MANAGED RISK MEDICAL INSURANCE BOARD
RESOLUTION

After considering the public comments submitted to the Board, the Board hereby approves the final adoption of regulation changes for the Access for Infants and Mothers, to exclude paid surrogacy benefits, Regulation Package ER-5-11.

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CERTIFICATION

I, Janette Casillas, Executive Director of the Managed Risk Medical Insurance Board, do hereby certify that the foregoing action was duly passed and adopted by the Managed Risk Medical Insurance Board at an official meeting thereof on May 9, 2012.

Dated this 9th day of May 2012.

Janette Casillas, Executive Director
Managed Risk Medical Insurance Board

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

Article 3. Scope of Benefits
Amends Section 2699.301

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Text proposed to be added for the 15-day comment period is displayed in double underline type.
Text proposed to be deleted for the 15-day comment period is displayed in ~~double 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) (A) 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) Participating health plans shall not withhold, or seek reimbursement from, a participating provider who rendered maternity services excluded pursuant to this section when the provider had not been notified that the Subscriber had entered into an agreement to serve as a paid surrogate mother.

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

Summary and Responses to Public Comments
Regarding Changes to Proposed AIM Paid Surrogacy Exclusion Regulations, ER-5-11
Comments were received during the 45-day comment period that
Closed on March 28, 2012

List of Comments Received

Four organizations submitted comment letters:

1. Kaiser Permanente
2. California Medical Association
3. American Society for Reproductive Medicine
4. The American Congress of Obstetricians and Gynecologists

The purpose of the proposed regulation changes to the Managed Risk Medical Insurance Board (MRMIB), Title 10 California Code of Regulations, are to exclude paid surrogacy as a covered benefit for Access for Infants and Mothers (AIM) program.

Specific Comments and Responses

#1) The comment immediately below was received from:

Written Comment:

- **Kaiser Permanente**

Comment: Subsection 2699.301(a)(18): Commenter believes the proposed regulation should expressly state that it does not create a new reporting obligation for plans and providers to screen all patients seeking maternity care to determine if the pregnancy is related to a surrogacy arrangement and commenter provided recommended language changes.

Response: MRMIB rejects the comment. The language of the proposed regulation does not propose any affirmative action on either the plans or providers and MRMIB considers the recommended language unnecessary.

#2) The comment immediately below was received from:

Written Comment:

- **California Medical Association**
- **The American Congress of Obstetrics and Gynecologists (ACOG)**
- **American Society for Reproductive Medicine (ASRM)**

Comment: Subsection 2699.301(a)(18): Commenters request that the proposed regulation be changed to protect physicians acting in good faith who provided services to AIM subscribers. Commenters state that in many cases expectant mothers in paid surrogacy do not reveal such arrangements to their health care providers. Specifically, commenters propose that additional language be added to the proposed regulation that would protect physicians from being at risk for payments and services that have already been provided to AIM subscribers who are paid surrogates.

Response: MRMIB accepts the comments. The proposed regulation has been amended to clarify that plans shall not withhold or seek reimbursement from a participating provider acting in good faith that renders maternity services to a subscriber who has entered into a paid surrogacy agreement when the provider has not been notified that the mother had entered into such agreement.

#3) The comment immediately below was received from:

Written Comment:

- **The California Medical Association**

Comment: Subsection 2699.301(a)(18): Commenter requests that the proposed regulations clarify that the AIM subscriber is responsible to reveal the paid surrogacy arrangement prior to services being provided.

Response: The proposed regulation is a benefit exclusion. MRMIB does not regulate the communication between a provider and the subscriber. In addition, one commenter believes that there is no reason for the patient to discuss the financial arrangements for a surrogacy with the physician and, therefore,

disagreed with comment #3. Finally, since the proposed regulation has been revised to clarify that plans shall not withhold or seek reimbursement from a participating provider acting in good faith that render maternity services to a subscriber who has entered into a paid surrogacy agreement when the provider has not been notified that the mother had entered into such agreement, there is no reason to require the subscriber to reveal the paid arrangement since the provider will be protected. For these reasons, MRMIB rejects the comment.

