

MANAGED RISK MEDICAL INSURANCE BOARD
TRANSCRIPT OF HEARING

R-2-07 HFP Waiting List and Disenrollment
April 21, 2008, at 01:30 p.m.

Ms. Turner: Good afternoon. I am Randi Turner. I am the Section Chief of Human Resources, Program Support, which includes the Regulations Unit.

This hearing is being recorded electronically. The transcript of this hearing and all exhibits and evidence presented during the hearing will be made part of the rulemaking record. The rulemaking record includes the (A) notice of the proposed action which was published in the California Regulatory Notice Register, (B) the express terms of the proposed action, it uses underline and strikeout format of the California Code of Regulations, (C) the statement of reasons, and (D) any written comments we receive.

Evidence in writing from interested parties will be accepted until 5:00 p.m. today. If you have brought written comments with you that you would like to submit for consideration, you may do so when I finish reading this, or if you're presenting testimony, you may give them to me after you speak. Is there anyone here now who is not presenting testimony who would like to submit their written comments?

Today is Monday, April 21, 2008 and it is about 1:43 p.m. We are meeting at the offices of the Managed Risk Medical Insurance Board, 1000 G Street, Suite 450, in the Front Conference Room in Sacramento CA, the purpose is to receive public comments on the proposed rulemaking action by the Board to make changes to Chapter 5.8 of Title 10 of the California Code of Regulations.

MRMIB operates the Healthy Families Program to provide health insurance for low-income children. Approximately two-thirds of the program is funded through the federal SCHIP program. The enabling HFP statute requires the Board to maintain enrollment and expenditures to ensure that expenditures do not exceed the amounts available and, if sufficient funds are not available to cover the estimated cost of program expenditures, the program must institute appropriate measures to limit enrollment. The proposed regulations which were approved by the Office of Administrative Law (OAL) as emergency regulations on November 30, 2007 would provide regulatory authority for the Board to establish waiting lists and disenroll children subscribers at their Annual Eligibility Reviews when funding is

not available. The present regulations do not provide for specific measures to limit enrollment.

Under the provisions of the California Administrative Procedures Act, this is the time and place set for the presentation of statements, arguments and contentions, both orally or in writing, for or against the changes in the Board's regulations. The notice of this proposal has been published on MRMIB's website, in the California Regulatory Notice Register and has been sent by mail to interested parties.

This is a quasi-legislative hearing to carry out rulemaking functions delegated to the Board by the Legislature. Witnesses presenting testimony at this hearing will not be sworn in, nor will we engage in cross-examination of witnesses. We will take under submission all written and oral statements submitted or made during this hearing. We will respond to these comments in writing in the final statement of reasons.

We will notify all those who signed in and provided addresses, before the final adoption of any changes to this proposal or about any new material relied upon in proposing these regulations. Such notice will be sent to everyone who submits written comments during the written comment period, including those written comments submitted today, to everyone who testifies today, and to everyone who asks for such notification. While no one may be excluded from participation in these proceedings for failure to identify themselves, the names and addresses on the attendance sheet will be used to provide the notice. And I believe everybody has signed the attendance sheet. If that's not the case, will you let me know now?

We will listen to oral comments in the order signed in on the attendance sheet. After we hear from everyone who signed in, we will hear from any latecomers or anyone else who wishes to be heard. When you speak, please begin by stating your name and identifying the organization you represent, if any, and tell us the section number of the particular regulation you want to discuss.

We are ready to take oral comments now. In the interest of time, if you agree with the comments made by a prior speaker, simply state that fact and add any new information that you feel is pertinent to the issue.

Does anybody have any questions?

Unknown: One question. Is there any question/answer or give and take or is it merely just the recording of arguments and favor right now?

Ms. Turner: Right now, we are recording the presentation of the comments that anybody has to make. If you want to discuss after we're finished anything technically that you don't understand, we can discuss that, but we're not here to discuss policy or what we will or won't do. We're just here to take the comments that you have. Okay? So, the first person that signed in is, pardon me if I kill your name, Mark, is it Paredes, would you like to begin? Feel free.

Mr. Paredes: My name is Mark Paredes, I work with Community Health Councils and I'm going to be commenting on the wait list and disenrollment policy for Healthy Families. Community Health Councils want to make a few statements regarding our thoughts about it. The idea that making a permanent regulation of disenrollment and wait lists that will authorize MRMIB to create a wait list for Healthy Families is unnecessary at this time and to respond to a nonexistent financial insufficiency problem is a big issue. The second point that we wanted to touch upon was that MRMIB we feel should consider other options other than the wait list because having a wait list create disruption of care for many families and as we are all well aware, a lot of families with disrupted care will fail to do certain checkups and it elevates to worse conditions for many people. And lastly we wanted to talk about CHCS many advocates has been doing legislative visits with Congressional reps regarding the federal funding package for SCHIP reauthorization and having a policy like this implemented is going really hurt our efforts in terms of speaking with the legislators for sufficient funds. And so these are some of the issues and concerns that we have. Thank you.

