

Summary of Public Comments and Staff's Explanation of Reasons for
Recommending Making No Change to the Regulations
Regulation R-2-07

List of Comments Received

Twenty (20) organizations collaboratively submitted one public comment made in writing regarding the proposed regulations. This comment will be referenced as the "20 group letter" and was signed by:

- Children's Specialty Care Coalition – Erin Aaberg Givans
- Health Access – Elizabeth Abbott
- American Academy of Pediatrics, CA – Kris Calvin
- California Children's Hospital Association – Diana S. Dooley
- Community Health Councils, Inc. – Lark Galloway-Gilliam
- California Rural Legal Assistance, Inc. – Beatriz Garcia
- Western Center on Law & Poverty – Angela Gilliard
- Legal Aid Society of San Mateo County – M. Stacey Hawver
- Latino Coalition for a Healthy California – Al Hernandez Santana
- LA Care – Howard A. Kahn
- Maternal and Child Health Access – Lynn Kersey
- PICO California – Jim Keddy
- National Health Law Program – Manjusha Kulkarni
- The Children's Partnership – Wendy Lazarus
- Children Now – Ted Lempert
- California Partnership – Mari Lopez
- Health Rights Hotline – Ann Rubinstein
- Children's Defense Fund California – Cliff Sarkin
- California Pan-Ethnic Health Network – Ellen Wu
- Insure the Uninsured Project – Lucien Wulsin, Jr.

Additional written comments were received by:

- California Nurses Association/National Nurses Organizing Committee – Donna Gerber
- Insure the Uninsured Project – Lucien Wulsin, Jr.
- California Medical Association – David T. Ford
- United Ways of California – Mary Lou Goeke
- California Academy of Family Physicians – Tom Riley

Oral comments were received by:

- Community Health Councils – Mark Paredes
- California Nurses Association – Donna Fox
- Health Access – Elizabeth Abbott
- California Medical Association – David T. Ford
- Children’s Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin
- Children’s Partnership – Kristen Golden Testa
- California Primary Care Association – Andi Martinez
- Health Rights Hotline – Ann Rubenstein

Specific Comments and Responses

#1) The comment immediately below was received by:

Written Comment

- 20 group letter
- California Nurses Association/National Nurses Organizing Committee – Donna Gerber
- Insure the Uninsured Project – Lucien Wulsin, Jr.
- United Ways of California – Mary Lou Goeke

Oral Comment

- Community Health Councils – Mark Paredes
- Children’s Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin
- Children’s Partnership – Kristen Golden Testa
- California Primary Care Association – Andi Martinez
- Health Rights Hotline – Ann Rubenstein

Comment: Comments were made requesting the Board to not adopt these emergency regulations as permanent, but let them expire because the uncertainty in federal funding in the State Children’s Insurance Programs (SCHIP) is no longer immediate.

Response: The Healthy Families Program (HFP) statute directs the Managed Risk Medical Insurance Board (MRMIB) to “[m]aintain enrollment and expenditures to ensure that expenditures do not exceed amounts available in the Healthy Families Fund and if sufficient funds are not available to cover the estimated cost of program expenditures, the board shall institute appropriate measures to limit enrollment” (Insurance Code section 12693.21(n)). Without a regulation in place, MRMIB cannot take the statutorily-mandated steps to limit enrollment when and if it becomes necessary. The program is funded through only half of the up-coming federal fiscal year. (The federal fiscal year is October 1 through September. SCHIP is funded to March 2009.) These regulations allow

MRMIB to act in the event of any federal or state funding limits. In adopting the regulations, MRMIB is not making a policy decision in favor of a waiting listing or disenrolling children and is not making a decision to establish a waiting list or disenroll children. Rather, these regulations provide the prerequisite for the board to comply with the statute if and when it is necessary to limit enrollment. Therefore, MRMIB rejects the comment.

