

**Managed Risk Medical Insurance Board
August 27, 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; Ernesto Sanchez, Deputy Director for Eligibility, Enrollment, and Marketing; Thien Lam, Manager for Eligibility, Enrollment, and Marketing; Ruth Jacobs, Assistant Deputy Director for Benefits and Quality Monitoring; Will Turner, Analyst with the Office of Health Policy and Legislative and External Affairs; 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 11:00 a.m.

REVIEW AND APPROVAL OF MINUTES OF AUGUST 13, 2009

Chairman Allenby indicated that the minutes for the August 13th meeting were not yet available.

FEDERAL BUDGET, LEGISLATION AND EXECUTIVE BRANCH ACTIVITY

Ms. Cummings stated that there was nothing in particular to report,

STATE BUDGET UPDATE

Ms. Cummings stated that there was nothing in particular to report.

STATE LEGISLATION

Mr. Turner reported that since the meeting last week, staff has added one bill to the tracking list--AB 1422 by Assembly Member Bass. AB 1422 may provide a source of funding for the Healthy Families Program. It was heard in the Senate Revenue and Taxation and Health Committees yesterday and is expected to be heard in Senate Appropriations today.

Mr. Turner added that there was nothing to report on in Special Session.

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

HEALTHY FAMILIES PROGRAM (HFP) UPDATE

Waiting List

Ms. Lam reported that as of August 25th, there are over 70,700 children on the Healthy Families waiting list. Thirty-five percent of the children placed on the waiting list are ages zero to five, and close to 65 percent on the waiting list are six years old or older.

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

This document can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082709/Agenda_Item_7.a.i_HFP_Waiting_List_Chart_08272009.pdf

Status of Efforts to Fund the Program

Ms. Cummings presented a chart showing HFP program costs, savings. She stated that, given the funding HFP will receive from the First 5 Commission and acknowledging the program savings that will result from the Board's action's on benefits in conjunction with AB 1422 premium increases, the Board could, if it chose, delay implementation of disenrollments at Annual Eligibility Review (AER) to November 1. She acknowledged that there is a complicated array of solutions that need to interact with each other to provide full funding for HFP and indicated that staff thinks there are adequate funds to defer the decision for a month. The Board has the opportunity to revise its determination in the upcoming Agenda Item 7b.

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

The chart can be found at

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082709/Agenda_Item_7.a.iii_chart_2.pdf

Options for Cost Savings and Alternatives

Ms. Lopez reviewed with the Board a chart identifying options for program savings. She has been working with PricewaterhouseCoopers (PwC) to refine some of the estimated savings, and has had some initial discussions with some of the health, dental, and vision plans regarding the proposals' impacts on plan rates. Staff intends to implement any program changes on November 1st. Hence, the program will not be conducting an open enrollment process before implementation.

Ms. Lopez pointed out that the Board had received several letters that express support or opposition to certain of the proposals. She indicated that she would be addressing mostly those proposals that staff recommended exploring further at the August 20th meeting. She then walked the Board through the chart, noting the cost savings associated with each of the proposals.

Regarding the option of conforming dental coverage to the approach used for state employees for their first two years of service, Ms. Lopez suggested that the Board discuss the issue further in the light of a revised cost savings estimate. PwC had estimated savings of about \$2.3 million. However, this figure does not take into consideration the costs that would be incurred with the administrative vendor to implement it. It will require extensive changes to HFP operations and the systems at MAXIMUS. It would cost about \$1.1 million to make all the changes necessary. Additionally, the Board received a letter from the California Dental Association that, quoting the Board's 2007 Dental Quality Report, notes that children have better access when they're enrolled in a fee-for-service model as opposed to a capitated model.

After Ms. Lopez completed her review of the chart, Chairman Allenby asked if there were any questions or comments. There were none.

