Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	141
Regulation Title:	Family Access to Medical Insurance Security Plan
Action Title:	FAMIS
Date:	November 7, 2001 NEED GOVERNOR APPROVAL BY: 01/11/2002

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

In accordance with § 32.1-351 of the Code of Virginia, as amended, this regulation is intended to implement the name change of the Children's Medical Security Insurance Plan (CMSIP) to the Family Accees to Medical Insurance Security (FAMIS); increase the maximum income eligibility levels; create a new benefit package; establish a new employer health insurance premium assistance component; create cost sharing requirements; and create a central processing unit to receive and respond to inquiries and requests for applications and assistance.

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.

In accordance with Code of Virginia § 32.1-351(K) the "Board of Medical Assistance Services, or the Director, as the case may be, shall adopt, promulgate, and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan."

The Code of Virginia also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

The Governor approved the initiation of the Article 2 process for this issue on July 30, 2001.

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.

This proposed regulation promulgates necessary guidelines for the implementation and administration of the Family Access to Medical Insurance Security Plan established by Code of Virginia § 32.1-351. It is essential to protect the health and welfare of Virginians who may not have access to health insurance for their children.

The goal of these regulations is to establish client eligibility criteria, a new benefit package of covered services, a premium assistance component for participants eligibility for employer sponsored health insurance, and cost sharing 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.

In accordance with § 32.1-351 of the Code of Virginia, as amended, this proposed regulation changes the name of the Virginia Children's Medical Security Insurance Plan (VCMSIP) to the Family Access to Medical Insurance Security Plan (FAMIS).

The FAMIS Plan is expected to increase participation of children over Virginia's current Children's Medical Security Insurance Plan by increasing the maximum income eligibility levels from 185 percent to 200 percent of the Federal Poverty Income Guidelines (See 12 VAC 30-141-100). This change simplifies the eligibility process to assist famlies in determining their eligibility by using only gorss income to determine eligibility. Asa result of the simplified eligibility process more families are expected to enroll into the program.

The types of medical benefits covered for program participants include well-child and preventive services, medical, dental, vision, mental health, and substance abuse services, and physical therapy, occupational therapy, speech-language pathology, and skilled nursing services for special education students in addition to the standard inpatient hospital, physician, laboratory and x-ray, and prescription drug services, for example. (See 12 VAC 30-140-200 through 12 VAC 30-140-440). The former CMSIP was a Medicaid "look-alike" plan. Therefore, its benefits reflected those offered in Virginia's Medicaid program. FAMIS changes the types of medical benefits covered for program participants to reflect the Key Advantage benefit package offered to all Commonwealth employees. In addition, vision, hearing aids, orthodontic, lead-testing, and complex dental services will be provided to participants by means of state funds.

FAMIS also establishes a premium assistance program. This provision permits participants who have access to employer-sponsored health insurance coverage, as defined in § 32.1-351.1, to voluntarily enroll in their employers' health plans. DMAS or its designee will then make premium payments to such employers' plans on behalf of these eligible participants if the DMAS or its designee determines that such enrollment is cost-effective, as defined in § 32.1-351.1. The FAMIS Plan will provide health benefits that are not included in the employer-sponsored health insurance benefit plan to ensure that the child will have insurance equivalent to the comprehensive health care benefits provided above. (See 12 VAC 30-141-160).

FAMIS also incorporates cost sharing requirements for all recipients (See 120 VAC 30-141-150). Specifically, FAMIS Plan participants whose incomes are above 150 percent of the Federal Poverty Income Guidelines will be required to participate in cost-sharing by means of monthly premium payments as well as copayments. The annual aggregate cost-sharing for all eligible children in a family at or above 150 percent of the federal poverty level shall not exceed five percent of the family's gross income. Cost-sharing for all eligible children in a family between 100 percent and 150 percent of federal poverty level will be limited to nominal copayments and the annual aggregate cost-sharing will not exceed 2.5 percent of such family's

gross income. Furthermore, cost-sharing will not be applied to specific preventive health care services such as well child care and age-appropriate childhood immunizations.

FAMIS also creates a central processing unit (CPU) for the administration of the program to include responding to inquiries, distributing applications and program information, and receiving and processing applications for program eligibility (See 120 VAC 30-141-141).

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.

The advantageous re-design and re-structuring to the public and potential participants of FAMIS will increase the enrollment of children into Virginia's Title XXI program. DMAS is addressing the need to increase enrollment of eligible children by reducing the stigma of a public welfare program and simplifying and speeding up the enrollment process. There are no disadvantages to the public or potential participants.

