



Virginia
Regulatory
Town Hall

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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 30-141-100 and 12 VAC 30-141-120
Regulation title	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS Eligibility for Children of State Employees
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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 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.

Section 2.2-4011 (A) of the *Code of Virginia* states that agencies may adopt regulations in emergency situations after the agency submits a written request stating the nature of the emergency and the Governor approves the action. This action qualifies as an emergency regulation pursuant to the *Code of Virginia* § 2.2-4011(A) because the Agency has determined that these changes "are necessitated by an emergency situation" and DMAS has submitted a

request to the Governor stating in writing the nature of this emergency as discussed herein in the Legal Basis section.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled FAMIS Plan Coverage for Children of State Employees (12 VAC 30-141-100 and 12 VAC 30-141-120) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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.

The Patient Protection and Affordable Care Act (PPACA) (2010) permits states to extend eligibility in the Children's Health Insurance Program (CHIP) to children of state employees who are otherwise eligible under the state child health plan, known in Virginia as FAMIS.

This action qualifies as an emergency regulation pursuant to *Code of Virginia* § 2.2-4011(A) because the Agency has determined that these changes "are necessitated by an emergency situation." On September 5, 2014, DMAS submitted a request to the Governor stating in writing the nature of this emergency and specifically requesting his authority pursuant to Virginia Code § 2.2-4011(A) to promulgate emergency regulations to address the emergency. In the letter, DMAS Director Cynthia B. Jones stated the following:

It has come to our attention that the lack of health insurance coverage for approximately one half of the population of the Commonwealth has created an urgent situation that necessitates the implementation of emergency regulations to speedily address the significant medical needs of Virginia's uninsured population.

....

Another critical issue reported to the Governor by the agency's Director is the denial of access for the children of Virginia state employees to the FAMIS program. Virginia's workforce includes a significant number of lower income employees. Last year, more than 9,600 full-time state employees qualified for the Earned Income Tax Credit, a federal tax subsidy for lower-income working families. State employees may cover their dependent children through their employee health insurance, but for many families this is not an affordable option. Employees who choose this option face an increase in their insurance premium contributions of approximately \$100 to \$200 per month. Even with the most comprehensive coverage, employees must also pay co-pays of up to \$40 for doctor visits. These health care premiums and cost sharing represent a significant reduction in take home pay for many state workers. Some may be forced to opt for employee-only coverage, thereby leaving their children with no health insurance; others may struggle to pay for rent or other necessities because of the additional cost for their children's insurance. This reduced access to covered medical services creates increased health risks for the children of Virginia state workers. Current DMAS regulations exclude state employees from FAMIS eligibility. DMAS now seeks to remove this barrier to the FAMIS program and open up low cost comprehensive health care coverage for the dependent children of Virginia state employees.

In light of this situation the Governor has charged the Secretary of Health and Human Resources to create a plan to provide Virginians with greater access to health care for uninsured citizens. This emergency regulation is part of DMAS' response to that directive.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled FAMIS Eligibility for Children of State Employees (12 VAC30-141-100 and 12 VAC 30-141-120) and also authorize the initiation of the regulation promulgation process provided for in § 2.2-4007 of the *Code*.

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.

State employees may cover their dependent children through their employee health insurance, but for many low-income families this is not an affordable option due to premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. This regulatory action will allow children of state employees who are otherwise eligible (e.g. by virtue of family income, residency) to be enrolled for health coverage under the FAMIS Plan. The action will remove the current exclusion of such children from enrollment. The goal of the action is to make health coverage accessible to more lower-income families.

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.

State employees have the option of covering their dependent children on their health insurance. However, the employee’s contribution to premium increases approximately \$100 - \$200 per month for adding dependents. For lower-income families, this represents a significant reduction in take-home pay. Even with the most comprehensive coverage, employees must also make copayments of up to \$40 for doctor visits when seeking acute care. Thus, lower-income state employees may opt for employee-only coverage, or may struggle to pay housing costs and other necessities because they are paying for the health insurance dependent coverage.

The FAMIS upper income limit is set at 200% of the Federal Poverty Level (FPL). For a parent with one child, an income of 200% FPL is \$2,622 a month or \$31,460 annually (gross income). The median state salary is \$38,957 a year while the lowest state salary is \$15,371. There are approximately 33,000 state employees with salaries between the lowest and median amounts. The average household size is two. Last year, more than 9,600 full-time state employees qualified for the Earned Income Tax Credit, a federal tax subsidy for lower-income working families.

Enrollment in FAMIS has been relatively flat for the past several years, with approximately 500 fewer children covered in July 2014 compared to July 2013. There are more than 100,000 uninsured children across the Commonwealth; the majority of these children are likely to qualify for Medicaid or FAMIS. For those with a parent employed by the state, who do not qualify for Medicaid, the exclusion from enrollment in FAMIS represents a barrier to accessing comprehensive health care benefits.

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 sections of the Family Access to Medical Insurance Security Plan that are affected by this action are: FAMIS Eligibility Requirements (12 VAC 30-141-100) and Children Ineligible for FAMIS (12 VAC 30-141-120).

CURRENT POLICY

At this time, a child who is a member of a family that is eligible for subsidized dependent coverage under any Virginia state employee health insurance plan is not eligible for FAMIS. This policy was originally enacted to be compliant with section 2110(b)(2)(B) of the Social

Security Act which categorically excluded dependents of State employees in the definition of a “targeted low-income child”.