#4) The comment immediately below was received from:

Written Comment:

- **The American Congress of Obstetricians and Gynecologists (ACOG)**

Comment: Subsection 2699.301(a)(18): Commenter is concerned that the definition of "paid" is minimal, making it difficult for the physician to make an assessment of whether or not a surrogacy arrangement is a paid surrogacy arrangement.

Response: MRMIB considers the definition of "paid" to be clear and unambiguous. Therefore, MRMIB rejects the comment.

#5) The comment immediately below was received from:

Written Comment:

- **American Society for Reproductive Medicine (ASRM)**

Comment: Subsection 2699.301(a)(18): Commenter is very uncomfortable with any program that denies care to a pregnant women based on the circumstances of their pregnancy.

Response: MRMIB supports the concept of care for pregnant women regardless of the circumstances of their pregnancy. However, it is not appropriate use of public dollars to provide services for paid surrogacy. MRMIB rejects the comment.

#6) **Comment: Subsection 2699.301(a)(18):** Commenter believes it is the responsibility of the surrogate to disclose any paid surrogacy agreement on her AIM application and that it should be clear on the face of the application that paid surrogacy will disqualify the applicant from coverage.
Response: MRMIB has determined to address the issue of surrogacy by excluding maternity care for a paid surrogate mother as a health benefit instead of changing the application. Therefore, MRMIB rejects the comment.

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Via Email: dknox@mrmib.ca.gov
Via Email: amalik@mrmib.ca.gov
Via Email: staff@oal.ca.gov

March 26, 2012

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

RE: Proposed regulations for both AIM and MRMIP - Benefits Related to Surrogacy
ER-5-11 - Title 10 - Chapter 5.6 – Access for Infants and Mothers
ER-6-11 – Title 10 – Chapter 5.5 – Managed Risk Medical Insurance Board

Dear Dianne Knox and Alexa Malik:

On behalf of Kaiser Foundation Health Plan, Inc. ("the Plan"), I am submitting comments regarding the proposed draft of regulations related to the exclusion of maternity benefits for members having surrogacy arrangements. Throughout California, the Plan contracts with Kaiser Foundation Hospitals to provide hospital services to its members and with Southern California Permanente Medical Group and The Permanente Medical Group to provide medical services to its members in Southern and Northern California, respectively.

The following are comments, suggestions, and or requests for clarification made by the Plan. Excerpts from the proposed regulations are included in bold-italic text while the Plan's recommended changes are included as underlined text.

Comment 1

Section 2699.301 and Section 2698.302:
(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.

Since the regulation amends Section 2698.302/2699.301, which lists "excluded benefits", the Plan is reasonably interpreting this to be a benefit change, or at the least, a benefit clarification. As such, the Plan would operationalize this "excluded benefit" in the same manner as other excluded benefits beginning with an amendment to our Evidence of Coverage.

To ensure plans undertake only the necessary operational changes in response to this regulatory change, the Plan believes the regulation should expressly state that it does not create a new reporting obligation for plans or providers.

Recommended language:

Section 2699.301 and Section 2698.302 (Excluded 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. This section does not create a new cause of action or any new requirements for plans or providers to actively screen all patients seeking maternity care to determine if the pregnancy is related to a surrogacy arrangement. 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.

Kaiser Foundation Health Plan appreciates the opportunity to submit comments on this proposed regulation.

Cordially,

Christine Nelson
Director, California Medi-Cal and State Sponsored Programs (CMSSP)
Kaiser Foundation Health Plan

c: Mary Ader, Senior Advisor, Government Relations
Margaret Fitzhugh, Counsel
Chuck Koch, Executive Director
Gwen Leake Isaacs, Managing Director
Teresa Stark, Director, Government Relations

California Medical Association
Physicians dedicated to the health of Californians

March 28, 2012

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

RE: Proposed Rulemaking ER-5-11 and ER-6-11; Request for Amendments.

Members of the Board:

On behalf of the 35,000 physician and medical student members of the California Medical Association (CMA), thank you for the opportunity to comment on proposed rulemaking ER-5-11 and ER-6-11, related to coverage of paid surrogacy arrangements by MRMIP and AIM, respectively.