The advantage to the agency and the Commonwealth is expected to be the increased enrollment in this re-designed program over the previous Children's Medical Security Insurance Plan. DMAS perceives that the program's low enrollment was due to its complex and slow enrollment process. There are no disadvantages to the agency or Commonwealth.

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.

Projected expenditures for FAMIS are based upon the following enrollment projections:

Enrollees by Federal Fiscal Year
(at Year End)

FFY	*Title XXI enrollment*

2001	34,602
2002	42,863
2003	51,125

Expenditures (total computable) for medical assistance services are based upon projected monthly enrollment multiplied by a Per Member Per Month (PMPM) cost of $97.69 from July 1999 through June 2000, a PMPM cost of $101.60 from July 2000 through June 2001, a PMPM cost of $105.66 from July 2001 through June 2002, a PMPM cost of $109.89 for July 2002 through June 2003, and a PMPM cost of $114.29 from July 2003 through September 2003. Projected expenditures (total computable) by quarter and federal fiscal year are shown in the following table. Please note that numbers may not add because of rounding.

Expenditures will be funded from the following sources:

Projected Medical Expenditures

	Federal Funds	State Funds	Total Medical
Total FFY 2000	$16,763,000	$8,570,615	$25,333,615
Total FFY 2001	$26,042,217	$13,240,107	$39,282,324
Total FFY 2002	$35,121,684	$18,080,897	$53,202,581
Total FFY 2003	$43,972,392	$23,293,509	$67,265,901

FAMIS will have an insignificant impact on localities and will affect the operations of six managed care health plans in Virginia.

Administrative Expenditures:

Based on these projected medical expenditures Virginia will have available $3.2 million in federal funding in FFY 2001 and $5.3 million in FFY 2002 for administrative funding.

Administrative Funding Available under the 10% Administrative Limit.

	Federal Funds	State Funds	Total Medical
Total FFY 2000	$1,862,556	$952,191	$2,814,846
Total FFY 2001	$2,893,580	$1,471,123	$4,364,703
Total FFY 2002	$3,902,409	$2,008,989	$5,911,398
Total FFY 2003	$4,885,821	$2,588,168	$7,473,989

If DMAS incurs administrative costs in excess of the amount available under the 10% cap, these costs will be paid with 100% state funding. Virginia's current Title XXI program (CMSIP) operates as a Medicaid look-alike program, with

eligibility determinations being done by local DSS offices and the services being delivered by Medicaid HMOs and the Medicaid fee-for-services program. The administrative structure of the FAMIS program will be substantially different. DMAS has contracted with an entity to establish a central processing site to perform eligibility determinations. This same site also provides enhanced services including enrollment in a managed care entity, outreach services, premium billing and collections, and a call center for customer support. Based on expenditures for similar sites in other states, DMAS expects to spend between $5 and $6 million per year (total funds) for the central processing site beginning in FFY 2002. (Since the contract was awarded in FFY 2001, there will be a partial year cost for the centralized processing site; however, this will be offset by savings in the cost of the current eligibility process.) In addition, DMAS expects to spend around $500,000 a year for in-house administrative support.

Funding:

State funding will come from two sources: State General Funds, and the *Family Access to Medical Insurance Security* Plan Trust Fund. The 1997 General Assembly established the Virginia Children's Medical Security Insurance Plan Trust Fund (the fund was renamed the *Family Access to Medical Insurance Security* Plan Trust Fund in legislation enacted in 2000) in anticipation that a children's health insurance program would be enacted by the 1998 General Assembly. The Assembly directed that the Fund be used to pay in part the Commonwealth's share of expenditures under the new children's health insurance program. Income to the Fund is derived from increased health insurance premium tax revenue. In 1997, the Commonwealth repealed a partial tax exemption enjoyed by the Blue Cross and Blue Shield Companies, which no longer provide insurance of last resort as a result of HIPAA reforms. Payments into the trust fund are expected to be between $9 and $10 million a year. The remainder of the Commonwealth's share will be paid from State General Funds.

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.

