Agenda Item 3
9/16/2009 Meeting

Managed Risk Medical Insurance Board
August 13, 2009, Public Session

Board Members Present:	Cliff Allenby (Chairman), Sophia Chang, M.D., M.P.H., Richard Figueroa
Ex Officio Members Present:	Ed Heidig, Bob Sands
Staff Present:	Lesley Cummings, Executive Director; Janette Lopez, Chief Deputy Director; Laura Rosenthal, Chief Counsel; Shelley Rouillard, Deputy Director for Benefits and Quality Monitoring; Terresa Krum, Deputy Director of Administration, Ginny Puddefoot, Deputy Director of Office of Health Policy and Legislative and External Affairs; Thien Lam, Manager for Eligibility, Enrollment, and Marketing; Will Turner, Analyst with the Office of Health Policy and Legislative and External Affairs; Anjonette Dillard, Policy Manager, Eligibility, Enrollment and Marketing Division; Maria Angel, Assistant to the Board and Stacey Sappington, Executive Assistant to the Board and the Executive Director.

Chairman Allenby called the meeting to order at 10:00 a.m. The Board then went into Executive Session. It reconvened for Public Items at 11:30 a.m.

REVIEW AND APPROVAL OF MINUTES OF JULY 30, 2009

Chairman Allenby noted that the item approving the minutes for the July 30th meeting would be moved to the next meeting.

FEDERAL BUDGET, LEGISLATION, AND EXECUTIVE BRANCH ACTIVITY

Ms. Puddefoot reviewed two documents that had been included in the Board's packet. One is an updated comparison of all the different health reform proposals that are currently being reviewed in Washington. The second is a document that was posted on the Federal Health Reform Website. It discusses

how health reform would benefit Californians. Similar reports have been posted for other states.

These documents can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_4.pdf

STATE BUDGET UPDATE

Ms. Krum indicated that the only recent development concerning the budget is that Senate Pro Tempore Darrell Steinberg has filed a lawsuit challenging the Governor's vetoes in the recently enacted budget bill. One of the vetoes was $50 million for the Healthy Families Program. There has been no judicial decision or opinion rendered regarding that lawsuit yet.

Ms. Cummings added that the State Controller has said that his behavior will be guided by the Attorney General's opinion on the matter.

STATE LEGISLATION

Mr. Turner reported that the Legislature has been in recess since the last board meeting so there is little new to report except that SB 227 is scheduled for hearing next Wednesday. He also pointed out that AB 2 and AB 730 would direct fine revenue to MRMIP. AB 1383 could potentially bring provide additional revenue to Healthy Families. There is nothing new to report regarding Special Session.

These documents can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_6.a_08-13-09_leg_status_report_Regular_Session_as_of_08-12-09.pdf

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_6.a.i_08-13-09_leg_status_report_Regular_Session_as_of_08-12-09.pdf

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_6.b_08-13-09_leg_status_report_Special_Session_as_of_8-12-09.pdf

HEALTHY FAMILIES PROGRAM (HFP) UPDATE

Waiting List, Fiscal Status, and Alternatives

Ms. Lam informed the Board that staff has modified the waiting list report to include a graph format that plots out waiting list numbers over time. As of August 11th there were over 55,200 children on the waiting list.

This document can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.a.i_Waitlist_Report.pdf

Funding Update from the First Five Commission

Ms. Cummings suggested that the Board defer discussion of the funding update from the First 5 Commission (Agenda Item 7.a.ii) until Kris Perry, the Executive Director of the First 5 Commission, arrives. Ms. Perry is planning to come and estimated that she would arrive around noon. MRMIB staff was in attendance at the First 5's meeting this morning and brought copies of the First 5's staff analysis of the HFP funding issue. Copies for the public have been placed on the back table. The First 5 staff recommends that the Commission approve funding up to $81 million for children 0-5, who would otherwise not be enrolled in HFP. They also suggested that the funding be contingent upon the First 5 statute not being revised or amended during the term of this authorization. MRMIB staff does not have a copy of any formal finding by the Commission, but when Ms. Perry arrives, she will be able to advise whether the Commission made a formal finding. It's our understanding that the First 5 Commission's action was consistent with its staff recommendation, but again Ms. Perry will be able to inform the Board when she arrives.

Referring back to the wait list issue, Mr. Figueroa asked if staff has observed any changes in subscribers' disenrollment behavior as a result of the waiting list. Ms. Lam replied that it is a little bit early to make that assessment, but that she would try to bring some information to the next meeting.

Efforts to Fully Fund the Program, Options for Cost Savings and Alternatives

Ms. Lopez informed the Board and members of the public that MRMIB would be meeting again on August 20th, noting that the agenda for that meeting is in the Board's packet. Ms. Cummings added that it is very likely that the Board would be a meeting on August 27th as well. This meeting will be scheduled because the efforts to fully fund the program involve a number of issues and things are moving very quickly on them. Staff need the opportunity to talk to the Board about these issues as they unfold.