#2) The comment immediately below was received by:

Written Comment

- 20 group letter
- United Ways of California – Mary Lou Goeke

Oral Comment

- Community Health Councils – Mark Paredes
- Health Access – Elizabeth Abbott
- Children’s Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin
- Children’s Partnership – Kristen Golden Testa

Comment: Comments were made stating that a waiting list and/or disenrollments in HFP are more appropriately addressed by the Legislature and Administration and not the Board.

Response: In enacting Insurance Code section 12693.21(n), the Legislature already determined to direct the Board to limit enrollment if sufficient funds are not available to cover the estimated costs of program expenditures and that directive became law with the signature of the then Governor. Of course, adopting the regulations does not mean the Legislature and the Administration cannot amend the HFP statutes in the future. However, under current law, the Board must limit enrollment if there is insufficient funding. Therefore, MRMIB rejects the comment.

#3) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: A comment was made that, as an alternative to waiting lists and disenrollments, when MRMIB foresees a potential financial shortfall, it could propose to the Legislature and Administration a process where HFP enrollees are transferred, temporarily or indefinitely, to Medi-Cal and receive open-ended federal Medicaid matching funds.

Response: As the commenters note, the proposed approach would involve, at a minimum, federal approval of a state plan amendments (SPA). The federal

government could, of course, deny requests to amend the SPAs. As such, the proposal does not alleviate MRMIB's need to have a regulatory scheme in place to limit enrollment if there is insufficient funding. For that reason, MRMIB rejects the comment.

#4) The comment immediately below was received by:

Written Comment

- 20 group letter
- Insure the Uninsured Project – Lucien Wulsin, Jr.
- United Ways of California – Mary Lou Goeke

Oral Comment

- Community Health Councils – Mark Paredes
- California Nurses Association – Donna Fox
- Health Access – Elizabeth Abbott
- Children's Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin
- Health Rights Hotline – Ann Rubenstein

Comment: Comments were received stating that making the regulations permanent will cause significant harm to the program because it would confuse applicants, depress applications and enrollments, weaken good-will, and undermine the case for federal funding.

Response: HFP program regulations previously provided for the establishment of a waiting list in the event of insufficient funds. However, the program caseload always was fully funded and the provision was never invoked. In 2002, in conjunction with a successful application for a federal waiver to cover parents of, and other responsible adults connected with, children enrolled in HFP and Medi-Cal, MRMIB deleted the waiting list provisions. As a condition of the waiver to cover adults, the state had to agree that it would enroll all eligible children. As this potential expansion of HFP to adults was never implemented and the federal waiver has expired, MRMIB is reestablishing the regulatory authority to limit enrollment. Previous regulations did not pose the problems received in public comment. However, while MRMIB cannot predict the impact that these proposed regulations may cause, it is required by statute to operate within available funds. Therefore, MRMIB rejects this comment.

#5) The comment immediately below was received by:

Written Comment

- 20 group letter
- Insure the Uninsured Project – Lucien Wulsin, Jr.
- United Ways of California – Mary Lou Goeke

Comment: Comments were received regarding evidence that children without health insurance do not receive timely care and, left untreated, minor illnesses with inexpensive treatments could grow into major illnesses that are more expensive to treat.

Response: Though MRMIB does not dispute the proposition asserted by the commenters, MRMIB is required to limit enrollment if there are insufficient funds to cover program costs. Therefore, MRMIB rejects the comment.

#6) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: A comment was received proposing that, as an alternative to adopting the regulations, MRMIB inform the Legislature and Administration in the case of insufficient funding. The proposal is that MRMIB provide notice of a deficiency to the Department of Finance and, in turn, to the Legislature, at mid-year.

Response: The proposal does not alleviate MRMIB's need to have a regulatory scheme in place to limit enrollment if there is insufficient funding. For that reason, MRMIB rejects the comment.

