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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC30-141-10, 12 VAC30-141-20, 12 VAC30-141-30, 12 VAC30-141-40, 12 VAC30-141-50, 12 VAC30-141-60, 12 VAC30-141-70, 12 VAC30-141-100, 12 VAC30-141-110, 12 VAC30-141-120, 12 VAC30-141-150, 12 VAC30-141-660, 12 VAC30-141-670, 12 VAC30-141-680, 12 VAC30-141-700, 12 VAC30-141-710, 12 VAC30-141-720, 12 VAC30-141-730, 12 VAC30-141-740, 12 VAC30-141-750, 12 VAC30-141-760, 12 VAC30-141-790,
Regulation title(s)	Family Access to Medical Insurance Security (FAMIS) Plan
Action title	FAMIS and FAMIS MOMS Periodic Review
Date this document prepared	October 27, 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*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

Regulations currently in place describe the implementation and oversight of the state's Children's Health Insurance Program (CHIP) (known in Virginia as the Family Access to Medical Insurance Security (FAMIS) Plan) and the CHIP waiver program for pregnant women known as FAMIS MOMS. Effective January 1, 2014, the Affordable Care Act (ACA) required eligibility for health coverage under all health insurance affordability programs, including CHIP, to be based on a new Modified Adjusted Gross Income (MAGI) methodology. Calculating applicants' MAGI eligibility entails defining household composition and executing income-

counting procedures based on Internal Revenue Service rules. Federal law required these changes to be made in the State Child Health Plan under Title XXI of the Social Security Act.

The proposed regulation incorporates the required changes in eligibility determination standards as well as updates to operational processes supporting eligibility and renewal actions. Because the FAMIS MOMS program operates as a CHIP waiver, corresponding regulations related to FAMIS MOMS are also proposed

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 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.

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 (CMS) has approved the CHIP state plan amendment to implement MAGI rules. CMS has also approved an amendment to the demonstration waiver that reinstated enrollment in FAMIS MOMS using MAGI rules and setting the income eligibility to that of the CHIP program.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to bring state regulations into line with federal rules and current Virginia practice. This action does not directly affect the health, safety, and welfare of citizens of the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The sections of the Family Access to Medical Insurance Security Plan that are affected by this action are:

Chapter Citation	Chapter Title	Nature of Recommended Changes
12 VAC 30-141-10	Definitions	Adds new definitions and modifies existing definitions pertinent to MAGI and operational processes
12 VAC 30-141-20	Administration and general background	Updates operational processes to reflect current practice
12 VAC 30-141-30	Outreach and public participation	Updates the reference to the Children’s Health Insurance Program Advisory Committee (CHIPAC)
12 VAC 30-141-40	Review of adverse actions	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-50	Nature of adverse actions	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-60	Request for review	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-70	Review procedures	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-100	Eligibility requirements	Specifies financial and non-financial eligibility standards consistent with MAGI requirements, and updated operational processes at VDSS and CPU
12 VAC 30-141-110	Duration of eligibility	Updates terminology from ‘redetermination’ to ‘annual renewal’
12 VAC 30-141-120	Children ineligible for FAMIS	Updates terminology consistent with MAGI standards and operational processes; clarifies that inpatient status in an institution for mental disease is a factor for ineligibility at initial enrollment or renewal
12 VAC 30-141-150	Application requirements	Updates terminology and operational processes at VDSS and CPU consistent with implementation of

		MAGI standards; use of a single streamlined application; case documentation and maintenance
12 VAC 30-141-660	Assignment to managed care	Specifies that a choice of managed care organization may be made at the time of application
12 VAC 30-141-670	Definitions	Adds new definitions and modifies existing definitions pertinent to MAGI and operational processes
12 VAC 30-141-680	Administration and general background	Updates operational processes to reflect current practice
12 VAC 30-141-700	Review of adverse actions	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-710	Nature of adverse actions	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-720	Request for review	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-730	Review procedures	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-740	Eligibility requirements	Specifies financial and non-financial eligibility standards consistent with MAGI requirements, and updated operational processes at VDSS and CPU
12 VAC 30-141-750	Duration of eligibility	Updates terminology and operational processes at VDSS and CPU
12 VAC 30-141-760	Pregnant women ineligible for FAMIS MOMS	Updates terminology consistent with MAGI standards and operational processes
12 VAC 30-141-790	Application requirements	Updates terminology and operational processes at VDSS and CPU consistent with implementation of MAGI standards; use of a single streamlined application; case documentation and maintenance

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 majority of these changes are required by federal regulations, and there are no other alternatives. Other changes are edits to update terminology and align with current operational practices.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the any suggested alternatives, and 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and 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 Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23219, fax: (804) 786-1680, or Emily.McClellan@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.