The chart can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082709/Agenda_Item_7.a.iii_chart_1.pdf

Chairman Allenby suggested that the Board defer action on the motion to amend its determination of insufficient funds and proceed to the motions needed to approve program changes that can be done via emergency regulations. He said he would bring up each one of them and ask for public comment. The other Board members concurred with this suggestion.

Ms. Rosenthal suggested that the process occur as follows. She will introduce each proposed regulation separately and suggest the motion needed. Board

members will make a motion and a second. She would then describe the regulation after which the Board would take public comments. The Chairman agreed to this approach. Ms. Rosenthal indicated that she would be presenting four proposed regulations.

Staff has made available to the Board and public the current regulation text of the relevant sections of the regulations as they exist today (Agenda Item 7c). Each of the proposals only excerpts subsections of the regulations, and staff thought it might be useful the public to have the entirety of the regulatory sections.

Staff is recommending that each regulation be adopted as an emergency regulation to implement program changes on the schedule that would produce the savings that Ms. Lopez discussed. The Board has the authority to adopt each of these proposals as an emergency regulation based on the emergency standard in the Administrative Procedure Act. Staff has also indicated in the chart of cost-savings options that MRMIB is seeking emergency regulation authority through legislation (AB 1422). However, this is a fail-safe protection that also streamlines the process for adopting emergency regulations. The Board has the authority to make emergency findings in order to adopt emergency regulations today and is not waiting on the enactment of AB 1422 to do that. Today, in the case of each the Board will adopt a resolution that includes a finding of emergency.

Ms. Rosenthal indicated that the first motion, to adopt the first regulation concerning co-payments, would be to approve the “finding of emergency and adoption of regulations” included as Agenda Item 7(c)(i), increasing co-payments to \$10 for health, dental, and vision services.

Chairman Allenby asked for and received a motion and a second

Ms. Rosenthal explained that presently in HFP, in most cases there is a \$5 co-payment for non-preventive services and no co-payment for all for preventive services. This resolution takes all of the co-payments for health, dental, and vision services that are \$5 today and makes them \$10. Because staff is making separate and subsequent proposals regarding co-payments for emergency room services and brand name drugs, this proposed regulation does not include a change in those co-payments.

Chairman Allenby asked for any questions on the part of the Board. There were none. He asked for any comments from the audience. There were none. He asked Board members to vote on the motion to adopt the proposed regulation. The Board unanimously approved it.

Ms. Rosenthal presented the second proposed regulation that addresses out-patient emergency room visits. Currently, families pay a co-payment of \$5 when using an emergency unless there's an admission to the hospital. There is

no co payment if there is a hospital admission. The proposed regulation changes the \$5 co-payment to \$15. Ms. Rosenthal said that the motion would be to approve the “finding of emergency and adoption of regulations” included as Agenda Item 7(c)(ii), increasing the out-patient emergency room co-payment to \$15 when not followed by an admission.

Chairman Allenby asked for and received a motion and a second. He called for any discussion from the Board or comments from the audience. There were none. The Board unanimously approved it.

Ms. Rosenthal presented the third regulation [7(c)(iii)] which addresses generic and brand name drug co-payments. It increases the co-payment for generic drugs from \$5 to \$10 and increases the co-payment for brand name drugs from \$5 to \$15 except where there is no generic equivalent available or if the use of a brand name drug is medically necessary. Under those circumstances the co-payment is \$10. Ms. Rosenthal said that the motion would be to approve the “finding of emergency and adoption of regulations” included as Agenda Item 7(c)(iii), increasing generic drug co-payments to \$10 and brand name drug co-payments to \$15.

Chairman Allenby asked for and received a motion and a second. He asked for any questions on the part of the Board. There were none. He asked for any comments from the audience. There were none. He asked Board members to vote on the motion to adopt the proposed regulation. The Board unanimously approved it.