Ms. Lopez pointed out a chart staff developed which details different options for reducing program expenditures in Healthy Families. An earlier version of the chart was discussed at the Board's last meeting. The chart has been modified somewhat from the chart that was presented at the last meeting. The original chart reflected a range of options that various stakeholders, mostly the participating plans, had suggested. The original chart is attached to the updated one as a point of reference. The updated chart shows the options staff believes warrant further consideration. These are the ones staff would continue to explore, including developing estimated cost savings. Efforts to estimate costs have begun, but there are many areas in which the estimates are not yet

finalized. Staff has been working with PricewaterhouseCoopers (PwC) for the past several days on cost estimates, and intend to have a final product for the Board's August 20th meeting.

Chairman Allenby suggested that Ms. Lopez review the list in its entirety and then the Board would talk publicly about the list staff presents and any additional items that may be appropriate. He also commented that the audience should assume that there will be legislation on an urgency basis so that the savings, either administrative or legislative, can occur within the time frames staff has set forth.

Ms. Lopez indicated that Vision Services Plan (VSP) submitted some additional ideas since the list was finalized that she would review for the next meeting. She then reviewed each item on the list, noting staff comments and any available cost savings estimates. Staff will work with PWC to provide a complete cost savings estimate soon.

Board members had the following questions on the options Ms. Lopez presented.

Mr. Figueroa asked if the issues of elimination of substance abuse and mental health could be treated separately.

Regarding the option to conform access to HFP dental coverage to the approach available to state employees – which would require children to be enrolled in a prepaid dental plan for their first two years of enrollment – Chairman Allenby asked if there were prepaid dental plans in every county. Ms. Lopez indicated that they are not in all counties and the limitation would only be imposed where one was available.

Mr. Figueroa asked if the estimated savings associated with lowering plan rates back to February 2009 levels reflected a future implementation date? Ms. Lopez indicated it assumed an implementation date of January 2010.

Regarding the option of eliminating or reducing certain optional benefits (biofeedback, acupuncture, and chiropractic), Mr. Figueroa asked whether HFP pays for these voluntarily-provided benefits in its rates. Ms. Lopez replied that the costs are reflected in the plan rates. Chairman Allenby remarked that a plan would not choose to offer an optional benefit unless it felt it was cost-effective. Ms. Cummings concurred that any savings would be de minimus.

Regarding the idea to increase the family co-pay maximum for health from $250 to $300, Chairman Allenby agreed with Ms. Lopez's remark that, when making co-payment and premium changes, staff had to ensure that families do not pay anywhere near the five percent federal maximum cap on cost sharing.

After Ms. Lopez completed her review of the list, Chairman Allenby called for any additional questions or comments by the Board

Mr. Figueroa asked for confirmation that staff's recommendation to obtain a cost estimate on an option does not prejudge the Board's decision to take the action. Ms. Lopez concurred. Ms. Cummings replied that the staff recommendations do represent some narrowing down of the options. For example, staff is not proposing to obtain fiscal estimates on establishing a $250 co-payment for hospital admissions. Staff has reasons, and can articulate them, why certain options were not included. For example, in the case of the $250 inpatient co-payment, the idea was not included because there's a $250 family out of pocket maximum. Today's list represents staff's admittedly hasty narrowing down of the options heard at the last meeting.

Chairman Allenby replied that the Board understands that this is round one of a lot of changes. Even if HFP gets funding for the current year, the Board needs to re-think what the program is going to look like on an ongoing basis and what makes sense. Doing this takes some time. The public should be aware that the list discussed today is, in fact, the beginning and not just one shot.

Chairman Allenby next asked for public comment on the options.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.a.iii.pdf

Ms. Cummings suggested that the Chair return to the topic of funding from the First 5 Commission as Executive Director Perry is now in attendance. The Chairman indicated that he would defer public comments on Options for Cost Savings and Alternatives until after Ms. Perry's remarks.

Funding Update from the First Five Commission (continued from earlier in the agenda)

Chairman Allenby welcomed Ms. Perry, commenting that the First 5 Commission is the Board's hero.

Ms. Perry stated that earlier in the day the First 5 California State Commissioners approved a contribution of $81.4 million to pay for health care premiums and related enrollment expenses for eligible children ages birth to age five in the Healthy Families Program. The funding has the potential to cover health care costs under the Healthy Families Program for more than 200,000 children, ages zero to five, through June 2010. First 5 California's action is consistent with its statutory mandate, mission, and longstanding commitment to protect the health and well-being of California's youngest children so they're ready to enter school. State Commissioners approved today's contribution to MRMIP after careful

consideration of First 5 California's current funding commitments. And with today's $81.4 million contribution to affordable health care, First 5 California continues to advocate on behalf of our state's youngest children and places kids first.

Chairman Allenby expressed the gratitude of the Board.

