

**State of California
Office of Administrative Law**

In re:
Managed Risk Medical Insurance Board

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections:

Amend sections: 2698.302

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

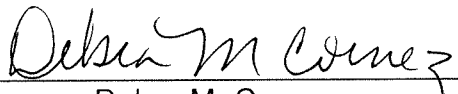
OAL File No. 2011-1129-04 E

The Major Risk Medical Insurance Program (MRMIP) is operated by the Managed Risk Medical Insurance Board (Board). MRMIP provides health insurance for Californians unable to obtain coverage in the individual health insurance market because of their pre-existing conditions. One of the benefits offered by MRMIP is comprehensive maternity care. Californians qualifying for the program participate in the cost of their coverage by paying premiums. The premiums are subsidized through the Cigarette and Tobacco Surtax (Proposition 99). The Board receives a limited appropriation for MRMIP and has an enrollment cap. This emergency regulatory action provides that, effective on or after February 1, 2012, maternity care for a subscriber who serves as a paid surrogate is an excluded benefit. This emergency regulatory action also defines "agreement to serve as a paid surrogate mother" for purposes of this excluded benefit.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/9/2011 and will expire on 6/7/2012. The Certificate of Compliance for this action is due no later than 6/6/2012.

Date: 12/9/2011



Debra M. Cornez
Assistant Chief Counsel/Acting Director

Original: Janette Casillas
Copy: Dianne Knox

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1129-04E
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For use by Office of Administrative Law (OAL) only

<p>2011 DEC -8 PM 3:44</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>2011 DEC -9 PM 1:28</p> <p><i>[Signature]</i> SECRETARY OF STATE</p>
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Managed Risk Medical Insurance Board

AGENCY FILE NUMBER (if any)
ER-6-11

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) MIP Paid Surrogacy Exclusion	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 2698.302
	REPEAL
TITLE(S) 10	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Dianne Knox	TELEPHONE NUMBER (916) 324-0592	FAX NUMBER (Optional) (916) 445-0898	E-MAIL ADDRESS (Optional) dknox@mrmib.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE 12/9/2011
TYPED NAME AND TITLE OF SIGNATORY Tony Lee, Acting Deputy Director, Administration Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
 DEC 09 2011
 Office of Administrative Law

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS Z- NOTICE FILE NUMBER REGULATORY ACTION NUMBER EMERGENCY NUMBER 2011-1129-04E

For use by Office of Administrative Law (OAL) only

2011 NOV 29 PM 3:57 OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Managed Risk Medical Insurance Board

AGENCY FILE NUMBER (If any) ER-6-11

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE TITLE(S) FIRST SECTION AFFECTED 2. REQUESTED PUBLICATION DATE 3. NOTICE TYPE 4. AGENCY CONTACT PERSON TELEPHONE NUMBER FAX NUMBER (Optional) OAL USE ONLY ACTION ON PROPOSED NOTICE NOTICE REGISTER NUMBER PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) MIP Paid Surrogacy Exclusion 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 10

3. TYPE OF FILING Regular Rulemaking (Gov. Code §11346) Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) Emergency (Gov. Code, §11346.1(b)) Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) Emergency Readopt (Gov. Code, §11346.1(h)) File & Print Other (Specify) Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) Effective 30th day after filing with Secretary of State Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal Other (Specify)

7. CONTACT PERSON Dianne Knox TELEPHONE NUMBER (916) 324-0592 FAX NUMBER (Optional) (916) 445-0898 E-MAIL ADDRESS (Optional) dknnox@mrmib.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE DATE 11/29/11 TYPED NAME AND TITLE OF SIGNATORY Loretta Hon, Acting Deputy Director, Administration Division

**TITLE 10: CALIFORNIA CODE OF REGULATIONS
CHAPTER 5.5 MAJOR RISK MEDICAL INSURANCE BOARD
MAJOR RISK MEDICAL INSURANCE PROGRAM**

**Article 3. Minimum Scope of Benefits
Amends Section 2698.302**

Text proposed to be added is displayed in underline type.
Text proposed to be deleted is displayed in ~~strikeout~~ type.

Section 2698.302 is amended to read:

§ 2698.302. Excluded Benefits.