#7) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: A comment was received proposing that, as an alternative to adopting the regulations, if federal funding is stalled as part of SCHIP reauthorization and MRMIB anticipates that federal SCHIP funding will be exhausted at a certain point in the year, it inform the Legislature and Administration with recommendation on how to address the situation.

Response: The proposal does not alleviate MRMIB's need to have a regulatory scheme in place to limit enrollment if there is insufficient funding. For that reason, MRMIB rejects the comment.

#8) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: Proposed language was received to replace 2699.6603(a) and provide that if the Board makes a finding that expenditures will exceed funding

within the next three months and, after pursuing all other remedies including, but not limited to, notifying the Legislature of a projected deficiency at least six months in advance of the projected deficiency, the Board shall decide whether to institute a waiting list.

Response: The Board needs to be able to assess changing funding realities and determine how best to minimize disenrollments. The Legislature and the Governor has delegated to the Board the obligation to limit enrollment when there is insufficient funding. There may be circumstances, such as Congress or the Legislature and the Governor failing to timely act, which makes it impossible for the Board to project funding three or six months in advance. In addition, it is unclear what “all other remedies” to which they refer. Therefore, MRMIB rejects this comment.

#9) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: Proposed regulations were received to amend 2699.6603(b). The amendment would provide that if the Board makes the finding that (1) after instituting a waiting list, sufficient funds will not be available to cover projected costs such that expenditures will exceed funds within the next three months; and (2) after pursuing all other remedies including, but not limited to, notifying the Legislature of a projected deficiency at least six months in advance of the projected deficiency, the Board shall decide whether to disenroll subscriber children at the time Annual Eligibility Review (AER).

Response: As stated in Response to Comment 8, the Board needs to be able to assess changing funding realities and determine how best to minimize disenrollments. The Legislature and the Governor has delegated to the Board the obligation to limit enrollment when there is insufficient funding. There may be circumstances which it would be impossible for the Board to project funding three or six months in advance. In addition, it is unclear what “all other remedies” to which they refer. Therefore, MRMIB rejects this comment.

#10) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: A comment was received proposing to add 2666.6603(e) to state that three months after the Board has decided to institute a waiting list pursuant to 2966.6603(a) or disenrollments pursuant to 2966.6603(b), the Board (1) evaluate the impact of these actions on the affected children and on the program and report those findings to the Legislature, and (2) determine whether to continue

the waiting lists and disenrollments based on pending financial options or alternative program modifications to allow sufficient funds to be available to cover the projected costs. The proposed regulation would further provide that following the establishment of a waiting list or disenrollments, the Board report the number of children placed on the waiting list and the number of children disenrolled from the Healthy Families Program to the Legislature every quarter. It shall also report to the Legislature the expected date of elimination of the waiting list and cessation of disenrollments every quarter.

Response: As described above, MRMIB rejects proposed 2966.6603(a) and 2966.6603(b). In addition, regulations are not an appropriate vehicle for instituting mandatory reports by the Board to the Legislature. Furthermore, it is not in the public interest for the Board to adopt a regulation that would determine in advance what form of monitoring and reporting will be suitable in the event a waiting list and/or disenrollment is necessary. The proposed regulations already require MRMIB to monitor the fiscal situation. When funding permits, the proposed regulations provide the Executive Director the authority to cease the waiting list and/or disenrollments. This allows MRMIB to act quickly without the necessity to wait for a Board meeting. Staff already provides enrollment monthly HFP reports at the Board's public meetings and on MRMIB's website. These public reports can at any time be shared with the Legislature. It is currently, MRMIB's practice to report monthly HFP enrollment statistics to the Board and on MRMIB's public website. Therefore, MRMIB rejects this comment.

#11) The comment immediately below was received by:

Written Comment

- 20 group letter

Oral Comment

- Children's Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin

Comment: These commenters proposed adding 2699.6604(b)(2) to provide an exemption for children whose financial qualification for receiving California Children's Services (CCS) is solely due to their enrollment in HFP. An oral comment was received to the same effect. The commenters also suggest that, if a child is not identified as being CCS-eligible in his or her application but he or she is in fact CCS-eligible, he or she should be able to challenge the disenrollment by appealing.