Mr. Figueroa asked whether the funding is contingent upon any other actions, such as a requirement prohibiting disenrollments or waiting lists -- or anything else. He indicated that he did not have a copy of the resolution.

Ms. Perry replied that the Commission is making $81.4 million available effective today as the first step in helping MRMIB solve the HFP budget shortfall. The Commission is excited by the possibility of leveraging two federal dollars for every dollar it contributes. The Commission would need to revisit the contribution if any changes are made to the California Children and Families Act, but could do so quickly if that were to occur.

Chairman Allenby and Dr. Chang again expressed the Board's deep gratitude. Ms. Perry replied that it is a pleasure and honor to help HFP.

Chairman Allenby called for any public comment, noting that he assumed that the audience members were grateful to the First 5 Commission. The audience applauded.

<u>Efforts to Fully Fund the Program, Options for Cost Savings and Alternatives (continued from earlier in the agenda)</u>

The Chairman indicated that the Board would now move back to discussing ways to make HFP more cost efficient. He requested that when it was time for public comment, the commenter provide his or her name and organization on a signup sheet. Ms. Rosenthal clarified that signing the sheet is not a condition of speaking, but doing so is helpful to the reporter.

Ms. Cummings pointed out that the Board had gotten letters from several groups which are in the Board's packets.

Beth Abbott, representing Health Access California said that Health Access is aware that the Board is facing nothing but unpleasant choices and would like to make some recommendations and proposals to guide the Board with its difficult decisions.

Ms. Cummings informed the Board that a letter from Health Access is in the Board's packet. Ms. Abbott replied that she was not limited in her remarks to the letter's contents. Chairman Allenby agreed that that was so.

Ms. Abbott reported that Health Access is generally opposed to co-insurance. Research shows that co-insurance deters appropriate utilization of services even for middle income families. It's especially inappropriate because it is an entirely unpredictable cost for struggling families. Health Access is also opposed to emergency room co-payments because in many cases health care professionals and health plans routinely advise their members to go to an emergency room. With great reluctance, Health Access is willing to accept a payment differential for non-generic drugs. These are typical in employer-based and individual markets – but if the Board does create a differential it should be a very modest amount and not required where there is not a therapeutic equivalent.

Ms. Abbott suggested that if a wait list remains in effect the administrative vendor should refer applications to Medi-Cal because some children will be found eligible. The vendor should have a standardized procedure that refers people for Medi-Cal and any other insurance for which they might be eligible. And if the Board has to implement disenrollments it should establish a triage process that prioritizes based on economic and medical conditions. For example, children who are qualified for CCS, and in the middle of a course of treatment should be exempt.

Ms. Cummings clarified that under the existing regulations if children are eligible for CCS only because of their HFP eligibility, they are exempted from disenrollment based on the program's insufficient funding.

Ms. Abbott also suggested that, when a child is exempted from disenrollment, his or her siblings also be exempted so that families are not split up. She recognized that these are all unpleasant, unpalatable choices, but that the advocates will work with the Board to reduce their impact on California's children.

Ms. Cummings added that in a subsequent agenda item the Board will consider whether or not HFP has insufficient funds. Some letters submitted to the Board discuss program reductions as well as the Board's determination of funding sufficiency. Those letters are under "Program Reductions". Then there are letters that exclusively address program reductions. So as people comment on program reductions they may go across these agenda items.

Manjusha Kulkarni spoke on behalf of the National Health Law Program and the Health Consumer Alliance. She expressed gratitude for the contribution from the State First 5 Commission, but noted that the contribution does not address the full shortfall. She acknowledged what a difficult period this is for HFP and for the Board, which has long championed the needs of children in California. She then discussed how the state economy has worsened which has increased the need for HFP. This is no time to freeze enrollments of new applicants or begin disenrolling current beneficiaries.

Ms. Kulkarni urged the Board to forward wait-listed applications to county welfare offices for a Medi-Cal determination. Her view is that a number of these would end up qualifying for free Medi-Cal programs. Many children whose applications are screened to HFP by the Single Point of Entry actually do qualify for free programs through either the 1931(b) program or through the disability programs. And almost all of them qualify for Medi-Cal through a share of cost. She urged the Board to give serious consideration to these issues and offered to provide the Board with assistance on them.

Cliff Sarkin, representing the Children's Defense Fund and 100 Percent Campaign, indicated that he had just arrived, having attended the meeting of the First 5 Commission. He expressed gratitude to the Commission for its provision of support for HFP. Because he was at the First 5 meeting he missed staff's presentation on the options for program savings. In general, he recommended that the Board look at ways to save money that don't affect children and their benefits. He then commented on some of the options. Elimination of the vision benefit would be unconscionable given that a quarter of children need some sort of eyewear and vision benefit. If including vision benefits under the medical plan saves money while maintaining the benefit, his organizations could support the change. Similarly, they would support eliminating the exception to the FVP process for the dental plans and increasing the medical loss ratio.