Ms. Turner: Thank you. Okay our next presenter is Donna Fox with the Nurses Association.

Ms. Fox: Hi. I had submitted written testimony last week to OAL and MRMIB, so I'd just like to highlight a couple comments. Your comment, I thought particularly the last comment, I think is a very important one that those organizations which can and do advocate for Universal Healthcare and emphasize the importance of health care for children have a hard enough time advocating in this current economic climate. Anything that undercuts the singular focus on putting children's health coverage first is a problem. One of the points I made in our letter is that from my understanding of history of this program, back in the 90's, and I actually was involved with Senator Dodd when this was only a brainstorm, this was not an effort to increase the financial health of the private sector and insurance industries. This was a compromise to provide healthcare for more families, those families who didn't meet Medicaid criteria but the families that were still in considerable need. So when we hear as we did about a week and a half ago in public

hearing in a budget committee, that the health plans received increases, that's very disconcerting. One of the assembly members, Mr. Bill asked the very pointed question repeatedly and put somebody from MRMIB on the spot for an answer about a range of increases and the response was not what range was but something like an average of 4% increase and not all plans got any increase. That's a very serious philosophic problem from our point of view. This program was designed, from our point of view, as a public health program and just because the private sector is involved does not justify, I think, putting their financial health in any kind of prioritization in a climate when, for at least the last two years, it's been very obvious that there are serious and decreasing financial resources both at the federal level and state level. Thank you.

Ms. Turner: Thank you. Our next presenter is Elizabeth Abbott from Health Access.

Ms. Abbott: Hi, my name is Beth Abbott. I'm Project Director for Health Access California. My testimony is probably a little bit different than some other peoples because I was the CMS Regional Administrator at the time the centers for Medicare and Medicaid services, at the time that the SCHIP program was inactive. So I have been a federal employee and a regulator program administrator all my life. So I do understand the responsibilities that the Director and the Board have to have careful stewardship of the program and of the money associated with this. It's not an entitlement program, I understand that, but I think that the disadvantages of establishing wait lists and disenrollments potentially are far outweighed and the advantages from a fiscal stewardship prospective; it has tremendous impact on the feelings of perceptions of the population that you're trying to reach. It is I think potentially quite dangerous. I also feel that the action that you're trying to mitigate or forestall is one that really should be decided by the legislature and the Governor. Considering all funding issues across the budget spectrum and should not be an administrative decision made by one agency for one program. I think that's too limiting; I think this program is too important. I also believe very strongly that it undercuts the argument that many advocates, in fact the Governor, is making for federal continuation on permanent basis and even enhancement of the SCHIP program; because when Congress looks at what they have to do and they see that states as large as California, which has roughly 10% of the national SCHIP population, when they see that they've made accommodations so have less impacted California it decreases the urgency that our, well California delegation as well as Congress as a whole, to make the program financially secure and stable. So I think it has minimal advantages and serious disadvantages and I urge the Board not to make these emergency regulations permanent. I understand why they thought it was important to do when the federal

position was not as clear as it is now; it's not permanently situated but it is secure through March of next year and I think this precipitous and unwise. (Unable to hear last comment)

Ms. Turner: Thank you. Our next presenter is Darryl Ford, California Medical Association. I'm sorry David.

Mr. Ford: I'm David Ford and on behalf of the Medical Association, I probably would associate myself with a lot what's already been said. The Medical Association has been very active as part of our role in the American Medical Association, Washington D.C. are gearing up for the next round of SCHIP funding. The fight is coming later this year into next year. But I wanted to, on the regulation that was presented, point out a couple, what we think are, problems with the regulation as presented, so a couple technical problems. I'll point you to subsection C and D of the proposed regulation. The Board has a statutory obligation to make eligibility determinations and so under subsections A and B the Board can make a determination that there is not sufficient funding in the program. Under subsections C and D, the power is then given to the Executive Director to make a decision that there suddenly is funding in the program. That to us is a really serious problem; it puts far too much power into the hands of one person who doesn't even have any obligation to an appointing authority. So we offer some alternative language on that, we think that that's a determination that the Board needs to make. And then sort of at the very least suggestion, we think there should be a section in the regulations, if children are going to be disenrolled through Healthy Families, there are other places they can go. You know, there are local health initiatives, there are (inaudible) local clinics, and there are other places they can go. We think if the Board is going to take people out of Healthy Families, we should at the very least give them referrals out to other places they can go to look for help. We had some suggestions on that as well, I will be submitting written testimony at the end of this hearing to that effect. Thank you.