Ms. Rosenthal presented the fourth proposed regulation, concerning choice of dental plans [7(c)(iv)]. She asked the Board and members of the public to make a technical correction to the proposed regulation copy. On the bottom of “page 3 of 4,” subsection (f) of 2699.6619 should read, “The transfers of enrollment shall comply with Sections 2699.6600(c)(1)(BB)(1).and 2699.6623.”

The Board’s motion would be to approve the “finding of emergency and adoption of regulations” included as Agenda Item 7(c)(iv), modifying applicant choice of participating dental plans.

Chairman Allenby asked for and received a motion and a second. He then asked for any discussion.

Ms. Rosenthal described the proposed regulation.

Currently, in HFP applicants have the choice of any health, dental, and vision plan available in their service area at enrollment and at the time of open enrollment. The proposed regulation would conform to the practice used for state employees and for the first two consecutive years of enrollment to limit the dental plan choice to plans that are known as “Prepaid Dental Plans” or “Dental

Maintenance Organizations.” After two years, the employee can then switch to a fee-for-service plan also known as “Dental Preferred Provider Organizations.”

On page 2 of four, under the basic provision on applicant choice of dental plan at the time of application, the new regulations state that the program may designate one or more participating dental plans as the only available dental plans to households where no subscriber has been enrolled for two consecutive years or more. The reason the regulations refer to households is that throughout the regulations, plan enrollment health, dental, and vision is by household. Subsection (b) specifies that the designated dental plans shall be those with the lowest per subscriber costs to the program.

The remaining provisions provide for technical conformance in other sections of the regulations. Subsection (3) under (f) of page 3 indicates that when HFP assigns a subscriber to a dental plan it does so consistently with this rule. At the bottom of the page under "Transfer of Enrollment" there are circumstances in which the program allows people to transfer plans midyear. This also would have to be consistent with the limitation of dental plan choice for the first two years. Then there is the technical correction previously discussed. And finally on the last page, page 4 of four, a conforming change specifying that the same rule applies during the open enrollment period.

Chairman Allenby asked for any questions on the part of the Board.

Mr. Figueroa commented that he planned to vote in favor of the proposed regulation but it is the option he likes the least out of those being considered. He expressed concern about what HFP's dental satisfaction surveys show regarding people's perception of access in the capitated model. He suggested that staff have a discussion with the plans to explore how to address this problem.

Ms. Cummings added that staff was already in conversation with the California Health Care Foundation (CHCF) asking for funding to develop a quality approach for capitated plans to improve access and satisfaction. CHCF staff has indicated interest in the request.

Mr. Figueroa remarked that such a project would be helpful. If there are access issues with the capitated plans, the regulatory change could be exacerbating it.

Chairman Allenby expressed his hope that CalPERS also would conduct such a review. He noted that Dental Maintenance Organizations are not available statewide. Mr. Allenby also stated that, given that HFP has historically followed the state employee benefit structure, it is appropriate to make the change.

Dr. Chang cautioned that the Board and staff need to be careful about the administrative costs of implementing the various options. A number of the

advocates have appropriately raised the issue of how the Board can keep administrative costs as low as possible. She urged staff to analyze what the actual savings would be given the implementation costs. The Board's consideration of the idea is not because of improved quality, but rather due to cost savings. The Board should not over tip the balance in the wrong action.

Chairman Allenby called for any comments from the audience.

Bill Lewis, representing the California Dental Association (CDA) noted that CDA had submitted a letter to the Board arguing against adoption of this regulation. Given the substantial upfront administrative costs of implementing the proposal and the possibility of some vehicle that brings the program additional funds, CDA believes that it would be unfortunate for the Board to move forward with this change. There is a question about the cost effectiveness of the proposal in the short and long term.

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

Chairman Allenby asked the Board members if they were ready to vote on the motion to approve the regulations. The motion passed unanimously.

