

**Managed Risk Medical Insurance Board
August 20, 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; Laura Rosenthal, Chief Counsel; Shelley Rouillard, Deputy Director for Benefits and Quality Monitoring Division; Ruth Jacobs, Assistant 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; Ernesto Sanchez, Deputy Director for the Eligibility, Enrollment, and Marketing Division; Thien Lam, Manager for the Eligibility, Enrollment, and Marketing Division; Larry Lucero, Manager in the Eligibility, Enrollment, and Marketing Division; 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

The Board unanimously approved the minutes of the July 30th, 2009 meeting.

Chairman Allenby asked if there were any questions or comments. There were none.

The minutes can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_073009/073009_Minutes.pdf

Chairman Allenby indicated that there was nothing to report on Federal Activities (Agenda Item 4) or the State Budget (Agenda Item 5).

STATE LEGISLATION

Ms. Cummings reported that SB 227, a bill that would provide increased funds for the MRMIP program, has become a two-year bill. She acknowledged Scott Bain, consultant to the Senate Health Committee, who was in the audience. Mr. Bain has been staffing the bill.

HEALTHY FAMILIES PROGRAM (HFP) UPDATE

Waiting List Report

Ms. Lam reported that as of August 18th, there were over 62,900 children on the Healthy Families waiting list.

During the last board meeting, Mr. Figueroa asked whether retention had increased following implementation of the waiting list. Ms. Lam indicated that staff had reviewed the disenrollment data for the last nine months, including the month of July 2009 (during which the wait list was imposed). The overall percentage of children being disenrolled from the program remained pretty consistent throughout those months. However, in July, around 10 percent fewer children were disenrolled because their families had not turned in their Annual Eligibility Review (AER) packets or followed through on information needed for AER.

Chairman Allenby called for comment or questions. There was none.

This document could be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082009/Agenda_Item_7.a.i_HFP_Waiting_List_Chart_08-20-2009.pdf

Status of Efforts to Fund the Program

Ms. Cummings reported that she has asked for a meeting with Kris Perry, Executive Director of the First 5 Commission early next week to clarify the offer of assistance that the Commission made of \$81 million, particularly when the funding would be available. The only other news to report on funding efforts for the program concerns the next agenda item on program changes the Board might make.

Options for Cost Savings and Alternatives

Ms. Cummings notified the Board that their packets included copies of letters received from several parties since its meeting last week, one of which comments on the issue of program changes.

She noted that there were multiple efforts still underway to provide sufficient funding for HFP to open. One of these efforts is for the Board to look at what it could do to reduce program costs. This has been a topic of discussion in the last several Board meetings. It began when Ms. Lopez presented a laundry list of items that stakeholders (mostly participating plans) had suggested. At the meeting last week, staff narrowed the list under consideration and focused efforts to obtain cost savings estimates to those options on the narrowed list. Staff has worked with PricewaterhouseCoopers (PwC) to develop the fiscals. The document presented today contains fiscals and staff recommendations on the items on the list. She noted that because HFP does not have encounter-and-claims based data, PwC has to make cost assumptions for the savings. Further, even with a solid estimate of cost savings, there are no actual savings unless the participating plans agree to rate reductions associated with the reduced benefit costs. The goal is to deliver program savings beginning November 1st for both benefits and premium changes. Ms. Lopez will return next week to negotiate rate changes with the plans that reflect benefit savings and get contract amendments in place reflecting the reduced rates.

Ms. Cummings noted that the list includes items that involve both statutory and administrative changes. On some occasions, an item calls for "statutory change" just because it would be helpful to have emergency regulation authority for benefit changes—and that is specified. Some issues are ones that the Board can recommend to the Legislature but could not implement without statutory change. For example, the Board could seek to eliminate the vision benefit, but doing so would require a change in law.

Ms. Cummings then reviewed a document titled "Changes to Reduce Program Expenditures in Healthy Families Program".