Response: CCS provides an exemption to financial requirements for children enrolled in HFP (Healthy and Safety code 123870 (a)(2)). CCS coverage is provided for a qualifying medical condition, while HFP coverage is based on financial and other criteria. Presently, HFP cannot coordinate with CCS as CCS does not maintain a statewide database or tracking mechanism. Specifically, six

counties – Sacramento, Los Angeles, Alameda, Orange, San Diego and San Mateo – do not post CCS enrollment information to the Medi-Cal Eligibility Data System (MEDS). MEDS is the system to which MRMIB currently has access and is the system that MRMIB would have to use to confirm whether CCS eligibility is based solely on HFP enrollment. These six counties account for approximately 57 percent of HFP subscribers enrolled in CCS. In addition, while 56 counties post CCS enrollment information to a statewide CCS database known as CMSNet, the six counties that do not post to MEDS use a child’s social security number (SSN) as their identifier, not a separately-generated unique identifier. By contrast, use of the SSN is optional in HFP. Thus, HFP would be unable to confirm readily whether a child is enrolled in CCS or whether the enrollment is solely due to his or her enrollment in HFP, and would not be able to administer a CCS exception on a uniform basis statewide. Therefore, MRMIB rejects the comment.

#12) The comment immediately below was received by:

Written Comment

- 20 group letter
- California Nurses Association/National Nurses Organizing Committee – Donna Gerber
- California Academy of Family Physicians – Tom Riley
- Children’s Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin

Comment: A written comment was received proposing to add 2699.6604(b)(3), and similar oral comments were received. Commenters propose that children receiving treatment for chronic conditions or are scheduled for surgery within three months not be disenrolled. The written comment also proposes that if such children are erroneously disenrolled, they can reverse their disenrollment through an expedited appeal.

Response: HFP does not provide case management and would not know if the child has chronic conditions or is scheduled for surgery within three months. The approach suggested by the commenters would have significant associated costs in that MRMIB would have to identify these children and obtain documentation of the condition or pending surgery as well as providing an appeal process. In addition, MRMIB would have to determine which chronic conditions have priority in disenrolling subscribers. For these reasons, MRMIB rejects the comment.

#13) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: Proposed regulations were received to add 2699.6604(a)(1) to require HFP to forward applications of children who have applied for HFP and have been placed on a waiting list to the applicable county for determination of Medi-Cal eligibility. It was also proposed that the application be forwarded not later than the date the notification of the child's placement on a waiting list has been sent to the family.

Response: Currently, each HFP application is treated as a joint application for both no-cost Medi-Cal and HFP, pursuant to Insurance Code section 12693.33. Applications are sent to the most appropriate program for an eligibility determination. Applications that appear to be eligible for no-cost Medi-Cal already are sent to the appropriate county for a determination and many children receive presumptive no-cost Medi-Cal benefits, known as accelerated enrollment in California, at this time. (Welfare and Institutions Code section 14011.6.) Forwarding all applications of children who do not appear to be eligible for no-cost Medi-Cal to the counties would increase workload and administrative costs for HFP, the counties and the Medi-Cal program significantly. Specifically, for children who are not income-eligible for no-cost Medi-Cal and whose applications are not sent to the counties today, HFP would need to identify each child's county in order to forward the application. Once the county received the application, the county would have to make an eligibility determination regardless of whether the child is already enrolled in a Medi-Cal program such as share of cost; the county would be obligated to do this because it would be receiving a new application. For all these reasons, it is more sensible for MRMIB to consider, as an administrative matter, including referral information on Medi-Cal, including share-of-cost Medi-Cal, in the notices sent to applicants at the time their children are placed on a waiting list.