Ms. Lopez interrupted to inform Mr. Sarkin that he was not referring to the most current options chart which contained the options the MRMIB staff was proposing to explore further.

Mr. Sarkin again remarked that the Board should first consider options that don't affect children and their coverage and their benefits. He suggested that reducing plan rate increases would be such an option as would reducing rates for the HFP administrative vendor contract, to the extent that there is room there to save money.

Michelle Wood with Community Health Councils spoke on behalf of the California Covering Kids and Family Statewide Coalition, a coalition of 69 organizations and 30 counties statewide. She expressed her gratitude to the State First 5 Commission for its action to address the Healthy Families budget shortfall. Ultimately, the funding of the Healthy Families Program is the responsibility of the Governor and the Legislature. Given the commitment from the State First 5 Commission, the Board should delay any disenrollment of children in the Healthy Families Program.

Ms. Wood shared a story about a family from Los Angeles for whom HFP coverage is critical. The mother is single, has two children and works for an employer that provides dependent coverage, but it is very costly. One of her children has a chronic condition, asthma, requires four medications, and requires

regular breathing treatments and multiple visits to the emergency room. Fortunately, coverage through HFP has kept her son's asthma under control.

The coalition is very concerned with the impact that the enrollment freeze is having on public trust. A lot of families coming into enrollment entity organizations are sharing their fear of possible disenrollment, some believing that the policy has been implemented. Coalition partners know of children whose health care would be disrupted: children with severe dental caries, heart disease, asthma, behavioral health issues, and cancer, as well as preventable conditions. They point with worry to the onset of the flu season and the loss of immunizations for children. Families don't know where to go for care when their children have been placed on the HFP wait list. Many school districts require that children show proof of school health physical examinations by their doctor. And the coalition partners struggle to advise families on where they can alternative coverage options.

Ms. Wood again asked the Board to hold off on disenrolling children. She asked for the opportunity to meet with MRMIB staff, along with other children advocacy groups to discuss their ideas to improve the wait list and implement disenrollments if these have to occur.

John Ramey, representing the Local Health Plans of California (LHPC) reminded the Board that, at its last meeting, LHPC committed to find solutions that would prevent disenrollments in HFP and, hopefully, a solution that would even allow for discontinuance of the waiting list. LHPC is still very actively engaged in these efforts, which are showing promise. The Board should be aware that some of the solutions being discussed as part of this effort would need to be in lieu of some of the options the Board is considering. Trying to breach the HFP funding gap is a complex matter but one for which there could be a successful resolution. The Board should know that there are technical and difficult negotiations going on to achieve a solution.

Steve Barrow, representing the California Premature Infant Health Coalition (CPIHC), indicated that his Board is very concerned about the impact that HFP closure would have on special needs children, especially prematurely-born children. But there are a couple of issues that are very obvious, involving special need children, particularly those children born prematurely. Fifty six thousand children a year are born prematurely in California. A great number of them have developmental, mental, vision, and hearing problems. Continuity of care is absolutely critical for them. When making its decisions, the Board must weigh the needs of these children. If they lose coverage now, they will develop more severe and thus more costly illnesses.

Mr. Barrow also commented on how critical outreach is for effective and efficient enrollment, noting that there is no funding for outreach efforts. His experience with the Kern County Children's Health Initiative and the Fresno Initiative

underscored for him how critical it is for families to have assistance in filling out their applications. He noted that the HFP enrollment report showed 91 percent of applications were incomplete but that those that had assistance were only 8.2 percent incomplete. In the field having to go back and clean up applications is costly. Outreach funds need to be a part of the solution.

Terry McHale, representing the California Children's Hospital Associations (CCHA) commented that disenrolling children from coverage does not provide cost savings in the long term as children will have more severe (and costly) medical needs without treatment. He asked that the Board provide exceptions for children who need or are undergoing life-saving treatments or treatments for chronic conditions.

Wendy Lazuras, representing the Children's Partnership and the 100 Percent Campaign, acknowledged that advocates are aware that the imposition of a waiting list and contemplation of disenrollments are issues that are as painful for the Board as for everyone else. She thanked the Board for trying to do everything possible to make coverage available for children and offered two specific suggestions. The Board may need to act at this meeting regarding disenrollments, but the next 45 days will be critical for efforts to resolve the HFP funding deficiency. The Board will have to make judgment calls that balance its fiduciary responsibility with the unfolding of several different solutions and may need to take some risk in the interest of large numbers of kids. Advocates are working with MRMIB staff to understand the assumptions behind the Board's estimates and believe that those estimates overestimate the costs of children who are going to be on the program. These are critical numbers that will drive the Board's decisions and the advocates want to work with staff to understand them and share what's happening with real families at the community level.

Secondly, if worse comes to worse and HFP's funding issues are not resolved, there are ways that are better and worse to administer the waitlist and disenroll children. The advocates want to work with MRMIB as it develops these all-important mechanics.