Ms. Turner: Thank you. Ok, Clifford Sarkin and you're from... can you go ahead and tell me where your from?

Mr. Sarkin: Yes, the Children's Defense Fund and 100% Campaign. Thank you very much for this opportunity to testify. The Children's Defense Fund, along with Children Now which is a partnership which make up the 100% campaign, we're joined by more than 20 organizations, advocacy and some providing coverage to combine our written comments; and those were submitted April 18th, on Friday. Don't need to be redundant; they are part of the record. However wanted to quickly outline what's in the comments then maybe give some

additional oral testimony. Basically our written testimony is broken down into three parts. First, we strongly believe that going forth with trying to make these regulations permanent are both not necessary and inappropriate. There is no need for them and we feel very strongly that we can let the current emergency regulations expire and MRMIB can still fulfill its requirements under its enabling statute. We also offer certain alternatives, that if the Board nonetheless feels that they must still do something, contained in our comment are various things they can do; everything from addressing the (inaudible) to the legislature as other people have testified to today, to developing alternative mechanisms that are much less severe than wait lists and enrollments in times of imminent financial insufficiency. The second part of what we talk about are the harms that would be felt if these regs were to be permanent. This is even before the next step, which is at some point the Board declaring emergency wait lists being implemented. Just merely passage and putting into law these regulations will do tremendous harm to families that are on the program; it will send a message to those subscribers that at any second applicants could be waitlisted or you could get dropped from coverage. It will inevitably lead to myths within the community that the program has (inaudible) before it has or you are disenrolled even before you might be. And ultimately effects the programs reputation which we know the administrators value and we as advocate's value. An entity that strives to cover more of California's kids and families that can't afford coverage and that well hard earned reputation might be sacrificed. So we would like to draw the Boards attention to that. Finally, in our comment we offer modifications to the regulations as proposed, in the ultimate event despite everything that's been said today and everything that has been included in the comments, the Board nonetheless precedes with trying to make some form of regulations permanent, modifications to the approach. The approach right now, we think is arbitrary in many respects and dangerous in others. I can site some examples, but again I refer everyone to the comment. But for instance on the disenrollment portion, the policy that's being made that's in these regulations are to just enroll at annual renewal; so I guess a date would be picked and then whenever a child's annual renewal comes up at that point or the next day or the next day, that's when disenrollments begin. While it might be really fair to the kid who's annual renewal came the day before that, not so much to the child who's fall upon the next day, and we proffer that potentially there's other policy choices to be made there. For instance, starting with the higher income kids, just as an example, not that I want to be in the game of picking and choosing which children deserve coverage, but there's an argument to be made; for instance, that children of higher income families might be better situated to afford health coverage in the market than those in the lower tiers in Healthy Families. Another

example is that children, many children are in the CCS program, the most sick kids, chronically sick kids are in the CCS program, partly because of their status as Healthy Families enrollees. That is, there is deemed financial eligibility for CCS if you are a Healthy Families member, so by virtue of being, for instance, disenrolled from Healthy Families, these kids are likely to be disenrolled from CCS and these are children, cancer and in hospital, and the regs as drafted don't consider all these things and so we highlight the Boards, to the staff, that in this third section. So that was me not spending my testimony on our comment and instead wanted to maybe take a few minutes and talk about what we don't mention in the letter as a group; which is, addressing the stated rationale for why these regs are necessary in the public notice of rulemaking. So first, the Board argues that they must do something, that the enabling statute says something must be done to ensure expenditures don't exceed amounts available. The automatic assumption in the argument is that limiting enrollment, and we first argue that there are many things that can be done before limiting enrollment as the only way to ensure that expenditures don't exceed amounts available. Then, even if, it must be enrollment limitations, creating wait lists and disenrollments are maybe the third and fourth option down the line. There are many other options which we highlight; again, but something must be done, it's a big leap going from something must be done to well, wait lists and disenrollments. The next argument that's made is that there is an uncertainty, and while the public statement admits that quote short term uncertainty of federal funds has lessened and this is in December 2009, SCHIP stock gap reauthorization, 18 months short term financing was passed. So in fact while the public notice says that short term insufficiency has uncertainty is lessened, in fact there's no short term uncertainty; we know there's sufficient coverage till March of 2009 and that includes an extra amount for the projected growth in the programs. That's admitted as much in the public notice. So it must be a long term uncertainty that these regs are trying to address; but if it is a long term uncertainty this is certainly something that could be addressed when that certainty, whatever it might look like if it ever comes around, is certainly closer on the horizon. Third, it stated in the notice that the Board has determined that these proposed regulations, that is the wait list and disenrollments, are appropriate means to limited enrollment as I mentioned before. The Board has determined that these are appropriate means to limit enrollment, but the Board has only determined that in an emergency situation. I just wanted to put on the record that this has been done before, therefore it can and should easily be done again. This situation, and as I think Ms. Abbott mentioned, in November of last year it was very very different than the situation we're facing now. Finally, I just wanted to highlight that, on second, the final point that's argued in further in these regulations is that if these regulations passed, there is