The document can be found at:

http://mrmib.ca.gov/MRMIB/Agenda_Minutes_082009/Agenda_item_7.a.iii_HFP_Changes_to_Reduce_Expenditures_8-20-09.pdf

Vision. The first option was elimination of an optional benefit under CHIPRA -- vision. This would have to be authorized in statute. Vision Service Plan submitted some options for reducing the benefit rather than eliminating it. VSP has always been a great partner in taking the initiative to suggest solutions to problems the program has faced. Staff reviewed the options and the only one recommended is an increase in co-payment for services. Staff are

recommending an across-the-board increase in co-payments later on the list. The other option staff considered was reducing the frequency with which children get new frames. But, given that children are more likely to damage their frames than adults, it did not seem appropriate. Staff recommendation is not to eliminate this benefit and to increase co-payment pursuant to the discussion later on the list.

Mental Health and Substance Abuse services. Elimination of these services would take a statutory change. The benefits are optional under federal law. Mr. Figueroa had asked staff to get separate estimates on cost-saving for elimination of each of the two benefits separately. Due to the lack of claims data, this was not possible. Staff recommend against elimination of these benefits.

Dental Coverage. Dental coverage is now a required benefit under CHIPRA. The option under consideration is to conform HFP practices to those in place for state employees. This change can be accomplished by a change in regulations. Presently, state employee coverage is the benchmark for HFP coverage. State policy is that during a state employee's first two years of service, the employee be enrolled in a capitated dental plan (as opposed to a fee-for-service plan). This rule applies where there is a capitated plan providing coverage in the employee's service area. Staff recommend this option as it is consistent with the present benchmark.

Chairman Allenby noted that capitated plans are not available in all counties and asked what would happen in these counties. Ms. Cummings replied that the rule would apply only where the option is available.

Ms. Rosenthal clarified why staff was asking for statutory authorization of emergency regulations for benefit changes. Counsel does believe that the promulgation of regulations qualifies as an emergency under the APA, but having deemed statutory authority makes it certain and also streamlines the process.

Reduce Plan Rate Restorations. Ms. Cummings indicated that this item proposes reducing by half the plan rate restorations that the Board previously approved. Staff do not recommend this option, fearing that it would result in significant service area changes which would disrupt children's coverage.

Specified Payment for Non-Contracting Providers. Non-contracting providers cannot balance bill Healthy Families subscribers for any charges that HFP plans do not pay. But HFP statute, unlike Medi-Cal statute, does not proscribe what plans will pay non-contracting providers. Some plans have suggested that there be a corollary provision in HFP and that having it would result in plan savings. Staff has not completed its analysis of this issue so do not recommend it today. It is under review.

Increasing Program Co-payments. Plans suggested a number of proposals for specific increases to different co-pays for different services. Broadly, staff is not recommending them with a couple of exceptions further down on the list. Generally, it's simpler for program administration to just increase the broad co-pays from \$5 to \$10 for non-preventative services. PwC estimates savings of around \$6 million and the chart also identifies how that would translate into plan rate reductions. Making this change in regulation is possible under the Board's authority.

Differential Co-payments for Name Brand Drugs. A number of plans suggested that the Board establish a differential in the amount of co-payment for generic versus brand name drugs. Staff recommends a differential of \$5, so generics would be \$10 and brand names would be \$15. There is an exception to the differential which is that it would apply only where an appropriate generic brand was available. PwC estimates savings of between three to four million for this, and the chart shows how this would translate in terms of reductions to plan rates. The Board has the authority to make this change in regulation.

Increased Co-payment for Use of Emergency Rooms. A number of plans recommended a differential co-payment when subscribers use emergency rooms and are not hospitalized. Staff would have liked to come up with a standard that more truly reflects non-emergent use of emergency rooms, but were unable to develop one. Thus staff recommend adoption of this policy and suggest that the co-payment be \$15.

Increasing the Family Co-payment Maximum. Staff spent some time assessing whether there was value in increasing the family co-pay maximum for health services from \$250/family/year to \$300. The program relies on this maximum co-payment limit to demonstrate to the federal government that family's out-of-pocket costs are within the limits proscribed by federal law. As PwC says that there will be no savings with this, staff see no point in recommending it.

Subscriber Premiums. The document presents two options concerning an increase in subscriber premiums. This is an area that requires statutory change and where the Board can only advise policymakers on the amount. Option A is the "LAO option" that had been advanced in discussion with the Legislature during conference committee and thereafter. Staff presented another option, Option B, which is basically half the increase that the LAO recommended. The chart shows the history of premium changes in the Healthy Families Program. Staff's sense is that the level recommended by the LAO would be a bit too much in the present economic situation and given the past history of increases. Staff recommends Option B. Under this option, subscriber premiums would not change for the lowest income families, would increase by \$4/child for families with incomes between 150 to 200 percent of Federal Poverty Level (FPL) (with a corresponding adjustments to the family maximum rate of \$48) and by \$7/child

for families with incomes between 200 to 250 percent FPL (with a change in the maximum to \$72).

