



Maternal and Child Health Access

Agenda Item 11.C

7/13/11 Meeting

1111 W. Sixth Street, Suite 400

Los Angeles, CA 90017-1800

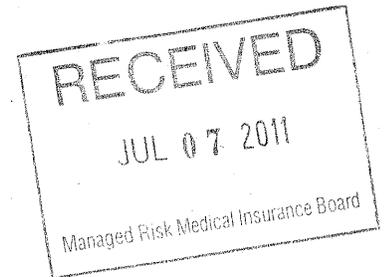
Tel 213. 749. 4261

Fax 213. 745. 1040

www.mchaccess.org

July 7, 2011

Mr. Cliff Allenby, Chair
California Managed Risk Medical Insurance Board
P.O. Box 2769
Sacramento, CA 95812-2769
FAX No. (916) 324-4878
Delivered by fax



Mr. Toby Douglas, Director
California Department of Health Care Services
1501 Capitol Avenue
MS 4607, P.O. Box 997417
Sacramento, CA 95899-7417
Toby.Douglas@dhcs.ca.gov
Delivered by e-mail

Re: AB 102 and AIM

Dear Chairman Allenby and Director Douglas:

We write with respect to several provisions of AB 102, signed by the Governor on June 29, 2011, concerning the Access for Infants and Mothers (AIM) program. We look forward to working with both MRMIB and DHCS as well as other stakeholders to try to ensure that the changes envisioned for AIM in AB 102 are implemented in the best manner possible for women and their newborns and that the provider experience is smooth.

We regret that we will be out of state for MRMIB's July 13, 2011 Board meeting, at which the AIM fee-for-service transition will be discussed, and request that this letter with its attachment be included as part of the record.

1) Repeal of AIM's unconstitutional durational residency requirement

MCHA is happy to see that the provision in Insurance Code § 12698(a) imposing an unconstitutional six-month residency requirement for AIM has finally been repealed (AB 102, § 6), as required by the writ of mandate in *MCHA vs. MRMIB*, San Francisco Superior Court Case No. CPF-08-508296. While AIM has been complying with the writ and the relevant Title 10 regulation has been amended, it is important that the unconstitutional provision no longer appear in the Insurance Code.

2) Changing AIM from HMO to a fee-for-service delivery

AB 102 authorizes MRMIB to enter into interagency agreements with DHCS with respect to provider reimbursement for the AIM program at Medi-Cal rates, with beneficiary identification cards (BICs) to be issued for the AIM program by DHCS (AB 102 §§ 1-9).

We understand from earlier conversations with staff at both of your agencies that eligibility for AIM would continue to be determined by MRMIB but that the AIM program would become a fee-for-service program for women whose AIM eligibility is effective on or after October 1, 2011. We also understand that any woman enrolled in an AIM health plan before October 1 will remain in her AIM health plan until the 60th day post-partum. If we have misunderstood any of these points, or if your agencies' positions on them has changed, we ask for information as soon as possible about the course of action your agencies plan to take instead.

To help ensure that AIM's new fee-for-service delivery model is implemented smoothly, we request the following:

- a meeting with MRMIB and DHCS staff and consumer and provider representatives as soon as possible, at which the state's implementation plans would be explained in detail and stakeholders would have an opportunity to receive answers to their questions. A Board meeting does not appear to be the appropriate venue for a conversation involving the necessary level of implementation detail. A forum for discussing these and other issues is especially necessary now that AB 102 (§§ 2 and 4) has repealed AIM's seven-member Advisory Panel. For example:
 - How will the AIM full-scope benefits package be described for the fee-for-service environment?
 - What procedures must providers follow to be reimbursed by the DHCS Fiscal Intermediary?
 - Will there be an AIM Provider Manual or similar set of instructions?
 - Will the DHCS Fiscal Intermediary train AIM providers?
 - Where can AIM patients and providers go with questions with respect to covered services?
 - Will prior authorization be required for any of AIM's services?
 - What will the new AIM application packet include (see also below)?
 - Does MRMIB intend to end the practice of retroactive disenrollment now that AIM will no longer be contracting with health plans (see also below)?
- input into the revisions that MRMIB will have to be make to the AIM application packet and instructions. We understand that a new application packet will have to be available in the field no later than September 1 to meet the October 1 deadline for transitioning to fee-for-service. We would appreciate the opportunity to review and comment on the draft application packet *before* it becomes final;
- input into the design and implementation details for the new BIC for AIM that is to be administered by DHCS. Among our concerns here is to avoid the potential for confusion

from the BIC's appearance between AIM, a full-scope program, and Medi-Cal's limited scope program for pregnancy-related care; and

- repeal of the AIM regulation and all policies and procedures on retroactive AIM disenrollment and collection activity against women who do not take affirmative steps to report the end of their pregnancies to AIM.
 - Under the AIM HMO service delivery model, these policies amount to rescissions and, as such, violate state law as well as Affordable Care Act (ACA) provisions that took effect on September 23, 2010 if applied to any of the women whose AIM health plan enrollment continues after October 1, 2011.¹
 - The retroactive disenrollment policy is equally unjustified with respect to the women whose AIM enrollment will be in fee-for-service, as providers are in a perfect position to know when the pregnancy has ended.

We look forward to working with you and your staffs to address these issues.

Sincerely,



Lynn Kersey, MA, MPH, CLE
Executive Director, MCH Access

¹ Citations were provided in MCHA's May 10, 2010 letter to the Board, a copy of which is attached and which we incorporate here by reference.



