

**FINDING OF EMERGENCY
ER-6-13
Guaranteed Issue Pilot Program**

FINDING OF EMERGENCY

Pursuant to section 11346.1 of the Government Code, the Managed Risk Medical Insurance Board (MRMIB) found, at its October 16, 2013, meeting, that an emergency exists and that the immediate adoption of the attached proposed regulation is necessary to avoid serious harm to the public peace, health and safety, or general welfare. A copy of the "Finding of Emergency and Adoption of Emergency Regulations" adopted by the Board is attached.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

Insurance Code section 12700, et seq., established the Major Risk Medical Insurance Program (MRMIP) in 1991, administered by MRMIB. The program provides access to health insurance for individuals who are denied coverage or offered excessive premiums due to pre-existing medical conditions. The State subsidizes the cost of health services with an appropriation from the Proposition 99 Cigarette and Tobacco Products Surtax Fund. This is a capped appropriation and the Board frequently has been obligated to limit enrollment in the program to stay within the appropriation.

To ease the demand on the MRMIP appropriation, in September 2002 the Legislature passed, and the Governor signed, AB 1401 (Chapter 794, Statutes of 2002), which restructured MRMIP and created a four year pilot project (Guaranteed Issue Pilot Project or GIP). During the time the pilot project operated, 2003 through 2007, MRMIP subscribers remained in the program for only 36 consecutive months. (Insurance Code section 12725(f).) At the end of that period, their MRMIP eligibility terminated and they became eligible, on a "guaranteed issue" basis, for a "MRMIP look-alike" health plan sold by each health insurer and health care service plan (hereinafter "health plans") offering coverage in the individual insurance market. As in MRMIP, MRMIB subsidized the cost of subscriber coverage in GIP but shared the losses equally with the health plans, whereas the state bore substantially all losses within MRMIP. (Health and Safety Code section 1373.62 (repealed), Insurance Code section 10127.15 (repealed).)

Once the pilot project ended, health plans participating in GIP were obligated to continue providing coverage to those subscribers who had already enrolled in

GIP health plans, and MRMIB was obligated to continue sharing health plans' costs, on the same terms as during the pilot project. (Health & Safety Code section 1373.622, Insurance Code section 10127.16.) These terms included a statutorily-defined timeline for plans' submission of annual reconciliation reports to MRMIB to claim reimbursement for half the plans' losses within GIP. Specifically, plans were obligated to report aggregate health care expenditures, the amount of a statutorily-authorized administrative fee, and premiums paid for each calendar year by December 31 of the following year. (Health & Safety Code section 1373.62(g,h) (repealed) as amended by SB 1702, Chapter 683, Statutes of 2006; Insurance Code section 10127.15(g,h) (repealed) as amended by SB 1702, Chapter 683, Statutes of 2006.)¹

On October 1, 2013, the Governor signed AB 1180 (Chapter 441, Statutes of 2013) into law. AB 1180 modifies MRMIB's and health plans' GIP obligations as follows:

- Health plans are no longer obligated to provide GIP coverage on and after January 1, 2014.
- MRMIB is not obligated to reimburse health plans for health care expenses incurred on or after January 1, 2014 or for any administrative fee for months after December, 2013.
- As a condition of receiving any payment from MRMIB for GIP coverage, health plans must submit their final reports to MRMIB by the earlier of December 31, 2014 or any earlier date that was already required by Health & Safety Code section 1373.62 and Insurance Code section 10127.15.
- MRMIB is obligated to complete reconciliation within six months if it receives a complete, final reconciliation report for a reporting period.

(Health & Safety Code section 1373.622(a) and Insurance Code section 10127.16(a) as amended by AB 1180.)

AB 1180 deems any MRMIB regulations implementing these changes to be an emergency, and necessary to avoid serious harm to the public peace, health, safety, or general welfare for purposes of Government Code sections 11346.1 and 11349.6. The bill also exempts MRMIB from the requirement that it describe

¹ Health & Safety Code section 1373.62 and Insurance Code section 10127.15 were, by their own terms, repealed January 1, 2008; however, key provisions remained operative because Health & Safety Code section 1373.622 and Insurance Code section 10127.16, which were not repealed, mandated continuing participation in GIP by health plans and continuing subsidies from MRMIB in accordance with the terms of the repealed sections.

facts showing the need for immediate action and from review by the Office of Administrative Law. (Health & Safety Code section 1373.622(c) and Insurance Code section 10127.16(c), added by AB 1180.)

AUTHORITY AND REFERENCE CITATIONS

Authority: Section 1373.622, Health and Safety Code; section 10127.16, Insurance Code.

Reference: Sections 1373.62 and 1373.622, Health and Safety Code; and sections 10127.15 and 10127.16, Insurance Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Policy Statement: These emergency regulations are necessary (1) to ensure that reconciliation between MRMIB and GIP health plans complies with changes enacted by AB 1180 (Chapter 441, Statutes of 2013) and (2) to exercise MRMIB's authority to cease providing reimbursement or administrative fees to health plans for any period after December, 2013.

A summary of the proposed regulation's effect on existing law and regulations follows:

Section 2698.602(b)(3): The introductory language in this paragraph states that, notwithstanding the reconciliation time line described in paragraphs (1) and (2) (addressing deadlines for health plan reconciliation reports) or in subsection (d) (describing MRMIB's deadline for reviewing health plan reconciliation reports), the rules articulated in the ensuing subparagraphs ((A) and (B)) will apply effective January 1, 2014.

Section 2698.602(b)(3)(A): This subparagraph states that MRMIB shall not provide any payment to GIP health plans for health care expenses incurred on or after January 1, 2014 and that MRMIB shall not provide an aggregate standard monthly administrative fee to GIP health plans for any month after December 2013.

Section 2698.602(b)(3)(B): This subparagraph requires health plans, as a condition of receiving payment for any reporting period (defined as a calendar year elsewhere in the regulation), to provide MRMIB with a final annual reconciliation report by the earlier of December 31, 2014 or the date the health plan would otherwise be required to report pursuant to paragraphs (1) and (2). It also requires MRMIB to complete reconciliation with a health plan with six months if the plan submits its report by the date required pursuant to this subparagraph.

**TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY or REPORT
DETERMINATIONS**

The Proposed Substantial differentiation from existing comparable Federal Regulation or Statute: None

Mandates on Local Agencies or School Districts: None.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Non-discretionary Costs or Savings Imposed on Local Agencies: None.

Costs or Savings to Any State Agency: The State may have a savings since MRMIB will not provide any reimbursement or administrative fees to health plans after December 2013. However, at this time, the amount of the savings is unknown.

Costs or Savings in Federal Funding to the State: None.