still one more necessary step before the actual wait list or disenrollments happen; there's one more step that needs to happen. And so, disregarding the aforementioned (inaudible) effect that would happen by merely the regulations passing, I just wanted to finally and lastly highlight that that necessary step that needs to happen can happen in an instant. That's just one majority vote by the Board at one of the monthly hearings and wanted to make a conjure of a hypothetical where, say if these regulations are valid and on the books, there's the potential that in the excited anticipation or trepidation of a potential shortfall funding, the Board is encouraged to and does vote to institute wait lists unnecessarily. And we can all imagine (inaudible) situation where its coming down to the last minute in D.C., and unnecessarily we in California decide to institute wait lists because it's so easy, because it is just one vote away. All the damaging effects that will happen by starting a wait list, and I think the Board knows all too well given their example with the AIM program, a ensuing very very short wait list and taking several years, the program, to make up that enrollment and also recover, having its reputation recover. I just think that making so close to being possible is in itself dangerous. Thank you.

Ms. Turner: Thank you. Kristen Golden Testa. Did I pronounce your name correctly?

Ms. Testa: Yup you did. I'm from the Children's Partnership and we also were one of the cosigners on the comments that were submitted on Friday that Cliff had mentioned so I won't go into those details other than to say that we do feel that these regulations should not move forward and become permanent. And I'll add just a supplement to what Cliff and what our written comments had said that there was in the argument that MRMIB staff had made in putting forward these permanent regs, the notion that there should be, that they've exhausted all reasonable alternatives that are more effective or at least as effective, but less burdensome and I would say that that condition has not been met; that in fact there are several alternatives that are more effective and are less burdensome to the children that this program serves. For example, if we were to look at the example of a state funding shortfall because I'm assuming that this regulation would allow circumstances of any type of shortfall, not just federal. But if there is a state shortfall there are options from right now available that are used on a regular basis for deficiency's within a year that could be used to notify the legislature and the administration of such shortfalls and that could be a process that could be used in this circumstance, there isn't any reason why it couldn't be. If there is a budget shortfall, even if it's known right after the budget passes, this is a process that could be used and the legislature really should be the first ones to be making a decision on

any monies that they did not provide or that apparently are not going to be sufficient later on down the road. With regard to a shortfall in federal funding, there are also alternatives which we went into in a little more specification in the written comments, but one particular is that there is a way which you can, especially now with some lead time before such any condition happens, you can put in place a process where by some of these children maybe in the lowest income, children in Healthy Families could be moved into Medi-Cal for purposes of when SCHIP federal funding runs out. You can at least be getting federal match, albeit at a lower level, through Title 19 Medicaid. So instead of having all children in Healthy Families be disenrolled, you would have some children that would be able to continue. Then also, I think its just important to reiterate as evidence by last years emergency regulations that there always are the emergency regulations that are available should a circumstance come up that is in fact an emergency, that these types of permanent regulation is not necessary. With that I'll just conclude and say please see our written comments.

Ms. Turner: Thank you very much. That concludes the individuals that said they would like to speak, does anyone else now want to make any comments after the comments that we have heard?

Unknown: Yes.

Ms. Martinez: My name is Andi Martinez, I'm with the California Primary Care Association and I would just like to concur with the comments that have been stated about not putting forth the regulations.

Ms. Turner: Okay, thank you. Anybody else?

Ms. Rubinstein: Yes, My name is Ann Rubinstein, I'm with the Health Rights Hotline. I also concur with the comments, we we're part of the group that signed on to the letters and I also wanted to comment a little more that the chilling effect of these regulations, at the hotline we get calls pretty regularly, people who are about to make changes in their lives or pursue different avenues, perhaps move onto a job that has a higher income; they often call with questions about how that will effect their health insurance. People do think about these things ahead of time, people who are on CalWorks right now are looking ahead to transitional Medi-Cal; and Healthy Families as when they are making their job choices. I think putting these into effect would have a large chilling effect on how they make those choices, perhaps they wouldn't try to go for those higher paying jobs that would allow them to support themselves but not allow them to purchase medical insurance without knowing they have the option of Healthy Families out there. So we would urge you to not go forward with these regulations.

Ms. Turner: Thank you. Anyone else? (No responses). With that, this concludes our public hearing. If you brought written comments that you would like to submit, we will take those and MRMIB will consider all of them.

Unknown: An question was asked about the receipt of a written comment.

Ms. Turner: We have received several written comments and right off hand I can't tell you which ones that they are. If you would like to call back we can verify we've received your comment.