

FINDING OF EMERGENCY

ACCESS TO INFANTS AND MOTHERS ADOPTION OF REGULATIONS CONCERNING ELIGIBILITY, ENROLLMENT, SUBSCRIBER CONTRIBUTIONS AND TECHNICAL CHANGES

At its November 20, 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 modify provisions concerning eligibility, enrollment and subscriber contributions, and make technical changes concerning implementation of new statutory requirements concerning Modified Adjusted Gross Income (MAGI), disenrollment of subscribers at the end of a calendar month and other technical changes.

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 lower 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. This global emergency regulation authority provides authority to adopt any and all emergency regulations for the AIM program, including but not limited to implementation of MAGI for AIM eligibility and implementation of end-of-month disenrollment in compliance with ABX1-1.

At its November 20 public meeting, the Managed Risk Medical Insurance Board adopted emergency AIM regulations to implement provisions concerning eligibility, enrollment and subscriber contributions and to make additional technical changes concerning MAGI eligibility in compliance with AB 82, and end-of-month disenrollment in compliance with ABX1-1 as well as other technical changes.

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 implement changes concerning eligibility, enrollment and subscriber contributions; to better align those provisions with related activities of the Department of Health Care Services and the California Health Benefit Exchange, who are implementing provisions of the ACA to provide a “Single Streamlined Application.” When fully implemented, the Single Streamlined Application will allow members of the public to apply for any of a wide range of health-related programs, including AIM, through a single application that will meet the needs of all of the programs and minimize the burden on the public of making application to multiple programs. The proposed regulation amendment also makes technical changes to correct and complete compliance 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. Both of these statutory purposes were the objective of a regulation amendment adopted by the Board in August, 2013. In addition, the proposed regulation makes technical changes to remove obsolete language.

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

Section 2699.100(l) is amended align the definition of "first trimester" of pregnancy with the approach and documentation used in the Single Streamlined Application by deleting reference to "last menstrual period." Section 2699.100(l) also deletes reference to the requirement of medical documentation.

Section 2699.100(q1) makes a technical change to move the definition of "MAGI" to the definitions section from Section 2699.200(b)(1)(C)(2), where it was placed in a previous rulemaking, and to make more explicit the cross-references to the federal statutes from which the definition is derived.

Section 2699.200(b)(1)(A) is amended to align with the Single Streamlined Application by deleting a requirement for medical verification of pregnancy to show eligibility for AIM, and to move subparagraphs 1., 2. and 3., relating to the handling of incomplete and complete applications, from Section 2699.202(d) to this section, substantially verbatim.

Section 2699.200(b)(1)(C)(2) is amended to move the definition of MAGI from this section to Section 2699.100(q1) and to add a cross-reference to federal statutes which require a conversion of the eligibility levels (200 percent to 300 percent of federal poverty level) to maintain substantially equivalent eligibility levels following the implementation of MAGI.

Section 2699.200(b)(1)(D) is amended to better align AIM eligibility with the Single Streamlined Application by deleting a requirement that the applicant make a pre-payment of \$50.

Section 2699.201(a)(1) is amended to allow members of the public to apply for AIM using either the AIM application specified in these regulations, or alternately, the Single Streamlined Application.

Section 2699.201(a)(2) is amended to better align AIM eligibility with the Single Streamlined Application by deleting a requirement that the applicant make a pre-payment of \$50.

Section 2699.201(d)(1) is amended to update the revision number of the AIM application to the newest version.

Section 2699.201(d)(1)(F) is amended to align with the Single Streamlined Application by deleting a requirement for medical verification of pregnancy to show eligibility for AIM.

Section 2699.201(d)(1)(G) is amended to align with the Single Streamlined Application by measuring the pregnancy by the expected delivery date of the pregnant woman's infant rather than by first day of the woman's last menstrual period.

Section 2699.201(d)(1)(I) is amended to align with the Single Streamlined Application by clarifying that providing information about whether the applicant or any member smokes is not a condition of eligibility.

Section 2699.201(d)(1)(N) is amended to align with the Single Streamlined Application by adding that an individual taxpayer identification number is an alternative to the social security number; requiring income amounts and tax filer or dependent status of members of the household; retaining the provision that the social security number, and now individual taxpayer identification number, is not mandatory; and stating that this information (while not mandatory) is necessary for electronic verification.

Section 2699.201(d)(1)(O) is amended to align with the Single Streamlined Application by adding the words, "[a]s necessary," reflecting that extensive documentation of income and deductions will not be required from all applicants when MAGI and electronic verification are implemented.

Section 2699.201(d)(1)(O)2.d.ii. is amended by adding that a determination of MAGI by a County Welfare Office is acceptable as documentation of income.

Section 2699.201(d)(1)(P) is amended to align with the Single Streamlined Application by adding the words, "[a]s necessary," reflecting that extensive documentation of income and deductions will not be required from all applicants when MAGI and electronic verification are implemented, and by adding "student loan interest" to the list of deductions that may be applicable.

Section 2699.201(d)(1)(T) is amended to consolidate in one place the application requirement for information about other health coverage and by adding that details of other insurance will be required only if requested.