CMA understands and supports the intent of the proposed rules – to protect the integrity of both of these important programs and to reserve precious resources for truly needy patients. We are, however, requesting that language be added to both proposed rules to protect physicians acting in good faith to provide services in these programs.

In many cases, expectant mothers in paid surrogacy do not reveal these arrangements to their health care providers. If the physician does become aware the arrangement, it may not be until very late in the pregnancy, or even after the birth has taken place.

CMA is requesting that additional language be added to both proposed rules to clarify that, in these cases, the physician is not at risk for payments and services that have already been provided. We would also request that the rules clarify the responsibility of the patient to reveal the surrogacy arrangement to their providers before services are rendered.

The proposed language would read as follows:

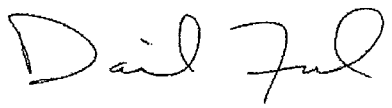
> (a) ***The subscriber shall reveal any paid surrogacy arrangement to their health care provider previous to the initiation of treatment.***
> ***(b) A health care provider shall not be responsible for repayment of any payments received relative to the care and treatment of a subscriber described above if he or she***

did not know, and could not have reasonably known, that the subscriber was in a paid surrogacy arrangement.

This language would be inserted after §2699.301(a)(18) in ER-5-11 and §2698.302(a)(15) in ER-6-11.

Thank you in advance for your consideration of our proposed amendments. Please contact me at 916-551-2554 or dford@cmanet.org if I can answer any questions or concerns.

Regards,



David Ford
Associate Director, Center for Medical and Regulatory Policy

AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE

March 28, 2012

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

RE: Proposed Rulemaking ER-5-11 and ER-6-11; Request for Amendments

Members of the Board:

The American Society for Reproductive Medicine is an organization of national fertility experts, with members including obstetrician/gynecologists, urologists, reproductive endocrinologists, embryologists, mental health professionals, internists, nurses, practice administrators, laboratory technicians, research scientists, and veterinarians. We are commenting today on the proposed regulation to exclude paid surrogates from using the AIM program for coverage for the pregnancy.

The view of ASRM is that intended parents should be prepared to pay for care of a gestational carrier. However, we are very uncomfortable with any program that denies care to pregnant women based on the circumstances of their pregnancy. In this day and age it's not much of a stretch to see employers deciding they don't want to pay for unmarried women's OB care because they have a moral objection to single women having children.

If the physician is being relied on for enforcing this regulation, you are putting the physician in a very precarious place. First, the physician's responsibility is to care for the patient. Second, the treating obstetrician will likely not be privy to the contractual agreement between the parties. This will be especially true if the surrogate is a traditional surrogate where even the existence of a surrogacy arrangement may not be known.

There are likely very few women using AIM in the circumstances brought to light by the 2011 case uncovered by the FBI. We do risk putting women at unnecessary scrutiny and judgment in order to protect against the few cases that violate our mutual sensibilities.

However, if it is determined that MRMIB believes this type of regulation is necessary for the protection of the program, there should be clarify as to:

1) a more detailed description of paid surrogacy on the AIM application and

J. BENJAMIN YOUNGER OFFICE OF PUBLIC AFFAIRS
409 12TH STREET SW SUITE 203 WASHINGTON, D.C. 20024-2155
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2) that is the responsibility of the surrogate to disclose any paid surrogacy agreement on her AIM application. It should be clear on the face of the application that paid surrogacy will disqualify the applicant from coverage.

In order to protect her ongoing prenatal care, there should not be any responsibility of the physician to determine her program eligibility. While we appreciate the California Medical Association proposed language, below, we do not think there is any reason for the patient to discuss the financial arrangement for a surrogacy with the physician, therefore we would not support (a). We would support (b) in order to protect treating physicians, allowing them to keep focus on caring for the pregnant woman.