Use of Medi-Cal Drug Formulary Pricing. Ms. Cummings noted that at the July 30th meeting, the Chair had asked staff to assess the option of having Healthy Families plans be able to use the Medi-Cal drug formulary and prices. Sadly, in the rush of business, this idea got dropped of the table but staff will assess this idea for the future.

Ms. Cummings then indicated staff's intention, unless otherwise instructed by the Board to, at next week's meeting, bring emergency regulations for benefit changes for the Board's approval. These would be the changes within the Board's authority to modify. The goal is to have these changes in place November 1st.

Chairman Allenby asked if the Board members had questions. There were none. He then asked for comments from the audience, again requesting that a person commenting provide their name and association for the benefit of the transcriber.

Krystal Moreno-Lee, representing Children Now and the 100 Percent Campaign, reminded the Board that she has commented on the options at prior meetings. She emphasized that advocates are aware that there is still a huge funding shortfall even with the First 5 gift and thanked MRMIB staff for analyzing the options. She urged the Board not to establish barriers to health care and also emphasized that any increase in premiums be on a one-time basis. She also asked that the Board pursue every possible option before disenrolling children. She ended expressing the desire to continue to keep the lines of communication open between advocates and the Board, as well as staff. The advocates have some ideas, on more of a micro level, that they want to share.

Chairman Allenby replied that MRMIB's door is always open.

Beth Abbott, representing Health Access, expressed appreciation for some of the recommendations the Executive Director has made indicating that her testimony would now be shorter.

Ms. Abbott urged the Board not to despair and to continue looking for additional funding. She urged the Board to establish a waiting list for AIM if funding shortfalls require program closure.

Ms. Cummings indicated that AIM funding was a topic later in the agenda. Chairman Allenby suggested she speak to AIM during that agenda item.

Ms. Abbott asked that the Board establish an exception to the disenrollment requirement for children who are CCS eligible.

Chairman Allenby commented that there is an exception and asked staff to explain it.

Ms. Rosenthal explained that the current regulations exempt from disenrollment those children who are receiving CCS services and are eligible because of their HFP enrollment. These children would otherwise lose CCS coverage.

Ms. Cummings added that there were children in CCS who would not be exempt.

Ms. Rosenthal agreed and clarified that the children who are exempt in the regulations are those receiving CCS services solely because of their HFP eligibility.

Ms. Abbott then urged the Board not to send out disenrollment notices only to rescind them if funding becomes available via the legislative process. She also said that Health Access has concerns about establishing a differential co-payment for emergency rooms. Many plans actually direct patients to the emergency room on their entry phone message. Low-income people should not be penalized for following the advice of their health plan or a health care professional.

Judith Reigel, representing the County Health Executives Association of California (CHEAC), noted that CHEAC had submitted written comments on the regulations. CHEAC members administer the CCS program at the local level, and have a couple of concerns to express. The first is that CCS and HFP determine financial eligibility differently. This makes identifying the children who would be exempt from disenrollment very difficult. The only way the county can absolutely identify some of the kids is to do a full financial review. There could be children stuck in limbo while this process unfolds. Secondly, regarding children who are disenrolled but remain on CCS because they are income eligible for the program, the Board needs to be mindful that CCS only treats a CCS condition. To the extent that these children are really sick, they will have other health issues that require treatment.

Ms. Cummings asked to comment on the technical issues Ms. Reigel was raising. When the Board first adopted the disenrollment regulations, members of the public, and even members of the Board, wanted to have an exemption for CCS children, especially those who would lose CCS coverage if disenrolled from HFP. It was this very problem about identifying children in this status that caused staff to recommend against the exception. At that time, statewide CCS data system was under construction, but several counties, including L.A., were not going to be on the system in the foreseeable future. Staff revisited the issue when amending the regulations for other reasons. All counties but one were up on the system, and the Board proceeded with the exception with the hope that the last county, L.A., would come up in a timely fashion. L.A. is still not on.