Chairman Allenby remarked that MRMIB's door is and always will be open.

Suzie Shupe, representing the California Children's Health Initiatives (CHI's) thanked the Board for its leadership in children's health. She expressed happiness about the support First 5 has offered to the HFP and tendered her hope that others will join in partnership with First 5 to resolve HFP's funding problems. The CHI's are familiar with the difficult decisions the Board is facing because they have been in exactly the same place and have had to make very difficult decisions about how to administer their programs. As the CHI's work in the local communities they find that families are extremely confused and frightened about what's going to happen to their kids regarding HFP. CHI's are working very hard to find resources so that they can triage situations, but, that's

not what certified application assisters (CAA's) are really supposed to be doing. They are supposed to be filling out applications.

Ms. Shupe shared a couple of stories about children that illustrates the fear and concern families are feeling. A mother contacted a CHI concerned about potential disenrollment of her kids from Healthy Families and indicated that she is not going to let her children play outside anymore for fear of injury or contagion. Another story concerns a mother who called her local CHI because her family's income had increased and her children, previously covered under Medi-Cal, are now waitlisted for HFP. Her daughter has brain cancer and is presently undergoing treatment. She took her daughter to the local clinic and was told that she would have to pay the entire cost of the treatments – something she cannot afford. The local CHI is presently searching for ways to help the family. These kinds of stories are telling and are the background for the Board's deliberations about disenrollments. The CHIs have a lot of experience working with wait lists and prioritizing children most in need of care and offer this experience and knowledge to the Board as it copes with HFP's financial situation.

Mr. Figueroa, on behalf of the Board, thanked the stakeholders for the tenor of their remarks and their collaborative spirit. The Board knows how difficult the issues are for everyone. Everyone has to work together to get through the issues and the spirit of collaboration makes it easier.

Consideration of Findings Pursuant to Title 10 California Code of Regulations Section 2699.6603 to Limit Enrollment Consistent with Funding: Subscriber Disenrollments

Chairman Allenby asked that counsel provide the Board with background concerning the issue.

Ms. Cummings asked if she could go over HFP's fiscal situation before counsel addressed the Board. She reviewed a chart that shows a projected deficiency of $194 million for 2009-10. The next page of the chart shows that for the Board to defer a decision to disenroll children for a month, the Board would need an additional $91.7 million. It also shows estimates of the number of children who will not have coverage as a consequence of the waiting list and disenrollments.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.a.iii.pdf

Ms. Cummings then asked the chair if staff could have a five-minute recess.

Chairman Allenby agreed and the meeting recessed at 12:33 p.m. and reconvened at 12:49 p.m.

Ms. Cummings asked Ms. Rosenthal to review the legal considerations concerning the Board's decision.

Ms. Rosenthal stated that the Board's obligation is to use its best judgment, as everyone knows it will.

Chairman Allenby interjected that, for this reason Board members did not listen to staff's discussion during the recess to deliberate during the public meeting.

Ms. Rosenthal stated that the public understands the Board's deliberations are being made in public view. She proceed to articulate the legal standard the Board needs to use in making a determination of funding insufficiency which would require disenrollments at Annual Eligibility Review. The standard is similar to that used at a previous meeting for determining whether the Board had to establish a waiting list for HFP. The issue is whether there are sufficient funds to cover the estimated costs of program expenditures. Specifically, if the Board determines that sufficient funds are not available to cover the estimated cost of program expenditures, even after and limiting new enrollment by means of the waiting list already established, it is also necessary to disenroll or terminate subscribers in the program to ensure that expenditures do not exceed amounts available for the program, this determination would drive the Board's decision to order staff to implement disenrollments. The Board here has a factual decision about the available funds, based on the facts as the Board knows them today, and about whether those funds are sufficient or insufficient to cover the estimated costs of the program, allowing for the fact that the program already has a waiting list in place.

Ms. Rosenthal then suggested that staff talk to the Board about HFP program expenditure estimates, the backdrop for applying the legal standard upon which the Board will deliberate.

Ms. Cummings summarized the financial facts. The program has an estimated $194 million deficiency. To fund children 0-5 would require an estimated $148 million for the year. The Executive Director of the First 5 Commission has just expressed First 5's intention to provide the Board $81.4 million for coverage of children 0-5. To defer a decision to disenroll children at Annual Eligibility Review by a month would require $91 or $92 million, as is shown on the chart. These figures are not broken out by age, but staff's recommendation at this point is for the Board to make a finding of insufficient funds and then direct staff to try to sort out all these numbers by age for the next meeting.

Chairman Allenby suggested that the Board's action be a generic determination that there are not sufficient funds and serve notice that, if additional funding does not become available, HFP will start disenrollments at annual eligibility review effective October 1. The Board will continue to work through areas of program change under its jurisdiction, assuming the legislature will provide any needed

authority for that purpose, and the Board anticipates that the legislature will have its discussions. The Chairman suggested that the Board limit its action to this determination and not delineate precisely how it would occur.