CMA Proposed Amendments:

(a) ***The subscriber shall reveal any paid surrogacy arrangement to their health care provider previous to the initiation of treatment.***
(b) A health care provider shall not be responsible for repayment of any payments received relative to the care and treatment of a subscriber described above if he or she did not know, and could not have reasonably known, that the subscriber was in a paid surrogacy arrangement.

In other circumstances where we have had to define payment, it is coverage for or payments over and above what would be required to make a woman financially whole while providing services. This could be everything from medical care, living expenses, child care and lost wages. As you can see, it can be a challenge to determine who is "paid". Let us know if we can help further with this definition.

Please contact me at 916.457.5217 should you have questions on our position.

Sincerely,

Shannon Smith-Crowley, JD, MHA
Legislative Advocate

cc: Sean Tipton, ASRM Public Policy Director

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ACOG
AMERICAN CONGRESS OF OBSTETRICIANS AND GYNECOLOGISTS

The American Congress of Obstetricians and Gynecologists

District IX California

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March 28, 2012

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

RE: Proposed Rulemaking ER-5-11 and ER-6-11; Request for Amendments

Members of the Board:

The American Congress of Obstetricians and Gynecologists, District IX (California), representing more than 5,300 physicians dedicated to the health care of California's women, appreciates the opportunity to comment on proposed rulemaking ER-5-11 and ER-6-11, related to coverage of paid surrogacy arrangements by MRMIP and AIM.

The California Medical Association has shared their comments with us, and we concur in their comments regarding the need to protect physicians who are acting in good faith to care for their patients, regardless of coverage. To be clear, in most circumstances, the physician will not know of the details of any contractual agreement between the surrogate and the intended parents. Also, because there is a minimal definition of "paid" it would difficult for a physician to make an assessment of the situation. Many surrogacy arrangements provide for coverage of expenses.

We do have some concern about medical privacy for the patient. We ask that the physician's focus be on her patient and that it be clear the physician will be paid for provided services. The language proposed by the CMA should suffice IF it is clear what defines "paid surrogacy". In other circumstances where this issue has arisen, such as women providing oocytes for research, payment has been defined as compensation over and above coverage for or reimbursement of expenses so that the woman is not out of pocket for costs related to her service. This could include child care and lost wages.

Thank you for considering our concerns. Please contact me at 916.457.5217 should you have questions on our comments.

Sincerely,

Shannon Smith-Crowley
Director, Government Relations

Summary and Responses to Public Comments
Regarding Changes to Access to Infants and Mothers program (AIM) Paid Surrogacy Exclusion Regulations, ER-5-11
Comments were received during the 15-day comment period that Closed on April 27, 2012

Two comment letters were received from:

1. California Medical Association
2. Diane Oatey

As a result of comments received during the 45-day comment period which ended on March 28, 2012.The original proposed regulation text Subsection (a)(18) is being renumbered to Subsection (a)(18)(A) and is further amended to add subsection (a)(18)(B) to clarify that, in applying the paid surrogacy exclusion, Participating Health Plans shall not withhold, or seek reimbursement from, a participating provider who renders maternity services to a Subscriber who has entered into an agreement to serve as a paid surrogate mother when the provider had not been notified that the mother had entered into such agreement.

Specific Comments and Responses

1. California Medical Association

Comment #1: Subsection 2699.301(a)(18)(B): Commenter noted that the additional language would protect physicians who provide services in good faith to patients they do not know have paid surrogacy arrangements.

Response: The comment is neither an objection nor a recommendation made regarding the specific amendment. Therefore, MRMIB rejects the comment. However, MRMIB appreciates the letter of support.

2. Diane Oatey (While some of the commenter's comments appear to refer to the Major Risk Medical Insurance Program (MIP) instead of the AIM program, since MRMIB proposes to adopt identical regulations in both

programs, MRMIB interprets the intent to the commenter's comments as to applying to both programs and responds to each comment.)

Comment #1: Section Not Identified: Commenter believes that surrogacy is a multibillion dollar business abusing taxpayer dollars and that should be investigated and stopped.

Response: The comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

Comment #2: Subsection 2699.301(a)(18)(A): Commenter expressed concern that the definition of paid surrogacy leaves a major loophole.