(a) Plans offered under this program shall exclude the following benefits unless specifically provided for in the program contract with the participating health plan:

- (1) Services that are not medically necessary. "Medically necessary" as applied to the diagnosis or treatment of illness is an article or service that is not investigational and is necessary because:
 - (A) It is appropriate and is provided in accordance with accepted medical standards in the state of California, and could not be omitted without adversely affecting the patient's condition or the quality of medical care rendered; and
 - (B) As to inpatient care, it could not have been provided in a physician's office, in the outpatient department of a hospital, or in a lesser facility without adversely affecting the patient's condition or the quality of medical care rendered; and
 - (C) If the proposed article or service is not commonly used, its application or proposed application has been preceded by a thorough review and application of conventional therapies; and
 - (D) The service or article has been demonstrated to be of significantly greater therapeutic value than other, less expensive, services or articles.
- (2) Any services which are received prior to the enrollee's effective date of coverage.

- (3) Custodial, domiciliary care, or rest cures for which facilities of a general acute care hospital are not medically required. Custodial care is care that does not require the regular services of trained medical or health professionals and that is designed primarily to assist in activities of daily living. Custodial care includes, but is not limited to, help in walking, getting in and out of bed, bathing, dressing, preparation and feeding of special diets, and supervision of medications which are ordinarily self-administered.
- (4) Personal or comfort items, or a private room in a hospital unless medically necessary.
- (5) Emergency facility services for nonemergency conditions.
- (6) Those medical, surgical (including implants), or other health care procedures, services, drugs, or devices which are either:
 - (A) Services, products, drugs or devices which are experimental or investigational or which are not recognized in accord with generally accepted medical standards as being safe and effective for use in the treatment in question.
 - (B) Outmoded or not efficacious.
- (7) Transportation except as specified in section 2698.301(a)(5).
- (8) Implants, except cardiac pacemakers, intraocular lenses, screws, nuts, bolts, bands, nails, plates, and pins used for the fixation of fractures or osteotomies and artificial knees and hips; and except as specified in section 2698.301(a)(6).
- (9) Sex change operations, investigation of or treatment for infertility, reversal of sterilization, and conception by artificial means.
- (10) Eyeglasses, contact lenses (except the first intraocular lens following cataract surgery), routine eye examinations, including eye refractions, except when provided as part of a routine examination under "preventive care for minors," hearing aids, orthopedic shoes, orthodontic appliances, and routine foot care are excluded.

- (11) Long-term care benefits including home care, skilled nursing care, and respite care, are excluded except as a participating health plan shall determine they are less costly alternatives to the basic minimum benefits.
- (12) Dental services and services for temporomandibular joint problems are excluded, except for repair necessitated by accidental injury to sound natural teeth or jaw, provided that the repair commences within 90 days of the accidental injury or as soon thereafter as is medically feasible.

This language shall not be construed to exclude surgical procedures for any condition directly affecting the upper or lower jawbone, or associated bone joints.

- (13) Treatment of chemical dependency except as specified in section 2698.301(a)(1)(J).
 - (14) Cosmetic surgery, except as specifically provided in section 2698.301(a)(6).
 - (15) Maternity care for a subscriber who (a) enrolled in the program with an effective date on or after February 1, 2012, and (b) has entered into an agreement to serve as a paid surrogate mother. For purposes of this section, an agreement to serve as a paid surrogate mother is an agreement entered into, in advance of the pregnancy, under which the subscriber agrees to become pregnant and deliver a child for another person as the intended parent, in exchange for monetary compensation other than actual medical or living expenses.
- (b) Benefits which exceed \$75,000 in a calendar year under the program for a subscriber, a subscriber's enrolled dependent or a dependent subscriber shall be excluded.
 - (c) Benefits which exceed \$750,000 in a lifetime under the program for a subscriber, a subscriber's enrolled dependent or dependent subscriber shall be excluded. Benefits received prior to January 1, 1999 shall be counted toward the \$750,000 lifetime maximum.

Note: Authority cited: Sections 12711 and 12712, Insurance Code. Reference: Sections 12711 and 12712, Insurance Code.