CMSIP		FAMIS	
VAC #	Effect	VAC #	Effect
12 VAC 30-140-10	Definitions	12 VAC 30-141-10	Definitions
12 VAC 30-140-20	Describes the administration of CMSIP and its general	12 VAC 30-141-20	Describes the administration of FAMIS and its general

	background		background.
12 VAC 30-140-30	Describes outreach and public participation	12 VAC 30-141-30	Describes outreach and public participation.
12 VAC 30-140-40	Outlines the administrative review process of an adverse action	12 VAC 30-141-40	Outlines the review process of an adverse action
12 VAC 30-140-50	Describes when a participant will receive notice of adverse action	12 VAC 30-141-50	Describes when a participant will receive notice of adverse action
12 VAC 30-140-60	Describes how a participant can request an administrative review	12 VAC 30-141-60	Describes how a participant can request a review of an adverse action.
12 VAC 30-140-70	Outlines the administrative review procedures	12 VAC 30-141-70	Outlines procedures for review of an adverse action.
12 VAC 30-140-100	Defines the eligibility requirements	12 VAC 30-141-100	Defines the eligibility requirements
12 VAC 30-140-90	Defines the duration of eligibility	12 VAC 30-141-110	Defines the duration of eligibility
12 VAC 30-140-110	Defines children who are ineligible for VCMSIP	12 VAC 30-141-120	Defines children who are ineligible for FAMIS.
12 VAC 30-140-120	Assures that all provisions in CMSIP are nondiscriminatory	12 VAC 30-141-130	Assures that all provisions in FAMIS are nondiscriminatory
12 VAC 30-140-130	Statement that CMSIP does not create an entitlement	12 VAC 30-141-140	Statement that FAMIS does not create an entitlement
12 VAC 30-140-140	Lists application requirements	12 VAC 30-141-150	Lists application requirements
12 VAC 30-140-150	Provides guidelines for cost sharing. Cost sharing was never implemented	12 VA C 30-141-160	Provides guidelines for cost sharing.
		12VAC 30-141-170.	Describes the Employer sponsored health insurance (ESHI) component.
		12 VAC 30-141-180	Describes third party liability for excess payment of benefits
12 VAC 30-140-200	General statement regarding benefits. Following this statement each benefit is listed in separate sections.	12 VAC 30-141-200	Lists all benefits covered for persons eligible in FAMIS
		12 VAC 30-141-230	Lists enhanced services in excess of the benchmark package in accordance with the State Plan
		12 VAC 30-141-240	Lists services covered in excess of the benchmark

			package covered with all state funds.
12 VAC 30-140-210	Inpatient services (Section 2110(a)(1))		
12 VAC 30-140-220	Outpatient services (Section 2110(a)(2))		
12 VAC 30-140-230	Physician services (Section 2110(a)(3))		
12 VAC 30-140-240	Surgical services (Section 2110(a)(4))		
12 VAC 30-140-250	Clinic services (including health center services) and other ambulatory health care services. (Section 2110(a)(5))		
12 VAC 30-140-260	Prescription drugs (Section 2110(a)(6))		
12 VAC 30-140-270	Over-the-counter medications (Section 2110(a)(7)		
12 VAC 30-140-280	Laboratory and radiological services (Section 2110(a)(8))		
12 VAC 30-140-290	Prenatal care and prepregnancy family services and supplies (Section 2110(a)(9))		
12 VAC 30-140-300	Inpatient mental health services, other than services described in 12 VAC 30-140-370 (Section 2110(a)(10))		
12 VAC 30-140-310	Outpatient mental health services, other than services described in 12 VAC 30-140-380 but including services furnished to outpatients of a state-operated mental hospital and including community-based services (Section 2110(a)(11)		
12 VAC 30-140-320	Durable medical equipment and other medically related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices,		

	and adaptive devices) (Section 2110(a)(12))		
12 VAC 30-140-330	Disposable medical supplies (Section 2110(a)(13))		
12 VAC 30-140-340	Home and community-based health care services (Section 2110(a)(14))		
12 VAC 30-140-350	Abortion (Section 2110(a)(16))		
12 VAC 30-140-360	Dental services (Section 2110(a)(17))		
12 VAC 30-140-370	Inpatient substance abuse treatment services and residential substance abuse treatment services (Section 2110(a)(18))		
12 VAC 30-140-380	Outpatient substance abuse treatment services (Section 2110(a)(19))		
12 VAC 30-140-390	Case management services (Section 2110(a)(20))		
12 VAC 30-140-400	Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders (Section 2110(a)(22))		
12 VAC 30-140-410	Hospice care (Section 2110(a)(23))		
12 VAC 30-140-420	Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services. (Section 2110(a)(24))		
12 VAC 30-140-430	Medical transportation (Section 2110(a)(26))		
12 VAC 30-140-440	Any other health care services or items specified by the Secretary and not included under this section (Section 2110(a)(28))		

12 VAC 30-140-500	Describes reimbursement of benefits with exceptions	12 VAC 30-141-500	Lists benefits reimbursement under FAMIS.
12 VAC 30-140-560	Provides that quality assurance assessment will be developed by the Director	12 VAC 30-141-560	Provides that quality assurance assessment will be determined by contracts between provider entities and DMAS
12 VAC 30-140-570	Describes CMSIP'S utilization control mechanisms	12 VAC 30-141-570	Provides that utilization review systems will be determined by contracts between provider entities and DMAS
		12 VAC 30-141-600	Recipient audit unit.
		12 VAC 30-141-650	Provider review.