Ms. Rosenthal indicated that, since this was staff's recommendation, staff had drafted a formal resolution consistent with this recommendation. She asked Stacey Sappington, the Board's executive assistant, to distribute the resolution to the Board and members of the public.

Mr. Figueroa noted that a number of people had attended the First 5 meeting and are unaware of the discussion early in the Board's meeting that the Board is planning to meet next Thursday (August 20) and likely the Thursday after that (August 27). These additional meetings will allow the Board to consider facts as they arise.

Ms. Rosenthal reminded the Board that, under the regulations, while only the Board can make a finding of insufficient funds, the Executive Director has authority to determine that there are sufficient funds, either for all children or some subgroups.

Ms. Rosenthal proceeded to review the elements of the resolution to ensure that the Board and the public are clear about its contents. She asked if everyone had a copy so that they can follow and know what they're commenting on. Ms. Puddefoot indicated that the copies had been distributed.

Ms. Rosenthal then articulated that the Board is making a finding pursuant to Section 2699.6603, Title 10 of the California Code of Regulations, which is the Healthy Families regulation that sets the standards in accordance to the statute.

The Board is finding that:

1) Sufficient funds are not available to cover the estimated costs of the Healthy Families Program expenditures for the 2009-10 fiscal year, as staff just outlined;
2) At its meeting on June 29th, 2009, the Board found and determined that it's necessary to limit enrollment in the program in order to ensure that expenditures do not exceed amounts available to the program. And that is a reference to the waiting list determination made on that day. The waiting list took effect July 17th.
3) The program has established a waiting list and is currently not enrolling children on the basis of new applications or Add-A-Person forms, which is a form of application.
4) In addition to limiting new enrollment in the program, it is necessary to terminate subscribers to ensure that expenditures do not exceed amounts available for the program.

Based on these findings, the Board is ordering that the disenrollment of children commence with subscribers who have an anniversary date in September 2009. For clarity, in layperson's language, when children are disenrolled at the end of the month of their anniversary date the effective date on which they don't have coverage is the first day of the following month. Subsection (a) of the order included in the resolution states disenrollments commence with children who have September anniversary dates; this means that they will be disenrolled following Annual Eligibility Review effective October 1st. Subsection (b) of the order included in the resolution explains the exemption for children who are financially eligible for CCS, the California Children's Services, solely because of their enrollment in Healthy Families. Subsection (b) cross-references Title 10 California Code of Regulations Section 2699.6603(b)(2) of the regulations, which is the exemption for these CCS children.

Chairman Allenby called for any questions or comments on the part of the Board.

Dr. Chang asked staff to confirm her understanding that if these disenrollments were to be implemented – a matter still under discussion – families that were coming in to re-enroll their child in September would be told at that time that the child will lose coverage as of October 1st.

Ms. Cummings replied that the vendor would provide 30-days notice in advance, so they would be informed 30-days prior to the Annual Eligibility Review termination date.

Ms. Rosenthal added that, under the proposed resolution, families would receive the notice on approximately September 1st. The HFP regulation says families will be provided with at least 15-days notice, but operationally, HFP has chosen to provide 30-days notice.

Mr. Figueroa asked for confirmation that the vendor will not send letters out until after the Board's meetings on August 20th and 27th. Chairman Allenby indicated that his understanding was correct.

Ms. Rosenthal reiterated that the Board could act to change this determination at a scheduled meeting or the Executive Director could do so if the facts change. But the Board's decision at this meeting is based on the current funding as Board members understand it.

Chairman Allenby asked for a motion.

Ms. Rosenthal added that the specific motion is to adopt the "determination pursuant to Title 10 CCR Section 2699.6603" that is included in Agenda Item 7(b). The motion was moved and seconded.

Chairman Allenby called for public comment.

Beth Capell, representing Health Access, urged the Board to be mindful of the legislature's schedule when making decisions to send out disenrollment notices. The Legislature recesses on or about September 11th and may not act on legislation until that date. The Governor has 30-days to sign or veto a bill. The September 1 effective date for sending disenrollment notices is not compatible with the legislative calendar. It would be exceedingly unfortunate to send out disenrollment notices to families on September 1st when their children would not, in fact, be disenrolled. Secondly, children should have every opportunity to be enrolled in Medi-Cal. Given the present economy, many of the families that applied will have had reduced incomes. The Board should also outreach to other possible entities that might be providing coverage. Some of the foundations, for example, Kaiser Permanente, have provided coverage for kids in the past. Third, children that are CCS eligible are being waitlisted. The Board should revisit the wait list provisions to assure that children that are CCS eligible are not denied access to Healthy Families coverage as a result of being waitlisted. It's a small number of children, and could be accommodated within the financial capacity of the Board, just as the Board is continuing to provide coverage for kids that are already enrolled in Healthy Families and are currently CCS eligible.