Maternal and Child Health Access

1111 W. Sixth Street, Fourth Floor
 Los Angeles, CA 90017-1800
 Tel 213.749.4261
 Fax 213.745.1040
www.mchaccess.org
info@mchaccess.org



Asian Law Alliance
 184 E. Jackson Street
 San Jose, CA 95112
 T: (408) 287-9710
 F: (408) 287-0864
www.asianlawalliance.org

May 12, 2010

Managed Risk Medical Insurance Board (MRMIB)
 1000 G Street, Suite 450
 Sacramento, CA 95814

Re: Changing AIM Rescission Policy

Dear MRMIB:

MCH Access and the Asian Law Alliance (ALA) would like to bring to the Board's attention again the enormous physical, mental and financial toll that AIM's rescission policies and practice take on women and their families, as in the case of a monolingual Vietnamese woman we assisted in 2005 who was billed over \$25,000 for medical care she received after AIM had her health plan coverage rescinded following a miscarriage.

AIM's policy and practice is to rescind a woman's AIM health plan without prior notice when the woman "fails" to report the end of her pregnancy to the State within 30 days (Title 10, California Code of Regulations (CCR), §§ 2699.207(a)(2)(D), 2699.209(b). Rescission takes effect on the 61st day following the date of the pregnancy's end (10 CCR § 2699.207(g)) and occurs even when:

- the woman pays all of her AIM premiums on time;¹
- her AIM health plan has continued to authorize medical services under the terms of her coverage;
- the plan has been paid by the state under its contract with AIM; and
- AIM receives its federal matching funds for the woman's coverage.²

The reason AIM gives for health plan rescissions without prior notice in these circumstances is that a woman is eligible for AIM only while pregnant and for 60 days after the pregnancy ends.

¹With very limited exceptions, AIM requires women to continue making all 12 of their monthly payments regardless of the number of months a woman may have been in AIM before her pregnancy ends. 10 CCR § 2699.400(a)(4) and (e).

²The Children's Health Insurance Program (CHIP) funds AIM; the state pays approximately one-third of the cost to draw down federal matching funds of two-thirds.

Under Health and Safety Code (H&SC) § 1371.8 (Stats. 2007, c. 702), however, health plans, including AIM plans, are now prohibited from

rescind[ing] or modify[ing] [an] authorization [for a specific type of treatment by a provider] after the provider renders the health care service in good faith and pursuant to the authorization *for any reason, including, but not limited to, the plan's subsequent rescission, cancellation, or modification of the enrollee's or subscriber's contract or the plan's subsequent determination that it did not make an accurate determination of the enrollee's or subscriber's eligibility.* . . (Emphasis added).

In addition, after September 23, 2010, the new federal health care reform law prohibits

[a] group health plan and a health insurance issuer offering group or individual health insurance coverage. . . from rescind[ing] such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved. . .³

The only exceptions are for “fraud or an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage.” *Id.* The fact that a woman has delivered a baby or suffered a miscarriage is a fact that is clearly known to the providers and health plan providing the maternity care and can in no way be construed as the woman engaging in an intentional misrepresentation of material fact, much less fraud, when the baby is born or the pregnancy ends in miscarriage.

In addition, under the new federal law, health plan coverage “may not be cancelled except with *prior notice to the enrollee.* . .” (emphasis added). *Id.* AIM regulations used to require that all women receive written notice prior to cancellation, but the prior notice requirement for what MRMIB terms “retroactive disenrollment” was eliminated in 2008 for women who do not report the end of their pregnancies to the State in 30 days. *See, former 10 CCR § 2699.207(b), amended by R-2-08.*

Large health insurers have recently announced an end to rescissions, in advance of the new federal prohibition’s September effective date. *See, e.g., LA Times, 4/28/2010*⁴; *New York Times, 5/2/2010.*⁵

We hope that AIM will soon follow suit by ending its policy practice of rescinding health plans for a woman’s “failure” to report a miscarriage or other end of her pregnancy in 30 days. MCHA looks forward to working with the Board to make sure that the necessary changes to

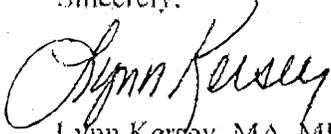
³Section 1001 of the Patient Protection and Affordable Care Act (H.R. 3590) and § 2301(a)(iii) of the Health Care and Education Reconciliation Act of 2010 (H.R. 4872), adding § 2712 of the Public Health Service Act.

⁴ http://www.latimes.com/business/la-fi-0428-insure-rescission-20100428,0,5187685_story

⁵ <http://www.nytimes.com/2010/05/03/opinion/03mon1.html?partner=rss&emc=rss>

AIM's program regulations and all related policies, practices, procedures and public information materials, such as the AIM application booklet and AIM website are made quickly.

Sincerely,



Lynn Kersey, MA, MPH
Executive Director, MCH Access

/s/

Jacquelyn Maruhashi
Staff Attorney, Asian Law Alliance

cc: California Department of Managed Health Care
California Health and Human Services Agency
Assemblymember William Monning, Chair, Assembly Health Committee
Assemblymember David Jones, Chair, Assembly Budget Subcommittee No. 1
Senator Elaine Alquist, Chair, Senate Health Committee
Senator Mark Leno, Chair, Senate Budget Subcommittee No. 3
Cindy Mann, Director, State Operations, U.S. Health and Human Services, Centers for Medicare and Medicaid Services, Baltimore
Don Novo, Manager of the State Programs Branch, Division of Medicaid and Children's Health Operations, State Operations, U.S. Health and Human Services, Centers for Medicare and Medicaid Services, Region IX