



**The California Managed Risk Medical Insurance Board**

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**NOTICE OF PROPOSED RULEMAKING  
ER-5-11**

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

**AMEND SECTION 2699.301**

**NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on March 28, 2012, at 1:30 p.m., at 1000 G Street, Suite 450, Sacramento, CA 95814.

Following the public hearing MRMIB may thereafter adopt the proposal substantially as described below or may modify the proposal if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the:

Managed Risk Medical Insurance Board  
Attn: Dianne Knox  
1000 G Street, Suite 450  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 445-0898 or by e-mail to [dknox@mrmib.ca.gov](mailto:dknox@mrmib.ca.gov). Comments must be received by no later than 5:00 p.m. on March 28, 2012.

## **AUTHORITY AND REFERENCE**

Authority: Section 12696.05, Insurance Code.

Reference: Section 12696.05, Insurance Code

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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 issue of receiving maternity care under MRMIB programs in connection with paid surrogacy was raised in August 2011 when the Federal Bureau of Investigation announced that it had discovered a baby-selling ring that used paid surrogates to create an inventory of unborn babies that they would sell for over \$100,000 each. One of the defendants admitted to causing applications containing materially false representations to be submitted to MRMIB's Access for Infants and Mothers (AIM) program to subsidize the medical expenses for delivering the babies. The AIM statute and regulations were silent as to benefits for subscribers who serve as a paid surrogate mother.

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 to exclude paid surrogacy as a covered benefit and manages the program's integrity. It is consistent and compatible with existing state regulations.

On December 8, 2011, MRMIB submitted the request for approval of the proposed emergency regulations to the Office of Administrative Law (OAL). The emergency regulations were approved by OAL and were effective December 9, 2011.

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

The Board believes that providing insurance coverage for paid surrogacy is an inappropriate use of public funds, particularly during this time of budget crises. Resources to fund AIM are dwindling and by preventing paid surrogates from getting services in AIM would allow other eligible mothers to receive services for their pregnancies. Excluding paid surrogacy in AIM manages the program's integrity.

Results of Economic Impact Analysis Required by Government Code

11346.3, subdivision (b): The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendment will not affect the health and welfare of California residents, worker safety or the state's environment.

**LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

**FISCAL IMPACT ESTIMATES/COSTS**

This proposal does not impose a mandate on local agencies or school districts for which reimbursement would be required pursuant to Part 7 commencing with Section 17500 of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies, or cost or savings in federal funding to the state.

**COSTS OR SAVINGS TO STATE AGENCIES**

There are no costs or savings to state agencies.

**BUSINESS IMPACT/SMALL BUSINESS**

The MRMIB has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal only clarifies that paid surrogacy is an excluded benefit.

**ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES**

The MRMIB has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The MRMIB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The limited public resources to fund AIM are dwindling and preventing paid surrogates from getting services in AIM would allow other mothers to receive services for their pregnancies.

**EFFECT ON HOUSING COSTS:** None

### **ALTERNATIVES**

The Board must determine that no reasonable alternative considered by the Board or that has been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or to other provision of law.

### **CONTACT PERSONS**

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Dianne Knox  
Managed Risk Medical Insurance Board  
1000 G Street, Suite 450  
Sacramento, CA 95814  
(916) 324-0592

Or

Alexa Malik  
Managed Risk Medical Insurance Board  
1000 G Street, Suite 450  
Sacramento, CA 95814  
(916) 323-0421

### **INITIAL STATEMENT OF REASONS**

The MRMIB has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

### **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which this proposal is based, may be obtained upon request from the Managed Risk Medical Insurance Board at 1000 G Street, Suite 450, Sacramento, CA 95814. These documents may also be viewed and downloaded from the MRMIB website at [www.mrmib.ca.gov](http://www.mrmib.ca.gov)

### **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

February 10, 2012

Page 5

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named above.

**WEBSITE ACCESS**

Materials regarding this proposal can be found at [www.mrmib.ca.gov](http://www.mrmib.ca.gov)