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Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC30-141-740 and 12 VAC30-141-760
Regulation title(s)	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS MOMS Eligibility for State Employees and Dependents
Date this document prepared	1/8/2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The state's Children's Health Insurance Program (CHIP) is known in Virginia as the Family Access to Medical Insurance Security (FAMIS) Plan and the CHIP waiver program for pregnant women is known as FAMIS MOMS. FAMIS MOMS is only available to pregnant women, according to their income who are uninsured. Pregnant, low-income state employees and their pregnant dependents, who are otherwise eligible for FAMIS MOMS, have been permitted to enroll in the program under the authority of the federal Centers for Medicare and Medicaid services, and this regulatory package represents changes to the Virginia Administrative Code to reflect coverage that is already provided.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“Children’s Health Insurance Program (CHIP)” means the federal program under Title XXI of the *Social Security Act* that provides funds to states to enable them to initiate and expand the provision of child health insurance to uninsured, low-income children.

“Family Access to Medical Insurance Security Plan (FAMIS)” means the CHIP program operated by the Commonwealth.

“FAMIS MOMS” means the CHIP waiver program serving low-income pregnant women with benefits the same as those for pregnant women in Medicaid.

“Patient Protection and Affordable Care Act (PPACA)” means Public Law 111–148, passed by Congress in 2010.

“DMAS” means the Department of Medical Assistance Services.

“DHRM” means the Department of Human Resources Management.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’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 DMAS, 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.

Section 1115 of the *Social Security Act* [42 U.S.C. 1315] provides states with the opportunity to implement demonstration projects that extend benefits to additional population groups with the intent of promoting program objectives, including those of Title XXI. Virginia implements the

FAMIS MOMS program through a section 1115 Health Insurance Flexibility and Accountability (HIFA) Demonstration called “FAMIS MOMS and FAMIS Select” (No. 21 – W -00058/3). The Center for Medicare and Medicaid Services has approved the HIFA waiver amendment to allow state employees and their dependents, who otherwise qualify, to enroll in FAMIS MOMS.

Purpose

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

Before Virginia changed its FAMIS MOMS program, lower-income families faced a barrier when access health care services. The barrier was high out-of-pocket costs which for low income pregnant women could be a substantial part of their income. The change permitted pregnant women in families who have access to state employee benefits, and who have incomes greater than 143% and less than or equal to 200% FPL, to enroll in FAMIS MOMS.

Pregnant women in working families who cannot afford insurance due to high out-of-pocket costs suffer from lack of access to health care. While state employees may be covered through their subsidized employee health insurance, for many low-income families this is not an affordable option due to high out-of-pocket costs such as premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. The FAMIS MOMS change permitted pregnant women who had access to subsidized health insurance through state employment, and are otherwise eligible (e.g. by virtue of family income, residency) to be enrolled for health coverage under the FAMIS MOMS program. By removing the exclusion of such women from enrollment, it allowed the Commonwealth's employees to be treated the same as other families with access to employer-sponsored health insurance.

As a result of the FAMIS MOMS change, more lower-income pregnant women were permitted to obtain insurance coverage for critically important prenatal care. This was essential to protect the health, safety, and welfare of these affected individuals by providing an opportunity to access high quality health care services that they might otherwise not be able to afford. It does not otherwise affect the health, safety, or welfare of other citizens of the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

DMAS submitted a HIFA 1115 Waiver amendment, which was approved by CMS, that expands coverage for FAMIS MOMS to include pregnant women with access to state employee health benefit coverage in accordance with the hardship exception specified in section 2110(b)(6)(C) of the *Social Security Act*.

To meet the financial hardship test, the Commonwealth showed that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the pregnant woman exceeded 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 federal Financial Hardship test.

Under the FAMIS MOMS change, applicable qualified state employees, and their otherwise-eligible dependents, have been permitted to enroll in FAMIS MOMS. (This change only affected state employees who are qualified for employer-sponsored health insurance; wage employees are not eligible to receive a state contribution toward the cost of their health coverage, but are eligible to enroll in FAMIS MOMS if they otherwise qualify.)

In order to alert potentially eligible employees about this policy change, DMAS and the Department of Human Resources Management (DHRM) implemented 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.