#14) The comment immediately below was received by:

Written Comment

- 20 group letter

Oral Comment

- Oral and written comment - California Medical Association – David T. Ford

Comment: A written comment was received proposing to add 2699.6604(c)(1) to state that the program shall notify in writing the families of children who have been placed on the HFP waiting list that their child may be eligible for Medi-Cal and local Healthy Kids Programs. A similar comment was made orally.

Response: A regulation is not required for MRMIB to provide information to applicants and might constrict the program's administration. MRMIB already provides information to applicants and works collaboratively with the Medi-Cal and Healthy Kids programs (county- or local-sponsored health insurance program). This comment can better be considered in the context of policy

determinations of what program information should be provided instead of a regulatory requirement. Therefore, MRMIB rejects this comment.

#15) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: Proposed regulations were received to add 2699.6604(b)(1) which would require HFP to forward applications of subscribers who are disenrolled and placed on the waiting list to the applicable county for a Medi-Cal eligibility determination no less than 30 days prior to disenrollment unless the family had indicated that it does not want their child's application to be forwarded for a Medi-Cal eligibility. In addition, HFP would be required to notify the children who will be disenrolled no less than 30 days prior to the child's effective date of disenrollment.

Response: See response to Comment. The regulations provide for disenrollment at a child's anniversary date. The disenrollment is preceded by Annual Eligibility Review (AER). HFP regulations require that the program make an eligibility determination during AER, including an evaluation of whether the child appears to be eligible for no-cost Medi-Cal (Section 2699.6607 (a)(2)(A)). At the time of this determination, if the child appears to be eligible for no-cost Medi-Cal and is not already enrolled in any Medi-Cal program, Medi-Cal provides Presumptive Eligibility in the form of no-cost Medi-Cal while the child's county makes a final eligibility determination using the AER information. For children that do not appear eligible for no-cost Medi-Cal at the time of AER, MRMIB can consider providing information on share-of-cost Medi-Cal as part of its disenrollment notice without the necessity of a regulation. Therefore, MRMIB rejects the comment.

#16) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: Commenters proposed amending 2699.6611(b)(2) to provide notice for subscribers disenrolled during AER, including a 30 day notice prior to disenrollment. This notice would be required to include the reason for and effective date of disenrollment, referral information to Medi-Cal and Healthy Kids, information on how to be taken off the waiting list, appeal rights, continued enrollment rights, and an explanation that employer-sponsored insurance will not affect future eligibility.

Response: Concerning the proposed 30-day notice, during 2007 Congress and the President signed a series of continuing resolutions extending

authorization of SCHIP and providing funds to the states; the activity surrounding the series of resolutions, some very short-term, created great uncertainty nationally about available funding. The 15-day notice period in the regulation is based on the Board's desire to implement waiting lists or disenroll subscribers at the latest possible point so as to avoid confusion for families as well as avoid unnecessary administrative costs. In addition, the regulation permits MRMIB to provide more than 15 days notice, which would be desirable if feasible under the circumstances at the time. For these reasons, MRMIB rejected the comment.

MRMIB's responses to the sub-comments are as follows:

- A. Reason for disenrollment. The requirement presently is contained in the regulation (2699.6611(b)(1)(A).) For that reason, MRMIB rejects the comment.
- B. The effective date of disenrollment. The requirement presently is contained in the regulation (2699.6611(b)(1)(B)). For that reason, MRMIB rejects the comment.
- C. Explanation that their child may be eligible for Medi-Cal or a local Healthy Kids program. As stated in response to comment 14, MRMIB provides families with information and a regulation is not needed. MRMIB rejects the comment.
- D. Explanation of the process to be taken off the waiting list. The present regulation requires that when the program places a child on the waiting list, the program shall provide written notification of the child's placement on the waiting list. (2699.6604(c)) In addition, the present regulation provides that when sufficient funds are available to enroll a child based on the child's placement on the waiting list, the program shall provide the applicant with written notification. In that written notice, the program may request any necessary information pursuant to sections 2699.6600 and 2699.6606 and any updates to information that no longer is current pursuant to section 2699.6600. (2699.6604(d)(2).) These notices are sufficient to accomplish the purposes of the regulations. For that reason, MRMIB reject the comment.
- E. Their right to appeal. Under the present regulation, disenrollment would occur without regard with subscribers' individual circumstances. For that reason, federal SCHIP regulations do not require states to provide a right of appeal. 42 CFR 457.1130(c). Since MRMIB is not proposing to change the criteria for disenrollment, it rejects the comment.
- F. Explanation of the appeal process. Since there is no right of appeal under the regulations, MRMIB rejects the comment.
- G. Explanation that opting for employer-sponsored health insurance will not affect their future eligibility for the program. Insurance Code section 12693.71(b) provides that the Board may disapprove an application if it is determined that the children to be covered under an

