The California Managed Risk Medical Insurance Board
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August 12, 2008

Mr. Herb B. Kuhn
Deputy Administrator and Acting Director
Center for Medicaid and State Operations
7500 Security Blvd.
Baltimore, MD 21244

Dear Mr. Kuhn:

This letter discusses the status of California's Healthy Families Program (HFP) with respect to the Center for Medicaid and State Operations' (CMS) August 17, 2007 State Health Officials letter (Directive). As you know, HFP is California's State Children's Health Insurance Program (SCHIP). Following release of the Directive, CMS identified California as one of the states to which the items in the Directive apply, since California serves children with gross family income above 250 percent of the federal poverty level (FPL).

Key requirements articulated in the Directive are inconsistent with current California law. Specifically, the Managed Risk Medical Insurance Board (MRMIB) cannot change the cost sharing in the manner anticipated by the Directive, nor can MRMIB impose a one-year period of un-insurance, without an amendment to the state statute. MRMIB, a California state agency, is constitutionally obligated to follow state law and cannot unilaterally change HFP operating rules that are embodied in state law.

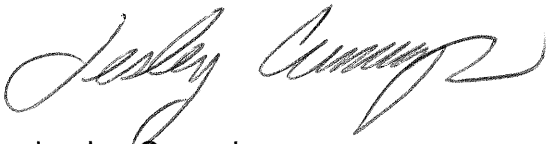
Moreover, California considers the requirements set forth in the Directive to be legally unauthorized for a number of reasons, including the following: (1) As articulated by the Congressional Research Service (CRS) and the Government Accountability Office (GAO), the Directive was advanced without meeting the requirements of the Congressional Review Act. (2) The Directive was not promulgated in accordance with the federal Administrative Procedure Act. (3) The Directive's requirements are not authorized by Title XXI of the Social Security Act. (4) As you are aware, a number of the terms of the Directive also are inconsistent with California's CMS-approved Title XXI state plan.

Despite California's view that the August 17 letter is legally unauthorized, MRMIB participated in two conference calls with CMS staff this year to determine the extent to which CMS would conclude that existing HFP operations and California data are congruent with the terms of the Directive. California held these conversations after CMS requested that all identified states work with CMS to permit enrollment of additional children in families with gross incomes over 250 percent FPL if CMS found that the standards in the Directive were met. California staff remains available to discuss these issues with CMS.

Nevertheless, we are writing to communicate that, at present, California will continue to operate the HFP, including eligibility, benefits, and cost-sharing, in conformance with its CMS-approved Title XXI state plan and will continue to claim federal funds accordingly.

California will continue to work with CMS to provide quality health care to children through SCHIP. If you or your staff has any questions, please contact me at 916-324-4695.

Sincerely,



Lesley Cummings
Executive Director

cc: Ms. Kathleen Farrell, Acting Director
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