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 of the FAMIS MOMS change was that more low-income working families had access to the FAMIS MOMS program, with significantly reduced out-of-pocket expenses for pregnancy-related care, perhaps resulting in more disposable income for such families to cover their basic necessities or other expenses. Businesses that offer health insurance to their employees could have seen a reduction in their health insurance costs if any of their employees had spouses employed by the state, and could enroll their eligible dependents in FAMIS MOMS. The primary disadvantage for the affected families is the administrative process of having to rejoin the state health benefit plan within the 60-day qualifying event period once the pregnancy ends.

One advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. The Commonwealth agencies that currently cover a pregnant woman on the state health plan might have been able to reduce their benefit option to that of an employee only, or employee plus spouse (depending on their family size and situation), thus reducing the state's share of premium for family coverage. Since the state employee health plan is self-insured, a reduction in the costs of claims incurred for pregnant women covered under the state health plan would contribute additional savings if those women were enrolled in FAMIS MOMS instead.

Another advantage to the Commonwealth is the sharing of the costs, with DMAS' Federal Financial Participation, of care of these women and their infants. The Federal Financial Participation rate for FAMIS MOMS is 88%.

Another advantage to the Commonwealth is reduction of the social and economic costs associated with reducing the number of births to uninsured women. To the extent that FAMIS MOMS participants deliver fewer preterm or low birth weight infants, the program contributes to reduced medical costs for women in the income range served. In 2013, 7.1% of babies born to FAMIS MOMS were of low birth weight, compared to 8% of all births in Virginia; 7.9% of babies born to FAMIS MOMS were delivered preterm, compared to 11% of all births in Virginia (*Calendar Year 2013 Improving Birth Outcomes through Adequate Prenatal Care*: Delmarva Foundation 2014).

There is no identified disadvantage to the Commonwealth.

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.

The proposed regulatory action has no requirements that are more restrictive than 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.

There is no identified disproportionate impact on any locality due to the proposed regulatory action.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 to Emily McClellan at the Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, by phone at (804) 371-4300, or by e-mail to Emily.McClellan@dmas.virginia.gov . Written comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>DMAS has no data on pregnancy rates of state employees by income level and family size. Therefore it is not known how many women might be eligible for, or may have enrolled in the FAMIS MOMS program; it is expected to be a small number of women.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>No impact is expected for localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>All state agencies and institutions of higher education, including the Virginia Commonwealth University Authority.</p>
<p>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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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</p>	<p>There are no projected costs to affected individuals, businesses, or other entities.</p>

<p>regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Virginia offers lower-income state employees an option to provide health insurance for pregnant family members that reduces their out-of-pocket expenses. The regulations may also produce some cost savings to the Commonwealth by reducing the expenses associated with coverage of pregnant women through the state health plan.</p>

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.

The FAMIS MOMS program provides low-income pregnant women, who have incomes too high for Medicaid, an option for obtaining health insurance and therefore access to critically important prenatal care. Even though individuals may purchase coverage through the federal health insurance marketplace, it is generally only available during the designated open enrollment period. Individuals may also purchase coverage at other times of the year under specific enrollment period conditions (life changing events such as marriage, divorce, insured spouse's death, etc.). Pregnancy, however, does not trigger a special enrollment period. Therefore, a woman cannot obtain insurance through the marketplace when she becomes pregnant, unless the pregnancy occurs during the open enrollment period. The alternative of using the federal health insurance marketplace for pregnancy coverage is, therefore, limited in its utility.

In addition, pregnant women with access to employer-sponsored health insurance are many times ineligible for premium tax credits to make federal health insurance marketplace coverage more affordable.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 are no requirements in the proposed regulation that adversely affect small businesses.

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. These changes do not strengthen or erode the marital commitment. These changes do encourage economic self-sufficiency, self-pride, and the assumption of responsibility for one's family by providing improved access to prenatal and postpartum care while reducing out-of-pocket costs of certain low-income families. These changes are likely to reduce the costs of health insurance and health care services for affected families who choose to participate in FAMIS MOMS, and therefore increase their disposable family income.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMAS submitted its Notice of Intended Regulatory Action to the Virginia Register for publication on September 7, 2015. The comment period ended on October 7, 2015. No public comments were received.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC30-		Eligible pregnant women must not be a member of a	This exclusion is deleted to reflect current practice.

141-740		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	
12 VAC30- 141-760		Pregnant women are ineligible for FAMIS if they are a member of a family eligible for coverage under any Virginia state employee health insurance plan	The categorical ineligibility is deleted to reflect current practice.