first 7 years U.S. only	yes, <i>with no time limit</i>
lawful permanent residents	yes, only after 5 years in U.S. and with 40 qualifying work quarters	yes, only after 5 years in U.S., <i>no work requirement</i>
conditional entrants; aliens paroled in the U.S.; and battered aliens, alien parents of battered children, alien children of battered parents	no	<i>yes, only after 5 years in U.S.</i>

Currently, otherwise eligible pregnant women with family income below 133% FPL who do not meet the Medicaid alien status requirement for full coverage are eligible for Medicaid coverage only for emergency services, for labor and delivery. The federal share of these costs is 50% under Title XIX. Under the revised policy, these women would be eligible for coverage for all pregnancy related services, including prenatal care as well as labor and delivery. The federal share of these costs would be 65% under Title XXI.

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 to the public of implementing the new provisions is that additional pregnant qualified aliens will receive health care coverage for prenatal care.

The primary advantage to the Commonwealth is the potential for better birth outcomes, resulting in lower Medicaid costs, for infants born into families with low income. There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

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.

There are no requirements that exceed applicable 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.

No locality is particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small businesses. No alternative regulatory methods were identified that would accomplish the objectives of applicable law.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a</p>	<p>None</p>
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delineation of one-time versus on-going expenditures	
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Pregnant women with family income less than 133% of the federal poverty level who meet FAMIS MOMS, but not Medicaid, alien status requirements.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	DMAS estimates that 938 emergency services births a year are for legal immigrants who do not meet the Medicaid alien status requirements. It is not known how many of these women would meet the more liberal FAMIS MOMS alien status requirements.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	DMAS estimates that the new regulation would increase the state general fund costs of providing services to the affected individuals by approximately 15% over current general fund costs for services to these individuals.
Beneficial impact the regulation is designed to produce.	Increased access to prenatal care for pregnant women in families with low income, resulting in better birth outcomes.

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.

No alternatives were identified that would accomplish the objectives of the proposed 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; 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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-141-100		Defines FAMIS eligibility qualifications for noncitizens.	Revises the reference to federal eligibility requirements for qualified noncitizens to be simpler and more straightforward.
12 VAC 30-141-740		Limits eligibility for FAMIS MOMS to pregnant women with income above the Medicaid limit of 133% FPL.	Allows otherwise qualified pregnant women with income within Medicaid limits to enroll in FAMIS MOMS if they do not qualify for Medicaid for nonfinancial reasons. This change would allow pregnant women who do not meet the Medicaid alien status requirements but do meet FAMIS MOMS alien status requirements to enroll in FAMIS MOMS.
		Defines FAMIS MOMS eligibility qualifications for noncitizens.	Revises the reference to federal eligibility requirements for qualified noncitizens to be simpler and more straightforward.