application were covered by an employer-sponsored insurance within the last three months. The proposed notice would be inconsistent with the standards adopted by the Board pursuant to this statute. Therefore, the proposed language is rejected by MRMIB.

#17) The comment immediately below was received by:

Written Comment

- 20 group letter

Comment: A comment was received proposing to add 2699(d)(a)(2) (sic) to state 2699.6607(d) shall not be used to assess the eligibility of children on the waiting list.

Response: Federal regulations require that HFP have procedures to ensure that HFP not allow subscribers to substitute employer-sponsored coverage for government sponsored program coverage. (42 CFR section 457.805.) In addition, under the federal SCHIP statute, a child is not eligible if he or she currently has private insurance coverage. (42 U.S.C. section 1397jj(b)(1)(C).) Accordingly, section 2699.6607(d) provides that if a child is enrolled in employer sponsored health coverage or, with certain exceptions, had employer-sponsored coverage within the past three months, he or she is ineligible for the program. As required by state and federal law, these requirements maximize the availability of state and federal funds to provide health coverage for children who have no other alternatives. As this recommendation would conflict with federal mandates, MRMIB rejects the comment.

#18) The comment immediately below was received by:

Written Comment

- California Academy of Family Physicians – Tom Riley

Comment: Comment was received to increase disenrollment notice to 45 to 60 days rather than a 15 day notice prior to disenrollment. The comment also requested that the notice be given to the child's provider.

Response: For the reasons stated in connection with the response to Comment 16.E, MRMIB rejects the comment proposing providing 45 to 60 notice. In addition, MRMIB does not receive information on the child's provider; for that reason, MRMIB could not implement the proposal. MRMIB therefore rejects the proposal that notice be given the child's provider.

#19) The comment immediately below was received by:

Written Comment

- 20 group letter

- Insure the Uninsured Project – Lucien Wulsin, Jr.

Oral Comment

- Children’s Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin

Comment: In summary, comments were made urging the MRMIB to explore all other fiscal options to reduce spending before adopting the proposed permanent regulation including limiting benefits offered, increasing financial responsibility on subscribers and plans, and using the “deficiency process”.

Response: Insurance Code section 12693.21(n) specifically directs MRMIB to limit enrollment if there are insufficient funds to cover program costs. The purpose of the regulations is to establish a mechanism to meet this requirement. Also, the “deficiency process” described no longer exists. Government Code Section 13324 forbids any expenditure that is in excess of appropriations. State officers, including Directors and Agency Secretaries who allow excess expenditures and members of boards who vote for expenditures can be held liable both personally and on their official bond. The comments address mechanisms to reduce costs, not the mechanism to limit enrollment . For that reason, MRMIB rejects the comment.

#20) The comment immediately below was received by:

Written Comment

- California Academy of Family Physicians – Tom Riley

Comment: Comment was received to define the terms “sufficient funds” and “insufficient funds.”