The proposed regulations can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082709/agenda_item_7.c.pdf

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

Chairman Allenby returned the agenda to Agenda Item 7(b) and staff's suggestion to amend the motion made at the last meeting and delay from October 1 to November 1 the imposition of disenrollments at Annual Eligibility Review given the contribution of \$81.4 million from the state First 5 Commission and the savings that result from the actions the Board has taken at this meeting.

Mr. Allenby stated that the data staff has presented indicate that HFP has sufficient funds to allow for deferments of disenrollments at AER for a month.

Ms. Rosenthal interjected that staff had prepared a motion, now being distributed to the Board and the public, that retains the Board's August 13th finding and determination regarding insufficiency of funds except that at the bottom in Sub (a) instead of beginning the disenrollments with subscribers who have anniversary dates in September, it would now begin with subscribers who have anniversary dates in October, meaning a November 1st effective date. So the required motion would be to adopt the "amended determination" included as Agenda Item 7(b).

Chairman Allenby asked for a motion and a second which the Board members provided.

Mr. Figueroa commented that in voting for a delay in disenrollment at AER, Board members were doing so solely on the basis of funding provided by the state First 5 Commission and program savings that will result from the Board's actions on regulations. The Board does not have to make any assumption about legislative savings associated with premium increases or things like that.

Ms. Cummings pointed out that without passage of the amendment, the vendor would be putting notices of disenrollment in the mail on September 1st. The Board's action would allow staff to defer that action for a month.

Chairman Allenby asked for any comments from the audience.

Krystal Moreno Lee, representing Children Now and the 100 Percent Campaign thanked the Board for its actions.

Chairman Allenby asked the Board to vote. The motion passed unanimously.

Chairman Allenby added that the Board would not meet on September 3rd because there would not be sufficient additional information to have a meeting.

This document can be found at:

http://www.mrmib.ca.gov/MRMIB/Agenda_Minutes_082709/Agenda_Item_7.b_Amended_Determination.pdf

Ms. Cummings interjected that staff had mailed out a meeting notice for September 3rd, but put it on the web site a day late. So if the Board did want to meet next week, it would adjourn this meeting and this agenda for September 3rd.

Chairman Allenby asked why the Board would need to meet. Mr. Figueroa replied that there were quick-moving circumstances that might require the Board to meet.

Ms. Cummings reminded the Board that its next regularly scheduled meeting is September 16th. Mr. Figueroa commented that the Legislature would be gone by then. Ms. Cummings replied that, given the uncertainty of things, it would be best if the Board kept its options open and suggested sending out a notice of adjournment (continuing the meeting September 3) If the Board finds no value in meeting, it need not do so.

Mr. Figueroa expressed his preference for keeping options open and the Chairman agreed.

Ms. Rosenthal interjected that, to preserve the option, the Board's order would be posted on the meeting room door in accordance with the Bagley-Keene Act. The required motion would be as follows: to order that the regular meeting of the Managed Risk Medical Insurance Board scheduled for and held on August 27th, 2009, is adjourned to and shall reconvene at the following time and location: September 3rd, 2009, at 10:00 a.m. at 801 Capital Mall, Auditorium, State Personnel Board, with the continuation of the agenda published for August 27th, 2009.

Chairman Allenby indicated that this would be the Board's motion. The motion was made and seconded.

The Chairman asked for any discussion from the Board or any discussion or comments from the audience. There was no response. Chairman Allenby asked for a vote from the Board which was provided, unanimously in favor.

Ms. Cummings asked to speak to the Board about the workload that the HFP deficiency had caused MRMIB staff. This particular week the people who have been on the hot spot have been Laura Rosenthal, Seth Brunner, and Randi Turner, MRMIB's regulations staff. These staff were at the office late the night before the board meeting assembling packages and alternatives for the Board meeting.

Chairman Allenby expressed his appreciation to the staff. He asked if there were any other issues to bring before the Board. There was no response.

Chairman Allenby indicated that the Board was adjourned until next Thursday. The meeting adjourned at 11:45 a.m.