Section 2699.201(d)(1)(V) is amended to align with the Single Streamlined Application by eliminating the requirement to provide the address and phone number of the primary employer.

Section 2699.201(d)(1)(W) is deleted, reflecting the consolidation of information about other health coverage in Section 2699.201(d)(1)(T), above.

Section 2699.201(d)(1)(BB) is amended to delete the reference to a "second choice" of health plans as unnecessary since there are no more than two participating health plans available, and to specify that selecting a first choice of health plan is needed only when there is more than one plan available.

Section 2699.201(d)(1)(EE) is added to align the AIM application verification process with the Single Streamlined Application, by specifying that income and deductions will be verified in a manner consistent with the Single Streamlined Application, and that, if the information cannot be verified in that manner, the application will be handled using existing processed for incomplete applications.

Section 2699.201(d)(3) is amended to align with the Single Streamlined Application by providing for a declaration acknowledging that an application found not eligible for AIM will be forwarded either to Medi-Cal or to Covered California (California Health Benefit Exchange) for determination of eligibility for those programs.

Section 2699.202 is deleted to reflect that denial of eligibility based on insufficient funds in the current subsections (a), (b), and (c), is no longer feasible as a result of the ACA, and to move subsections (d)(1), (2) and (3), concerning incomplete applications to Section 2699.200(b)(1)(A)1., 2. and 3., substantially verbatim.

Section 2699.205 is amended to add subsection (b), specifying that this section will cease to be operative at such time as the Department of Health Care Services implements its AIM-Linked Infants Program, as described in Chapter 2 (commencing with Section 15810) of Part 3.3 of Division 9 of the Welfare and Institutions Code, which will render this section obsolete.

Section 2699.207(a)(2)(C) is amended to clarify that a subscriber may self-attest to a termination of pregnancy before the effective date of coverage in AIM, if she does so before the effective date.

Section 2699.207(g) is amended to add paragraphs 1., 2. and 3., specifying the procedural steps for disenrollment of AIM subscribers at the end of the eligibility period, as well as the new requirement that the program provide coverage through the last day of the month in which the 60th day following the end of pregnancy occurs (effective January 1, 2014). Paragraph 1. adds the new requirement for coverage through the end of the month. Paragraph 2. States the rule that, if the subscriber does not notify the program about the end of her pregnancy, disenrollment takes place based on the expected delivery date. Paragraph 3 states that the AIM program shall send a reminder notice on or about 30 days prior to the expected delivery date.

Section 2699.208 is repealed, since infants are no longer enrolled in the AIM program but are instead enrolled in the Healthy Families Program, and, when the Department of Health Care Services implements its AIM-Linked Infants Program, will be enrolled there.

Section 2699.209(b) is amended to conform to the end-of-month disenrollment in compliance with ABX1-1, and to add language stating that the subscriber's responsibility to report the end of her pregnancy can be satisfied by the infant's father, the subscriber's health care provider or the subscriber's health care plan.

Section 2699.210 is amended throughout to delete various obsolete references to infants, who are no longer enrolled in the AIM program.

Section 2699.211 is repealed, reflecting the fact that MRMIB no longer has funds to make payment for application assistance.

Section 2699.400(a)(1) is amended to better align with the Single Streamlined Application by deleting a requirement that the applicant make a pre-payment of \$50.

Section 2699.400(a)(4) is amended to align the calculation of the subscriber contribution with the use of MAGI to determine income pursuant to Section 24 of AB 82, Chapter 23, Statutes of 2013.

Section 2699.400(f) is amended to delete an obsolete reference to infants, who are no longer enrolled in the AIM program.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY OR REPORT

None.

DETERMINATIONS

Description of Specific Benefits Anticipated, Including Applicable Nonmonetary Benefits:

The proposed regulation brings the AIM application and eligibility process into conformity with federal requirements that states provide a streamlined application that can be used across multiple programs, giving applicants “no wrong door” access to programs for which they may be eligible. The proposed regulation reduces the burden on applicants by removing requirements that certain documentation and a prepayment must accompany the application. The proposed regulation provides subscribers with a longer period of coverage, to the end of the month in which the 60th day post-partum occurs, as required by recent legislation.

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

Evaluation of Inconsistency/Incompatibility with Existing Regulations: MRMIB has evaluated the proposed regulation and existing regulations and determined that the proposed regulation is not inconsistent or incompatible with existing regulations.

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

Non-Discretionary Cost or Savings to Local Agencies: None

Costs or Savings to Any State Agency: The proposed regulation would modify provisions concerning eligibility, enrollment and subscriber contribution. The state fund may have costs since more people will be eligible for coverage. However, at this time, the amount of the costs is unknown because the change of caseload in the AIM due to this regulation cannot be identified.

Costs or Savings in Federal Funding to the State: The proposed regulation would modify provisions concerning eligibility, enrollment and subscriber contribution. The state fund may have costs since more people will be eligible for coverage. However, at this time, the amount of the costs is unknown because the change of caseload in the AIM due to this regulation cannot be identified.

Costs or Savings to Individuals or Businesses: None