Response: The definition was in the originally proposed regulatory text. The comment period for the originally proposed regulatory change ended on March 28, 2012. Thus, the comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

Comment #3: Subsection 2699.301(a)(18)(B): Commenter expressed concern that the regulatory change is to protect doctors who are abusing the program from paying restitution for paid surrogacy arrangements.

Response: The proposed language is to address concerns of providers who may provide services with no knowledge of a paid surrogacy arrangement. In addition, the comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

Comment#4: Subsection not identified:: Commenter is concerned that the participating providers stockholders are having their stocks earnings depleted by the surrogacy companies, surrogates, attorneys, and doctors who are abusing the state programs.

Response: The comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

Comment #5: Subsection not identified: Commenter stated there needs to be a stipulation that there has been abuse of this program for surrogacy profit and that the program should have the right to check with the doctors to ask if the pregnancy is a surrogate pregnancy.

Response: The comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

Comment #6: Subsection not identified: Commenter believe there needs to be ways to let subscribers who use the program know that the program will be investigating, either through the doctor, or the birth certificates, or some other system and they would be forced to pay restitution if they use the program for surrogacy.

Response: The comment is neither an objection nor a recommendation made regarding the specific proposed regulatory change from the original made available to the public. Therefore, MRMIB rejects the comment.

California Medical Association
Physicians dedicated to the health of Californians

Agenda Item 13.a.
5/9/12 Meeting
ER-5-11 AIM Paid Surrogacy Exclusion
15 Day Comment Letter #1

April 24, 2012

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

RE: Support for Proposed Rulemaking ER-5-11 and ER-6-11.

Members of the Board:

On behalf of the 35,000 physician and medical student members of the California Medical Association (CMA), I am writing to thank you for the amendments that have been made to proposed rulemaking ER-5-11 and ER-6-11, related to coverage of paid surrogacy arrangements by MRMIP and AIM, respectively.

In our previous written and oral comments, CMA had requested language very similar to that which is now being amended into the regulations. The additional language would protect physicians who provide services in good faith to patients they do not know are in paid surrogacy arrangements. We thank the board for considering our concerns and adding this additional language.

Please contact me at 916-551-2554 or dford@cmanet.org if I can answer any questions or concerns.

Regards,

David Ford
Associate Director, Center for Medical and Regulatory Policy

April 25, 2012

Diane Oatey
5846 Creekside #23
Orange, CA 92869

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

RE: Proposed Changes re. Surrogacy Coverage

To: The Managed Risk Medical Insurance Board ("MRMIB")

I am a concerned citizen who is in opposition to the proposed changes being made to the MRMIP/AIM programs regarding surrogacy. I have personally witnessed a scam taking place in the surrogacy industry. Surrogacy is only legal in three states in the US. One of the most important, and expensive aspects, of surrogacy is the insurance. For an intended parent to pay for surrogacy insurance, it can cost well over $40,000. Therefore, many of these surrogacy companies in CA are abusing tax payer dollars by running surrogates under this state program.

Not only are these state programs paying for the surrogates' medical care, they additionally are billing these surrogate babies' nursery bills as though they are related to the surrogate, when they are in **no way related**. This means tax payer money is being used to pay for surrogacy companies that profit, surrogates who profit, doctors who are participating and billing the pre natal care and delivery bills under the program, and more concerning, is they are also billing the nursery bills of these babies as beneficiaries of the surrogates, which is billing fraud, and an abuse of tax payer funds. It is alarming how many of these surrogate babies leave the State of California since intended parents from the 47 states that are not "surrogacy friendly" come into the State of California and our state pays for these babies who leave our state after they are born. MORE DISTURBING, is that many surrogates are carrying babies for intended parents from other countries, and these babies are also billed as though they are the baby/beneficiary of the surrogate, and leave the country while receiving dual citizenship at the expense of the wrongful use of taxpayer money. Surrogacy is a multi-billion dollar business and this scam needs to be investigated and stopped immediately.

After reading the proposal for the changes to be made, I am very concerned with the EXCLUDED BENEFIT Item (18A) "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."