Ernesto Sanchez has been working on the systemic issues about implementation and it would be good to get an update from him on the matter.

Mr. Sanchez reported that staff has been working with the administrative vendor to establish a way to access information off of the Medi-Cal eligibility data system for those children that are CCS eligible. MRMIB is in the process of setting the system up with The Department of Health Care Services (DHCS) and MRMIB's Information Technology Services Division. For L.A., staff is reaching out through DHCS to the county itself, so that the vendor can pull a file directly from the county. Mr. Sanchez noted that Ms. Reigel also raised the issue about the discrepancy on how income is calculated for both programs. This discrepancy is part of the implementation challenge is going on.

Chairman Allenby called for any additional comments from the public. There were none.

Mr. Figueroa acknowledged that the pace and workload of the last few weeks has been very difficult and that staff has put together a lot of information in a very short time. He has been aware that staff has been working in the evenings more often than not. He thanked staff for their hard work. He also thanked agency staff, legislative staff in the audience, and the advocates, all of whom have been working diligently to forestall the need for disenrollments. One of the reasons the Board scheduled another meeting next week is to provide the opportunity for the Board to reconsider its findings if something has changed between now and next week regarding program financing. Dr. Chang and Chairman Allenby added their thanks.

Ms. Cummings thanked the Board members for acknowledging staff's hard work. MRMIB staff always work hard, but the last month has been quite arduous. All of the divisions have been affected, but the Administration Division, in particular, have really been on the hot spot. MRMIB's fiscal forecasting shop is two people. And these two people have been called on in the last six months to produce four different May Revise Packets, estimates for the budget Conference Committee, estimates for the Big Five discussions, a number of estimates for the First 5 discussions, estimates assessing the impact of the Governor's veto, and estimates for program reductions. Staff has been performing above and beyond, doing things on the run. Work won't be perfect in this type of environment, but staff has been making it as perfect as is possible given the time available. Ms. Cummings expressed gratitude for people's patience and indulgence.

Mr. Figueroa added that the administrative vendor has also been working exceptionally hard, dealing with tens of thousands of phone calls from people on the waiting list who want to know if they can get off the waiting list; tens of thousands of phone calls from people who are worried they might get disenrolled.

Ms. Cummings added that the vendor is about to lay off a number of staff because they don't get paid unless there's enrollment.

Chairman Allenby expressed the hope that by the time of the next Board meeting, the Board will have an idea of any statutory changes that will be enacted and will be ready to act on those issues under its purview.

Ms. Cummings indicated that she had not heard the Board express any disagreement with staff recommendations, and stated that she would like to be told if there were other options the board wanted staff to include.

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

Chairman Allenby indicated that there was nothing to do under this item.

2008-09 Fiscal Report to the First Five Commission on Enrollment of 0-5 Year Olds

Mr. Lee presented the 2008-09 Fiscal Report to the First 5 Commission. This is MRMIB's third report to the First 5 Commission and is for the period of May 1st, 2009, through June 30th, 2009.

First 5 provided MRMIB with \$16.75 million in December 2008 to cover children ages zero to five, for the period of December 18, 2008, through June 30th, 2009. As of today, MRMIB has billed First 5 a little over \$12 million. This leaves a balance of about \$4.7 million currently. However, this balance does not include any adjustment related to AIM-linked infants that may retroactively enroll during the period, as HFP regulations permit enrollments for AIM infants up 11 months after the date of birth. The administrative vendor estimates that there's an average of about 430 AIM retro enrollments per month during this period. This equates to about \$1.3 million per month that still needs to be collected. Therefore, MRMIB expects to utilize the goal of \$16.75 million by the end of October 2009.

Chairman Allenby called for any questions or comments from the audience. There were none.

The report can be found at:
http://mrmib.ca.gov/MRMIB/Agenda_Minutes_082009/Agenda_item_7.c.pdf

Health-e-App Public Access Update

Ms. Cummings remarked that making an electronic application available to the public has been one of her top goals since becoming MRMIB's Executive Director.

Mr. Lucero informed the Board that since his last update on the project, there has been considerable progress. The implementation date for the project is to start April 2010.

Phase I of the Public Access Project is now complete. This is functionality for the Healthy Families and Medi-Cal for children and pregnant women. The team is now working on Phase II, which will include the Add-A-Person forms, the Continued Enrollment, Program Reviews, and the Annual Eligibility Reviews.