Chairman Allenby told Ms. Capell that the Board would take the issues under consideration. Ms. Capell indicated that Health Access would be providing additional comments on the program reductions as well.

Cliff Sarkin, representing the 100 Percent Campaign and Children's Defense Fund, indicated many of the children's groups think that a vote to authorize disenrollments at today's meeting is premature. An hour ago, the First 5 Commission committed to providing the program with $81.4 million. As the Board is having meetings next week and the following week, it could take up the issue later. The $91.6 million figure which staff submits is necessary to defer disenrollment for a month is one that the advocacy community thinks is too high. The overall shortfall is $194 million. It seems illogical that it would take $91 million to defer disenrollments for one month. Advocates are discussing the assumptions underlying the number with MRMIB staff. Because the Board has scheduled extra meetings this month, it could defer the decision to a later meeting and still make the September 1st date, if necessary. This approach is only reinforced by counsel's suggestion that after the Board votes it can undo the vote if other things happen.

Chairman Allenby clarified that if somehow sufficient funds become available, the Executive Director is authorized to act. The Board does not have to meet for action to occur.

Mr. Sarkin acknowledged this point but again suggested that the decision that there are insufficient funds can wait at least a week, if not two.

Brenda Kaplain, representing Blue Shield of California asked whether the Board is definitely planning on disenrollments October 1, or whether it might, depending on discussions in future meetings, exempt certain age brackets.

Ms. Rosenthal replied that, if the Board adopts staff's recommendation, it would be finding there are insufficient funds and would be ordering disenrollments that would take effect October 1. But under the structure of the regulations, if the funding situation changes and the analysis changes, the Executive Director could modify or reverse the finding -- if there are sufficient funds. The notices would not be going out until September 1st and would precede actual disenrollment by 30-days, so things could happen between now and then. But this decision, absent further action by the Board or the Executive Director, would result in disenrollments effective October 1st.

Ms. Kaplain asked about exemptions for children certain ages.

Ms. Rosenthal replied that exempting children of certain ages is possible under the regulations which were amended last fall to allow for exemptions based on different sources of funding.

Ms. Kaplain asked for confirmation of her understanding that children who have CCS but would not lose CCS if they lost their Healthy Families would get disenrolled, but children that would lose their CCS if they lost Healthy Families would not be disenrolled. Ms. Rosenthal indicated that she was correct.

Ms. Kaplain asked whether there was a possibility that families get notices of disenrollment only to find that their child does not have to be disenrolled. She expressed concern that, after receiving a disenrollment notice, a family may fail to fill out paperwork needed to remain in the program.

Chairman Allenby replied that this is a legitimate concern and the Board would have to handle it so that problem does not arise.

Chairman Allenby called for a vote. The motion carried unanimously.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.b.pdf

Ms. Cummings indicated that, because of the work crush related to the funding issues, many agenda items had been struck from Healthy Families but staff would present agenda items 7(c) and (d).

Enrollment and Single Point of Entry Report

Ms. Lam presented the enrollment reports. She indicated that, as of the end of July, there were over 922,400 children enrolled in the program. Over 29,300 children are new subscribers. The new subscribers enrolled into the program occurred prior to the implementation of the waiting list on July 17th. There are no notable changes to the percentage of children enrolled in the top five counties; no notable changes to the subscribers' demographic information and no changes to the percentages of Single Point of Entry applications that are forwarded to either Healthy Families or the Medi-Cal Program. She offered to answers any questions.

Chairman Allenby asked for questions or comments.

Dr. Chang asked whether staff wanted to add the statistic about disenrollments to the report.

Ms. Lam indicated that staff will be prepared to present that at the next board meeting based on the question that Mr. Figueroa asked earlier.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.c_HFP_Enrollment_Report.pdf

Administrative Vendor Performance Report

Ms. Lam indicated that she also would report on Agenda Item 7(d), the Administrative Vendor Performance Report. She indicated that the administrative vendor continued to meet all of the 18 areas of performance quality and accuracy standards. Even though there was an increase in call volumes during the waiting list, the administrative vendor continued to meet performance standards for the HFP toll-free line. There was an increase of 200 calls, up to 500 calls a day, because of questions about the waiting list. She offered to answer any questions.

Chairman Allenby called for questions and comments. There were none.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_7.d_HFP_Adm_Vendor_Perf_July_2009_Summary.pdf

ACCESS FOR INFANTS AND MOTHERS (AIM) UPDATE

Enrollment Report

Ms. Dillard presented Agenda Items 8(a) and 8(b), the AIM Enrollment and Administrative Vendor Performance reports. In July there were 939 new

subscribers enrolled in the AIM Program. Presenting the Enrollment report, she stated that the program currently has 7,064 subscribers enrolled, and there were not notable changes in the percentage of enrollment in specific counties. Los Angeles, San Diego and Orange Counties are the top three counties. These counties reflect 50.5 percent of the AIM-enrolled population. AIM subscribers' enrollment in health plans did not significantly change from the previous months. She asked for questions. There were none.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_8.a_AIM_Enrollment_Report.pdf

Administrative Vendor Performance Report

Concerning item 8(b), the AIM Administrative Vendor Report, Ms. Dillard stated that the Administrative Vendor continues to meet all seven areas of performance and quality and assurance standards. She asked for questions. There were none.