I have a concern as there is a major loophole in this provision in that it states, **"other than actual medical or living expenses".** This is just another way for these surrogacy companies to write contracts which state the surrogate mothers will profit by having their living expenses paid and will continue to run surrogacy through the MRMIP state program and will continue to do so when the program goes federal.

I am also very concerned with Item (18 B) which states, "Participating health plans shall not withhold, or seek reimbursement from, a participating provider who rendered maternity services excluded pursuant to this section when the provider had not been notified that the Subscriber had entered into an agreement to serve as a paid surrogate mother". There is one reason, and one reason only, that this is being written- to protect these doctors from having to pay restitution. These Providers, or doctors, are FULLY aware that these are surrogacy arrangements since the surrogacy contracts set up between surrogates and intended parents state that an agreed upon medical doctor will be selected. There is a group of these doctors who work with these surrogacy companies, and who are participating in this scam. For example, Dr. Manuel Porto of UCI in Orange, CA is one of them as he bills MRMIP under four (4) DBA's. This is just one of the many doctors who has been participating in this fraud and has been participating in billing surrogate babies' nursery bills as though they are the surrogate's child, when once again, these surrogate babies are in no way related to the surrogate.

This stipulation (18b) is written to protect doctors who are abusing the programs from having to pay restitution. These doctors clearly know of these surrogacy arrangements, and are trying to legally protect themselves. These doctors have been gainfully profiting on tax payer money, as the MRMIP program pays nearly 100% of what these doctors bill. This provision (18B) would not be written if the doctors participating with surrogacy companies and surrogates weren't concerned

of the fraud and abuse of tax payer money being used for surrogacy profit. These doctors need to pay restitution.

Additionally, I am very concerned that this state program will be going federal and it will grossly abuse federal tax payer money if something is not done immediately to stop this surrogacy industry from participating in this sham.

A group of concerned citizens called around to many surrogacy companies in CA. Every one of the companies called stated they accepted surrogates with this MRMIP State insurance. Attorney Bill Handle, of 640 AM, and of Handle on the Law, 640AM's company, The Center for Surrogate Parenting, Inc. was contacted and the woman who runs the surrogacy side of the business stated they accepted surrogates with MRMIP State insurance. Attorney Stephanie Caballero, of Extraordinary Conceptions, LLC has also been abusing this program. I can name many more, since we contacted several surrogate companies. If the MRMIP program is being abused now by this surrogacy industry, it will get even worse when it goes Federal, especially how (18A) and (18B) are written and the loopholes in (18A) and (18B).

I am also concerned that the participating providers' stock holders (such as stockholders of Anthem which is one of the providers used through MRMIP) are having their stock earnings depleted by the many surrogacy companies, surrogates, attorneys, and doctors who are abusing the MRMIP State Funded program.

It is clear that 18A and 18B have been written to allow the surrogacy industry to continue to abuse this program and this **urgently needs to be addressed**.

I believe there needs to be a stipulation stating that there has been an abuse of this program for surrogacy profit, and that if you plan to use this program for pregnancy, the State or Federal program will have the right to check with the doctors to ask if the pregnancy is a surrogate pregnancy. Another way to check that the abuse of this program is stopped would be to check the birth certificates of the children born under the MRMIP program. I am positive you will find that these birth certificates are not in the hands of the surrogates as they are in other states, and again, more troubling, in other COUNTRIES!!!

The Major Risk Medical Insurance Board needs to halt surrogacy period. This is an abuse of tax payer money. Additionally, there needs to be ways to let Subscribers who use the program for surrogacy know that MRMIP will be investigating, either through the doctor, or the birth certificates, or some system of

checking, that they will be forced to pay restitution if they use the MRMIP State of CA program for surrogacy. Additionally, class action lawsuits could result since the stockholders' earnings are being depleted by the abuse taking place within this program.

This is a serious issue, and I'm positive if the public knew what was taking place within the MRMIP program, there would be some very upset tax paying citizens, and some upset stockholders.

A concerned citizen,

Diane Oatey

Cc: Senator Mimi Walters

Sent via E-mail and US mail