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.

The various programmatic alternatives for this child health plan were considered during the legislative session and are a matter of that public record.

Public Comment

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

One written comment was received in response to the comment period for the Notice of Intended Regulatory Action, which ended September 26th, 2001. The Virginia Poverty Law Center's comments suggested revisions to the current emergency regulations governing FAMIS. DMAS will analyze each revision and consider them when promulgating proposed regulations.

The Virginia Hospital and Healthcare Association also provided some of the same comments on the emergency regulations for FAMIS.

Comment: The preamble to the emergency regulations incorrectly states that FAMIS "expands the types of medical benefits covered."

FAMIS is modeled after Key Advantage, the health benefits plan for state employees, which offers a comprehensive benefits plan. This has been clarified in the proposed regulation.

Comment: "Employer-sponsored health insurance coverage" should reflect the 40% employer contribution.

This clarification has been made.

Comment: Stepparents should be deleted from the definition of family.

DMAS does not believe the inclusion of stepparents in the definition of family creates negative implications. Moreover, because FAMIS is a separate plan DMAS is not required to follow Title XIX rules.

Comment: FAMIS premium amounts should be reconsidered.

DMAS will continue to review the number of families required to pay a premium, the amount of the premium per family, and the number of children who are dis-enrolled from FAMIS for not paying premiums in order to adjust its program as necessary.

Comment: DMAS has never explained the purpose of a monthly premium.
Cost sharing in the FAMIS program is limited to nominal co-payments and premiums. Utilization of premiums and co-payments implements a health insurance program that bridges the public and private sectors by providing a plan that is similar to commercial private insurance. Having such co-payments and premiums in FAMIS is intended to help families to convert to private health insurance as their economic self sufficiency grows.

Comment: The regulation should contain far more detail about outreach and public participation.

DMAS continues to invest an enormous amount of funds into its FAMIS outreach program and will continue to involve the public when appropriate.

Comment: The regulation should include specific provisions for actions needed once a child is identified as potentially Medicaid eligible. Specifically, a Medicaid application should be processed in each instance.
The FAMIS application is a single program application. It is used solely for FAMIS and does not contain the information necessary to process Medicaid eligibility.

Comment: The regulations should incorporate the three specific good cause reasons for dropping insurance, which were used in CMSIP.
These good cause reasons have been "operationalized." Incorporating them into the regulation would limit the Agency's flexibility if other good cause reasons were appropriate.

Comment: Virginia should incorporate 12-month continuous eligibility into the FAMIS program.
DMAS has evaluated guaranteeing 12-month eligibility without regards to changes in a family's financial circumstances and has determined that such a provision is cost prohibitive. FAMIS recipients are required to report changes in income and living arrangements when changes occur. Eligibility is re-determined each time there is a reported change. If no changes are reported, cases are reviewed annually (or only every 12 months) to determine continued eligibility for the program, which, in effect is the 12-month period of eligibility that the commenter recommended (as long as there are no changes in family financial circumstances).

In future, because Federal funding for FAMIS is limited, continuous eligibility could create a situation in which more deserving recipients are placed onto waiting lists.

Comment: The automatic exclusion of children in an institution for mental disease (IMD) is more restrictive than what is required by federal law, and the regulation should be revised.
When a child is admitted to an IMD it creates a change in family status, which is required to be reported. A required immediate re-determination of the new family status appropriately excludes these children in accordance with federal law.

Comment: Any adult taking care of a child, particularly a relative should be able to file an application for a child.
Any adult can file an application for a child as long as there is an "authorized representative" in accordance with the FAMIS regulation.

Comment: Instead of citing premiums, the regulation should state the actual cost sharing limits.

Because cost sharing limits are based upon the Federal Poverty Level, which fluctuates annually, DMAS will continue to use percentages in its regulation. However, material available to all enrollees contains specific dollar amounts.

Comment: Cost sharing amounts for state funded services should be revised.

DMAS will continually monitor access to these services and revise as necessary.

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.

The regular review of this regulation will occur in conjunction with the review of all agency regulations according to the schedule approved by the Secretary of Health and Human Resources under Executive Order Twenty-five (98).

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 strengthen the institution of the family by providing comprehensive health care insurance, at nominal fees, to individuals who are uninsured. It will encourage wellness and well-being for families in the Commonwealth who currently do not have health care benefits.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities.