



The California Managed Risk Medical Insurance Board

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October 16, 2013

**ADVANCE NOTICE OF INTENT TO FILE EMERGENCY REGULATIONS
ER-3-13**

TITLE 10: CALIFORNIA CODE OF REGULATIONS

**Chapter 5.6. Access for Infants and Mothers Program
Article 2. Eligibility, Application, and Enrollment
Sections 2699.200 and 2699.207**

NOTICE IS HEREBY GIVEN in accordance with Government Code Section 11346.1(a) (2), which requires that State of California agencies give a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The Managed Risk Medical Insurance Board (MRMIB or Board) intends to file an Emergency Rulemaking package with the Office of Administrative Law (OAL), in concerning modified adjusted gross income and disenrollment of subscribers at the end of a month. As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice appends the following: (1) the specific language of the proposed regulation and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, and required determinations.

The Board plans to file the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulations, they must be received by both the Board and the Office of Administrative Law within five calendar days of the Board's filing at OAL. Responding to comments received at this point in the process is strictly at the Board's discretion.

Comments should be sent simultaneously to:

Managed Risk Medical Insurance Board
Attn: Dianne Knox, ER-3-13
1000 G Street, Suite 450
Sacramento, CA 95814
Fax (916) 327-6560
E-mail to dknox@mrmib.ca.gov.

And

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax to (916) 323-6826
E-mail to staff@oal.ca.gov.

Please note that this advance notice and comment period is not intended to replace the public's ability to comment once the emergency regulations are approved. The Board will hold a public hearing and 45-day comment period within the 180 day certification period following the effective date of the emergency regulations.

Please contact Dianne Knox at 916-327-6218 or dknox@mrmib.ca.gov if you have any question concerning this Advance Notice.

Enclosures

FINDING OF EMERGENCY

ACCESS TO INFANTS AND MOTHERS ADOPTION OF REGULATIONS CONCERNING MODIFIED ADJUSTED GROSS INCOME AND DISENROLLMENT AT END OF A MONTH

At its August 21, 2013, meeting, using the authority provided by AB 82 (Chapter 23, Statutes of 2013) and Insurance Code Section 12696.05(h)(2) in the existing Access for Infants and Mothers statute, the Managed Risk Medical Insurance Board (MRMIB or Board) adopted an emergency regulation that would implement new statutory requirements concerning Modified Adjusted Gross Income (MAGI) and disenrollment of subscribers at the end of a calendar month.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

The Access for Infants and Mothers (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 percent 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.

On June 27, 2013, the Governor signed AB 82 (Chapter 23, Statutes of 2013), the 2013 Omnibus Health Trailer Bill. Section 24 of AB 82 added subdivision (d) to Insurance Code Section 12698, requiring use of MAGI in calculating AIM eligibility effective January 1, 2014, pursuant to the Federal Patient Protection and Affordable Care Law (Public Law 111-148, amended by Public Law 111-152, jointly referred to here as the ACA).

Section 77 of AB 82 deems MRMIB's adoption and readoption of its regulations implementing AB 82 to be an emergency and necessary to avoid serious harm to the public, peace, health, safety, or general welfare of the people of California for the purposes of Government Code Section 11346.1 and 11349.6 and exempts MRMIB from the requirement to describe facts showing the need for immediate action and from Office of Administrative Law review. This provides authority to adopt emergency regulations implementing MAGI for AIM eligibility.

On June 27, 2013, the Governor also signed ABX1-1 (Chapter 3, Statutes of 2013-14, First Extraordinary Session). Section 2 of ABX1-1 amended subdivision (a) of Insurance Code Section 12698.30, to require that AIM eligibility continue through the end of the month in which the 60th day following the end of a pregnancy falls, rather than ceasing on the 61st day following the end of the pregnancy.

Insurance Code Section 12696.05(h) reads, in relevant part, “During the 2011-12, 2012-13, and 2013-14 fiscal years, the adoption and readoption of regulations pursuant to this part shall be deemed to be an emergency that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the board is hereby exempted from the requirement that the board describe facts showing the need for immediate action and from review by the Office of Administrative Law.” The “part” referred to in subdivision (h) is Part 6.3 of Division 2 of the Insurance Code, i.e. the AIM statute. Hence, this provides authority to adopt emergency regulations implementing MAGI for AIM eligibility as well as emergency regulations implementing end-of-month disenrollment in compliance with ABX1-1.

At its August 21 public meeting, the Managed Risk Medical Insurance Board adopted emergency AIM regulations to implement both MAGI eligibility in compliance with AB 82 and end-of-month disenrollment in compliance with ABX1-1.

AUTHORITY AND REFERENCE CITATIONS

Authority: Section 12696.05, Insurance Code, Section 77 of AB 82 (Chapter 23, Statutes of 2013).

Reference: Sections 12696.05, 12698, and 12698.30 of the Insurance Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Policy Statement: The objective of the proposed regulation amendment is to comply with new California legislation that (1) requires use of MAGI in determining AIM income eligibility (Section 24 of AB 82, Chapter 23, Statutes of 2013) and (2) requires AIM eligibility to continue through end of the month in which the 60th day following the end of a pregnancy falls rather than disenrolling subscribers on the 61st day following the end of a pregnancy.

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

Section 2699.200(C) is amended to add numbers designating subparagraphs 1 and 2.

Subparagraph 1 states the existing eligibility rule, under which eligibility is based on monthly household income after deductions (defined at Title 10 CCR Section 2699.100(o)); the amendment adds introductory language clarifying that this rule applies only to eligibility that takes effect before January 1, 2014.

Subparagraph 2 States that, for eligibility that takes effect on or after January 1, 2014, income shall be calculated in accordance with MAGI. The reference to “Section

1397bb(b)(1)(B) of Title 42 of the United States Code as added by the federal Patient Protection and Affordable Care Act (Public Law 111-148) as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) and any subsequent amendments” is a reference to the federal requirement for implementation of MAGI income eligibility.

Section 2699.207(D) is amended to add language stating that, notwithstanding the prior rule under which an AIM subscriber is disenrolled on the 61st day following the end of pregnancy, beginning January 1, 2014, coverage shall continue through the last day of the month in which the 60th day following the end of a pregnancy occurs.

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: None

Costs or Savings to Any State Agency: There will be an additional Proposition 99 cost of \$1.4 million in fiscal year 2013-14 and \$2.0 million for the two subsequent fiscal years due to implementing end-of-month disenrollment.

Costs or Savings in Federal Funding to the State: There will be an additional cost of \$2.1 million in fiscal year 2013-14 and \$2.9 million for the two subsequent fiscal years due to implementing end-of-month disenrollment.

Costs or Savings to Individuals or Businesses: There will be a small savings to Program subscribers due to implementing end-of-month disenrollment.

Title 10. Investment

Chapter 5.6. Access for Infants and Mothers Program Article 2. Eligibility, Application, and Enrollment Sections 2699.200 and 2699.207

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2699.200. Basis of Eligibility.

(a) All eligibility requirements contained herein shall be applied without regard to race, creed, color, sexual orientation, health status, national origin, occupation, or occupational history of the individual applying for the program.

(b) To be eligible for the program, an individual shall meet the requirements of either (1) or (2):

(1) Meet all of the following requirements:

(A) Be certified as pregnant by a staff person authorized by the Planned Parenthood Organization or a licensed or certified healthcare professional, including, but not limited to a medical doctor, doctor of osteopathy, registered nurse, physician's assistant, nurse midwife, vocational nurse, or medical assistant, and have a reasonable good faith belief that the pregnancy is not beyond the 30th week of gestation as of the application date; and

(B) Be a resident of the state of California; and

(C) 1. For eligibility that takes effect before January 1, 2014, have Have a monthly household income after income deductions that is above 200 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level at the time of application; ~~and or~~

2. For eligibility that takes effect on or after January 1, 2014, have a monthly household income, calculated in accordance with the requirements of Section 1397bb(b)(1)(B) of Title 42 of the United States Code as added by the federal Patient Protection and Affordable Care Act (Public Law 111-148) and as amended by the federal Health Care and

Education Reconciliation Act of 2010 (Public Law 111-152) and any subsequent amendments, that is above 200 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level at the time of application.

- (D) Pay the first portion of the subscriber contribution, which shall be fifty dollars (\$50), and agree to the payment of the complete subscriber contribution; and
 - (E) Not be reimbursed by any health care provider or any state or local governmental entity for payment of the subscriber contribution and not have any health care provider or state or local governmental entity pay the subscriber contribution; and
 - (F) Not be a beneficiary of either no-cost Medi-Cal or Medicare Part A and Part B as of the application date; and
 - (G) Not be covered for maternity benefits in a private insurance arrangement as of the application date. A pregnant woman in a private insurance arrangement with a separate maternity only deductible or copayment greater than \$500 shall be deemed not covered for maternity benefits for purposes of determining eligibility.
- (2) Be an infant of less than two (2) years of age born to a program subscriber who was enrolled prior to July 1, 2004, and reside in California.

Note: Authority cited: Section 12696.05, Insurance Code. Reference: Sections 12696.05, 12698(b), 12698(c), 12698.05, 12698(c) and 12698.06, Insurance Code; and Maternal and Child Health Access, Petitioner, vs. Managed Risk Medical Insurance Board, et al, Respondents (Superior Court of the State of California, City and County of San Francisco, Case No. CPF-08-508296).

2699.207. Disenrollment.

- (a) A subscriber shall be disenrolled from the program and from the program's participating health plan when any of the following occur:
 - (1) The subscriber so requests in writing.
 - (2) The subscriber becomes ineligible because:

- (A) The subscriber fails to meet the residency requirement; or
 - (B) The subscriber has committed an act of fraud to circumvent the statutes or regulations of the program,
 - (C) The subscriber is no longer pregnant on her effective date of coverage. If notification to the program is received after the effective date, documentation by a licensed or certified healthcare professional must be submitted indicating the date of the miscarriage.
 - (D) More than 60 days have elapsed since the end of the pregnancy for which the subscriber enrolled in the program. Notwithstanding the previous sentence, beginning January 1, 2014, the program shall provide coverage through the last day of the month in which the 60th day following the end of the pregnancy occurs. As a condition of receiving the premium reduction described in Section 2699.400(a)(5), documentation by a licensed or certified healthcare professional must be submitted to the program indicating the date the pregnancy ended.
- (b) When a subscriber is disenrolled pursuant to subsection (a) of this section, the program shall notify the subscriber of the disenrollment. The notice shall be in writing and include the following information:
- (1) The reason for the disenrollment.
 - (2) The effective date of the disenrollment.
 - (3) An explanation of the appeals process.
- (c) Disenrollment pursuant to (a)(1), shall take effect at the end of the calendar month in which the request was received or at the end of a future calendar month as requested by the subscriber.
- (d) Disenrollment pursuant to (a)(2)(A), shall take effect as follows:
- 1. If the program provides notification to the subscriber on or before the 10th of the month, disenrollment shall take effect at the end of the calendar month.
 - 2. If the program provides notification to the subscriber after the 10th of the month, disenrollment shall take effect at the end of the following calendar month.
- (e) Disenrollment pursuant to (a)(2)(B), shall take effect as follows:

1. If the program provides notification to the subscriber on or before the 10th of the month, disenrollment shall take effect at the end of the calendar month.
 2. If the program provides notification to the subscriber after the 10th of the month, disenrollment shall take effect at the end of the following calendar month.
- (f) Disenrollment pursuant to (a)(2)(C), shall take effect upon the date that would have been the effective date of coverage.
- (g) Disenrollment pursuant to (a)(2)(D), shall take effect on the 61st day following the date the subscriber's pregnancy ended.
- (h) Once a subscriber is disenrolled pursuant to Section 2699.207(a), the subscriber cannot be re-enrolled for the same pregnancy.

Note: Authority cited: Section 12696.05, Insurance Code. Reference: Sections 12696.05 and 12698, Insurance Code.