Virginia’s state employee health benefit policies do not allow adding or dropping dependents to coverage outside of the open enrollment period for the new plan year beginning annually on July first, except in the case of certain qualifying events. Eligibility for Medicaid has been such a qualifying event.

The PPACA [P.L.111-148 Title I (E) (I) (A) § 1401] addresses premium tax credits and cost-sharing through changes to the Internal Revenue Code. The implementation of these rules has drawn wide attention to the issue of “affordable” health insurance. “Some low-to-moderate-income families may be locked out of receiving financial assistance to purchase health coverage through the new health insurance Marketplaces. Eligibility is not solely determined by income. It is also subject to whether a family has access to affordable employer-sponsored insurance. The problem is that the definition of “affordable”--for both an individual employee and a family--is based only on the cost of the employee-only coverage and does not take into consideration the often significantly higher cost of a family plan.” [“The Family Glitch”, *Health Affairs* Health Policy Briefs November 10, 2014

http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=129

ISSUES

The children of working families who cannot afford insurance due to out-of-pocket costs suffer from lack of access to health care. Children in very low-income families (less than 143% FPL) are eligible for Medicaid; those who are dependents of state employees can be dropped from state-subsidized coverage and enroll in Medicaid. Currently, children in families with income between 143% and 200% FPL are eligible for FAMIS -- unless they have a parent who is a state employee with an option for subsidized health insurance.

Although the PPACA requires individuals to have health insurance, dependents of State employees may be subject to “the family glitch” described above. More significantly, because they are able to be covered by the state’s health plan, they are currently categorically ineligible for FAMIS, regardless of their financial eligibility for FAMIS or inability to pay for dependent coverage through the sponsored health plan. This exclusion creates an unnecessary disparity in access to health care for children in working families with low incomes.

RECOMMENDATIONS

The intent of this action is to align Virginia policy with that afforded by changes in federal laws, and in doing so expand options for health care coverage to more children in lower-income families.

The PPACA amended the definition of a targeted low-income child in Section 2110(b)(2)(B) of the *Social Security Act* by permitting States to extend CHIP eligibility to children of State employees who are otherwise eligible under the State child health plan (FAMIS). States now,

with an approved CHIP state plan amendment, can enroll such children in these programs. In order to have a state plan amendment approved, the state must meet one of two tests as follows:

- **Maintenance of Contribution** – to meet this test, the amount of annual expenditures made on behalf of each employee enrolled in health coverage paid for by the agency that includes dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made by the agency for the 1997 State fiscal year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for All-Urban Consumers (all items: U.S. City Average) for such preceding fiscal year. This analysis must include data from all agencies with state employees.
- **Financial Hardship** – to meet this test, the state needs to show that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the child would exceed 5 percent of such family’s income for the year involved.

An analysis of annual aggregate out-of-pocket expenses for employees of the Commonwealth of Virginia, University of Virginia, and Virginia Commonwealth University Health System Authority demonstrated that Virginia currently meets the Financial Hardship test. The requisite CHIP state plan amendment has been submitted to the Centers for Medicare and Medicaid Services.

Beginning in January 2015, DMAS and Department of Human Resources Management (DHRM) will allow state employees who do not currently cover their dependent children on their health benefits to enroll their dependent children in FAMIS, if all eligibility standards are met. DMAS is working with DHRM on 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. It is estimated that five percent of the eligible State workforce will be impacted by this change, with a resulting 5,000 children enrolled in FAMIS.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12 VAC 30-141-100		Eligible children must not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member’s employment with a state agency	This exclusion is deleted, allowing dependents of state employees who otherwise meet eligibility requirements to be enrolled in FAMIS. Some children who are currently not insured through their parent’s coverage will be eligible for FAMIS.
12 VAC 30-141-120		Children are ineligible for FAMIS if they are a member of a family eligible for coverage under any Virginia	The exclusion is deleted, allowing dependents of state employees who otherwise meet eligibility requirements to be enrolled in FAMIS. Some children who

		state employee health insurance plan	are currently not insured through their parent's coverage will be eligible for FAMIS.
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The federal financial participation rate for FAMIS is currently 65% to 35% state funds. Implementing this action will allow the Commonwealth to leverage available federal funds to support health care services for more lower-income children, while reducing the contribution of state funds that supports those children through dependent coverage on their parents' state employee benefit.

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 will promote enrollment in FAMIS statewide to increase awareness of the program and assist eligible families in covering their eligible children. However, without this regulatory action, dependents of state employees will not be eligible for the program.

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.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) 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 Joanne Boise, Maternal and

Child Health Policy Analyst, DMAS, 600 East Broad Street, Richmond, VA 23219; (804) 225-2334; (804) 786-6134; joanne.boise@dmas.virginia.gov. 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.

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. These changes do encourage economic self-sufficiency, self-pride, and the assumption of responsibility for one's children by providing improved access to comprehensive health care services while reducing out-of-pocket costs of certain low-income parents. These changes do not strengthen or erode the marital commitment, but may increase disposable family income for affected families who choose to enroll their eligible children in FAMIS and reduce their personal costs for health insurance through the state employee health plan.