

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: 12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-120).

Statutory Authority: §§ 32.1-325 and 32.1-351 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: January 1, 2015, through June 30, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

Preamble:

This action qualifies as an emergency regulation pursuant to § 2.2-4011 A of the Code of Virginia because the Department of Medical Assistance Services (DMAS) has determined that these changes "are necessitated by an emergency situation," consulted with the Attorney General, and received approval from the Governor to promulgate emergency regulations to address the emergency.

Section 32.1-325 of the Code of Virginia 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. Section 32.1-324 of the Code of Virginia 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. Section 32.1-351 of the Code of Virginia authorizes the board 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 USC § 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.

State employees have the option of covering their dependent children on their health insurance. However, the employee's contribution to the 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 children 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.

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 § 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 1, except in the case of certain qualifying events. Eligibility for Medicaid has been such a qualifying event.

PPACA 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]

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

PPACA amended the definition of a targeted low-income child in § 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 5.0% 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 & 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 5.0% of the eligible state workforce will be impacted by this change, with a resulting 5,000 children enrolled in FAMIS.

Part III

Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

- A. This section shall be used to determine eligibility of children for FAMIS.
- B. FAMIS shall be in effect statewide.
- C. Eligible children must:
 1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;
 2. Be under 19 years of age;
 3. Be residents of the Commonwealth;
 4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;
 5. Be uninsured, that is, not have comprehensive health insurance coverage; and
 6. ~~Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(e)(1)(ii) under any Virginia state employee health~~

~~insurance plan on the basis of the family member's employment with a state agency;~~
~~and~~

7. 6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid Services. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is

considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance. Each redetermination of eligibility shall also document inquiry about current health insurance.

b. Health insurance does not include Medicare, Medicaid, FAMIS, or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-120. Children ineligible for FAMIS.

A. If a child is:

1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, he shall be ineligible for FAMIS;~~

~~3.~~ 2. An inmate of a public institution as defined in 42 CFR 435.1009, he shall be ineligible for FAMIS; or

~~4.~~ 3. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, he shall be ineligible for FAMIS.

B. If a child's parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the child shall be ineligible for FAMIS.

C. If a child, if age 18, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. The child, if age 18, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.