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_8.b_AIM_Adm_Vendor_Perf.pdf

Regulations Modifying Language Concerning Enrollment Limitations Related to Insufficient Funding

Ms. Rosenthal presented agenda item 8(c). She indicated that this is a first viewing of regulations that address the process MRMIB follows if there is insufficient AIM funding to enroll all eligible women. The AIM statute requires that the Board administer AIM within the available funds, and the AIM program already has regulations to this effect. The current AIM regulations already specify that the program does not enroll new subscribers when the program does not have the necessary funding. This is not new, and has always been the AIM law and the approach taken in the AIM regulations. But the proposed amendment clarifies the language of the existing regulation and institutes a process and standards that parallel the process the Board adopted for the Healthy Families Program.

Ms. Rosenthal indicated that she would briefly outline the proposed changes. She indicated that staff planned to bring this regulation back to the Board for action in September and that staff invited comments from the public in the interim.

Ms. Rosenthal indicated that the proposed regulation is an amendment to Title 10, California Code of Regulations, Section 2699.202. First of all, staff proposes deleting introductory language stating that when the program receives an

application, the program determines if there is funding available. Instead of that language, staff proposes substituting new standards, with language similar to Healthy Families. Specifically, the Board must make a determination of insufficient funds, and the Executive Director may resume enrollments if funds become available.

Ms. Rosenthal explained that, under Subsection (a), if the Board makes a finding that sufficient funds are not available to cover the estimated costs of program expenditures and that it is necessary to limit enrollment so that expenditures do not exceed the amounts available, then the program closes to new enrollment. She indicated that subsections (b)(1) and (2) are very similar to the Board's Healthy Families regulations, which allow the Executive Director, based on available funds, to open the program in part or in full to new enrollment.

Subsection (b)(1) refers to situation in which the Executive Director determines that, in addition to having enough funds for the people already in the program, the program has enough funds to cover program expenditures for some new applicants. In that case, the Executive Director has authority to open to new enrollment for the appropriate number of people. Subsection (b)(2) describes a situation in which the Executive Director determines that the program, based on sufficient funds, is open without restriction. Under this latter scenario, where the Executive Director re-opens the program without restriction, the Board then would have to make a new determination at some point in the future before closing enrollment again.

Ms. Rosenthal explained that subsection (c) essentially substitutes for current language which, again, talks about whether there is sufficient funding when the program receives receive a particular person's application. Instead, the new language states that, if the Board has made a finding of insufficient funds, the program will close to all new applications unless the Executive Director has made a finding that there is enough money to open the program to enrollment in part or in full.

She explained that subsection (d) retains the current standard under which the program reviews and processes applications when the program is open to new enrollments, but would slightly modify the language of the current regulation to make it clear that this process could apply to all or only to some new applications, depending on funding.

Ms. Rosenthal also stated that the AIM regulations do not provide for the possibility of disenrollments based on insufficient funds, and the proposed regulation does not change this. And similarly because the AIM Program is a pregnancy-related program, the program does not have a waiting list. As with the Board's current AIM regulations, under the proposed regulation, the program would either admit applicants or not.

Ms. Rosenthal re-iterated that MRMIB staff is not asking for any action today but would return to this item in September. She offered to answer any questions from the Board. She indicated that staff was interested in listening to any public comments at this meeting and also asked members of the public to contact staff with comments.

Chairman Allenby asked whether there were any comments from the audience.

Ms. Capell said she appreciated that a waiting list may not seem sensible in dealing with pregnant women. However, prenatal care occurs over the course of a year, and it is better to have care in the last trimester than to have no care. She suggested that, as in other cases, a waiting list may be appropriate, especially as the year progresses. She expressed the hope that the program has additional funds, if not in the current year, in the budget year. She also indicated that this had not happened before in the AIM Program.

Mr. Figueroa indicated that this had actually happened in 1994 or 1995.

Chairman Allenby indicated that the Board had done this (closed the program to enrollments) and that it is not nice.

Ms. Capell stated that she appreciates that this is a bad place for all of us.

Mr. Figueroa indicated that Ms. Wilson (Gayle Wilson) said it should never happen again.

Ms. Capell remarked, “Well, where's Gail Wilson when we need her?”

This document can be found at:
http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_081309/Agenda_Item_8.c_AIM_Emergency_Regulations.pdf

Chairman Allenby indicated that there was nothing of import in the remaining section of the agenda, and asked whether there was anything else to bring before the Board; there was no further response. Chairman Allenby indicated that the Board would meet again the following week and he adjourned the meeting.