Response: The regulation incorporates the statutory language that “if sufficient funds are not available to cover the estimated cost of program expenditures, the board shall institute appropriate measures to limit enrollment.” The term “sufficient funds” is contained in statute and MRMIB may consider what constitutes sufficient funds on a case-by-case basis, analyzing all available information. Similarly, MRMIB may consider what constitutes insufficient funds on a case-by-case basis. Therefore, MRMIB rejects this comment.

#21) The comment immediately below was received by:

Written and oral comment

- California Medical Association – David T. Ford (written and oral)

Comment: Comment was received suggesting that the proposed regulations violated Insurance Code section 12693.21 by placing too much power in the

hands of the Executive Director. The commenter proposed adding 2699.6603(c) and (d).

Response: Insurance Code section 12710 provides that the Executive Director shall administer the affairs of the board as directed by the Board. As a practical matter, delegating to the Executive Director the determinations described in regulation allows the program to resume program enrollments and cease disenrollments more quickly than convening a Board meeting. It is within the Board's authority to delegate this authority to the Executive Director and it is better policy because it favors access to health coverage through the program. Therefore, MRMIB rejects this comment.

#22) The comment immediately below was received by:

Oral Comment

- Children's Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin
- Children's Partnership – Kristen Golden Testa

Comment: Comment was received regarding the proposed regulations are addressing a long-term, not a short-term, uncertainty and that the problem could be addressed in the future including another emergency regulation package if funding shortfalls become imminent.

Response: Insurance Code section 12693.21(n) specifically directs MRMIB to limit enrollment if there are insufficient funds to cover program costs. The purpose of the regulations is to establish a mechanism to meet this requirement. Therefore, MRMIB rejects the comment.

#23) The comment immediately below was received by:

Oral Comment

- Children's Partnership – Kristen Golden Testa

Comment: Comment was received regarding moving children from HFP into Medi-Cal and obtain Title 19 federal funding match.

Response: MRMIB is not the administering agency over the Medi-Cal program. MRMIB has no jurisdiction over Medi-Cal including program restructure or obtaining federal funding. Therefore, MRMIB rejects the comment.

#24) The comment immediately below was received by:

Oral comment - Children's Defense Fund and 100% Campaign, Children Now, and representing the 20 group letter – Clifford Sarkin

Comment: A comment was received suggesting that the AER date should not be used to disenroll children, but instead disenroll children based on family income.

Response: The decision to disenroll only at a child's anniversary date, following a completed AER, is based on the statutory provision that, once determined eligible, children are enrolled in HFP for a full year (Insurance Code section 12693.74). For that reason, MRMIB is unable to disenroll mid-year. Furthermore, assuming that all disenrollments occur at AER, disenrolling only higher-income subscribers at their anniversary dates could leave MRMIB unable to meet the disenrollment targets that it must meet in order to keep expenditures within available funds. Alternatively, in order to meet disenrollment targets, MRMIB might need to disenroll more children sooner. In addition, family income fluctuates frequently for the HFP subscriber population and MRMIB accepts many forms of income verification – including current pay stubs and the previous calendar year's federal tax return. Therefore, it is unlikely that prioritizing children by income would permit MRMIB to make accurate comparisons among subscribers based on their true level of need. Finally, the HFP statute defines eligibility based on income (Insurance Code section 12693.70) and does not further distinguish among eligible individuals on the basis of income. For these reasons, MRMIB rejects the comment.

#25) The comment immediately below was received by:

Written and oral Comment

- California Medical Association – David T. Ford (written and oral)

Written Comment

- California Academy of Family Physicians – Tom Riley

Comment: The commenter proposed adding language into 2699.6604 so that if a child is disenrolled, the program shall, to the extent practicable, refer the child to any existing community resources that can provide health care services at low or no cost.

Response: The program presently provides information as practicable. The proposed language – “to the extent practicable” – would include a vague and undefined requirement in the regulations. Depending on how the requirement were construed, compliance could require unavailable staff resources to identify and update the information. There is no reason to include the provision of information “to the extent practicable” in a regulation. For these reason, MRMIB rejects the comment.