Among the many things accomplished, the team has developed a central data repository for all of the information and documents for the project. It has developed the requirements for Usability Study, and received the preliminary Usability Report. A prototype is now available to all team members via the internet for various testing and validation sessions. The team created test scenarios using new updated software projects that provides greater flexibility and versatility in testing that goes on throughout the entire process.

Chairman Allenby asked for any questions or comments from the audience. There were none.

Update on PERM Regulations.

Mr. Lee informed the Board that on July 13, 2009, Centers for Medicare and Medicaid Services (CMS) released proposed rules for Medicaid and CHIP programs regarding quality control for Medicaid eligibility and the payment error rate measurements programs for both CHIP and Medi-Cal. CMS has requested by September 22nd, 2009. DHCS has already submitted some comments to CMS as has the National Association of State Medicaid Directors and National Academy of State Health Policy. Both of these entities hold conference calls with states to discuss their shared concerns. MRMIB intends to submit its comments to CMS either individually or through a coordinated effort with other states prior to the September 22nd deadline. At a minimum, MRMIB will request some form of acknowledgment for high-performance states.

Ms. Cummings noted that California is a high performing state thanks to the excellent work of the administrative vendor.

Chairman Allenby called for any questions or comments. There were none.

Rural Health Demonstration Projects.

Ms. Jacobs addressed the Board concerning a shortfall in funding for the Rural Health Demonstration Projects (RHDP). Originally, MRMIB had \$6.2 million in funding in 2008-09 for the Rural Health Demonstration Projects. However, staff has recently determined that the funding available is actually \$1.6 million less. As a result, MRMIB staff has had to cancel some projects and reduce funding for others. Seven projects were impacted. Five were dental and two medical. Ms. Rouillard has contacted each of the plans and each of the projects to notify them of the matter.

Chairman Allenby asked for any questions or comments from the public. There were none.

CHIP Reauthorization Implementation.

Ms. Cummings reported that MRMIB has been appointed to the technical assistance group that CMS has convened on CHIP implementation, as has the Medicaid/Medi-Cal counterparts. There have been two calls so far.

Chairman Allenby asked for any questions or comments from the audience. There were none.

ACCESS FOR INFANTS AND MOTHERS (AIM) UPDATE

Fiscal Status

Ms. Krum informed the Board that she had a bit of good news. After enactment of the May Revision, staff estimated that AIM would run out of funding by January 2010. She then reviewed the contents of a document providing a fund balance statement for the AIM Program. It showed that there was a higher carryover of funding from 2008-09 than previously estimated because enrollment had come in lower than projected. With these funds, staff anticipates a shortfall of just \$1.8 million in 2009-10. This means that the Board can postpone an enrollment freeze in the AIM Program until at least March 1, 2010. Should enrollment continue at the current lower rate or decline further, then the enrollment freeze could be pushed back even longer. Staff will continue to monitor and report back at future meetings on this issue.

One side effect of being able to delay a program freeze is that additional AIM-linked children will be coming into the HFP Program. This increases the HFP state funds deficiency by \$2.26 million. Fortunately, the California First 5 Commission did provide funds for these children when calculating their \$81.4 million gift to HFP.

Ms. Rosenthal added that the Board had first viewing of regulations earlier in the month that would slightly modify the process for not enrolling women when and if

there is a freeze. These will be on the agenda for the September meeting for adoption.

Chairman Allenby asked staff to describe what the regulations say regarding how the children of the mothers are treated.

Ms. Rosenthal responded that under the Healthy Families statute, there is automatic enrollment of the babies who are born to mothers in AIM. They are not placed on the waiting list because the waiting list only deals with applicants. At the end of the first year of life, however, children go through what is the equivalent of an annual eligibility review. At that point, both under the statute and under our disenrollment regulations, there is no further exemption from disenrollment.

Chairman Allenby asked if anyone in the audience wanted to comment.

Ms. Abbott replied that she no longer felt the need to comment on AIM given the news staff provided.

Chairman Allenby asked for any further questions or comments. There were none.

This document can be found at:

http://mrmib.ca.gov/MRMIB/Agenda_Minutes_082009/Agenda_item_8.a.pdf

There being no other items before the Board, Chairman Allenby adjourned the meeting.