

EMERGENCY NOTICE PUBLICATION/REGULATIONS SUBMISSION

File Print
(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1129-05EFP
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Managed Risk Medical Insurance Board			AGENCY FILE NUMBER (if any) ER-5-11

2011 NOV 29 PM 3:59
OFFICE OF ADMINISTRATIVE LAW

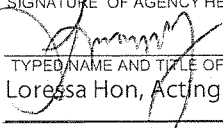
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) AIM Paid Surrogacy Exclusion		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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 2699.301		
TITLE(S) 10	REPEAL		
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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 Resubmittal of disapproved or withdrawn emergency filing (Gov.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 checked="" 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

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 	DATE 11/29/11
TYPED NAME AND TITLE OF SIGNATORY Loretta Hon, Acting Deputy Director, Administration Division	

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**TITLE 10: CALIFORNIA CODE OF REGULATIONS
CHAPTER 5.6 ACCESS FOR INFANTS AND MOTHERS PROGRAM**

**Article 3. Scope of Benefits
Amends Section 2699.301**

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

Section 2699.301 is amended to read:

§ 2699.301. 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 which 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, except as provided in Section 2699.303.
- (3) Custodial care, 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, products, drugs, or devices which are either:
 - (A) 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 2699.300(a)(3).
- (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 2699.300(a)(9)(C).
- (9) Eyeglasses, except those eyeglasses or contact lenses necessary after cataract surgery, which are covered under Subsection 2699.300(a)(17).
- (10) Long-term care benefits including long-term skilled nursing care in a licensed facility and respite care are excluded except as a participating health plan shall determine they are less costly, satisfactory alternatives to the basic minimum benefits. This section does not exclude short-term skilled nursing care or hospice benefits as provided pursuant to Subsection 2699.300(a)(18) and (19).
- (11) Dental services, including dental treatment for temporomandibular joint problems, except for repair necessitated by accidental injury to sound natural teeth or jaw, provided that the repair commences within ninety (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.

- (12) Cosmetic surgery, including treatment for complications of cosmetic surgery, that is solely performed to alter or reshape normal structures of the body in order to improve appearance, except as specifically provided in Section 2699.300(a)(9).
- (13) Any services or items specified as excluded within Section 2699.300.
- (14) Any benefits in excess of limits specified in Section 2699.300.
- (15) Treatment for infertility is excluded. Diagnosis of infertility is not covered unless provided in conjunction with covered gynecological services. Treatments of medical conditions of the reproductive system are not excluded.
- (16) Treatment for any bodily injury or sickness arising from or sustained in the course of any occupation or employment for compensation, profit, or gain for which such benefits are provided or payable under any Worker's Compensation benefit plan. The participating health plan shall provide the services at the time of need, and the subscriber or applicant shall cooperate to assure that the participating health plan is reimbursed for such benefits.
- (17) Services which are eligible for reimbursement by insurance or covered under any other insurance or health care service plan. The participating health plan shall provide the services at the time of need, and the subscriber or applicant shall cooperate to assure that the participating health plan is reimbursed for such benefits.
- (18) 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.

Note: Authority cited: Section 12696.05, Insurance Code. Reference: Section 12696.05, Insurance Code.

FINDING OF EMERGENCY

ACCESS TO INFANTS AND MOTHERS ADOPTION OF REGULATIONS TO EXCLUDE PAID SURROGACY

As described below, the Legislature declared that the adoption of regulations to modify Access to Infants and Mothers (AIM) program benefits or manage program integrity operations is an emergency. At the October 19, 2011 Managed Risk Medical Insurance Board (MRMIB) meeting, the Board found that the action to modify the benefits regulations constituted an emergency. A copy of the Adoption of Emergency Regulations adopted by the Board is attached.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

The AIM program is a state and federally-funded program administered by MRMIB (Insurance Code section 12695 et seq.). The program provides low cost health insurance coverage to uninsured, middle income pregnant women. The total cost is 1.5% of the subscriber's adjusted annual household income. The State of California and the Federal Government supplement the subscriber contribution to cover the full cost of care.

The Legislature has determined that all regulations to revise the AIM benefits or manage program integrity may be adapted as emergency regulations. Insurance Code Section 12696.05 provides:

Issue rules and regulations as necessary to administer the program. All rules and regulations issued pursuant to this subdivision that manage program integrity, revise the benefit package, or reduce the eligibility criteria below 300 percent of federal poverty level may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.59 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

In AIM, paid surrogacy is currently not an excluded benefit. The Board believes that providing insurance coverage for paid surrogacy is an inappropriate use of public funds, particularly during this time of budget crises.

The proposed regulation revises the AIM benefit package and manages the program's integrity. For these reasons, pursuant to the Insurance Code Section 12696.05, the adoption of the proposed regulation is deemed to be an emergency.

AUTHORITY AND REFERENCE CITATIONS

Authority: Section 12696.05, Insurance Code.

Reference: Section 12696.05 Insurance Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Policy Statement: The objective of the proposed regulation amendment is to exclude paid surrogacy as a covered benefit in the AIM.

A summary of the proposed regulation's effect on existing law and regulations follows:

2699.301 Excluded Benefits

Section 2699.301 lists the excluded benefits in the AIM Program.

MRMIB is amending Sections 2699.301 to add subsection (a) (18) to provide that, effective on or after February 1, 2012, maternity care for paid surrogacy is excluded as a benefit in AIM.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY OR REPORT

None.

DETERMINATIONS

The Proposed Substantial differentiation from existing comparable Federal Regulation or Statute: None

Mandates on Local Agencies or School Districts: None

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: There are no costs to local agencies or school districts that would require reimbursement.

Costs or Savings to Any State Agency: Unknown potential savings to the State's Access for Infants and Mothers Program.

Costs or Savings in Federal Funding to the State: None

Costs or Savings to Individuals or Businesses: None