

## **PASSAGE OF AB 1422 HIGHLIGHTS**

More than 600,000 children will be saved from losing health insurance with the passage of Assembly Bill 1422.

Wendy Lazarus of The Children's Partnership, a nonprofit advocacy group, said the bill's passage comes as children are returning to school and the swine flu looms.

The measure will bolster the state's Healthy Families program, whose budget was slashed by \$178 million during this year's budget crisis.

AB 1422 will impose a 2.35 percent tax, until January 2011, on the gross premiums of companies that manage Medi-Cal insurance plans.

Companies assessed the tax will be reimbursed indirectly after the state uses the new revenue stream to qualify for federal funds.

The new tax is lower than a separate 5.5 percent fee that the companies already pay on revenues under a mandate set to expire in October.

Besides the new tax, Healthy Families' coffers will benefit from an \$81 million commitment in tobacco tax revenue from First Five California, and from higher premiums and co-payments charged to participating families.

### **Impact on OC**

Passage of AB 1422 will help over 30,000 children in the County. On July 28th, California severely cut the Healthy Families Program by 60%, which would have sent over 30,000 Orange County children to be without health coverage and lead to the lay-off of providers, longer wait lists and reductions in services. The passage of the bill reverses these.

BILL ANALYSIS

AB 1422

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(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS  
AB 1422 (Bass)  
As Amended August 25, 2009  
2/3 vote. Urgency

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| ASSEMBLY: | (May 28, 2009) | SENATE: | 27-8 | (September 2, 2009) |  
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(vote not relevant)

COMMITTEE VOTE: (Health)	12-2	(September 2, 2009)	RECOMMENDATION:	concur
COMMITTEE VOTE: (Revenue & Taxation)	6-2	(September 2, 2009)	RECOMMENDATION:	concur
COMMITTEE VOTE: (Appropriations)	10-3	( September 3, 2009)	RECOMMENDATION:	concur

Original Committee Reference: H. & C.D.

SUMMARY : Provides, on an urgency basis, funding for, and makes program changes to, the Healthy Families Program (HFP), administered by the Managed Risk Medical Insurance Board (MRMIB), which provides health care coverage for eligible low- and moderate-income children; extends the gross premium tax of 2.35% to Medi-Cal managed care (MCMC) plans; and, authorizes the California Children and Families Commission (CCFC) to make specified transfers of program revenues.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Grant CCFC the authority to transfer funds that are allocated to the CCFC, but are not needed for the purposes specified in existing law, from specified accounts to the Unallocated Account.

Specifically, the amendments allow CCFC to transfer funds from the Mass Media Communications Account, the Education Account, Child Care Account, and Research and Development Account to the Unallocated Account. Declare legislative intent that the changes proposed in this bill are in furtherance of the California Children and Families Act of 1998, an initiative statute.

2) Increase, effective November 1, 2009, the monthly premiums paid by certain families for children enrolled in HFP. As an example, for families enrolled in the community provider plan, the cheapest plan available for HFP subscribers, premiums will increase as follows:

- a) No changes for families at or below 150% of the federal poverty level (FPL). (In 2009, the FPL for a family of three is \$18,310 per year);
- b) For families whose income is above 150% of the FPL and up to 200%, from \$9 to \$13 per child, with the family maximum increasing from \$27 to \$39; and,
- c) For families whose income is above 200% of the FPL and up to 250% of the FPL, from \$14 to \$21 per child, with the family maximum increasing from \$42 to \$63.

3) Require MRMIB to notify families of the increase in premiums and provide them an opportunity to demonstrate that the family's income has decreased making them eligible for a lower premium.

4) Grant MRMIB the authority to use emergency regulations to modify health, dental, and vision benefits or other HFP requirements for fiscal years (FYs) 2009-10 and 2010-11.

5) Extend to MCMC plans the gross premium tax of 2.35% which is imposed on insurers certificated by the California Department of Insurance (CDI) pursuant to Section 28 of Article XIII of the California Constitution, and define as the basis of the tax the MCMC plans' total operating revenue for the period January 1, 2009, to December 31, 2009, including but not limited to, Medi-Cal revenues. Extend to MCMC plans existing provisions related to the gross premiums tax including, among other things, prepayment requirements, penalties and under- and overpayment provisions.

6) Appropriate, on a continuous basis, revenues raised by the gross premiums tax as follows: 38.41% to Department of Health Care

Services (DHCS) for purposes of the Medi-Cal program and 61.59% to MRMIB for HFP. Exempt dental MCMC plans from the gross premiums tax imposed by this bill.

7) Sunset the provisions of this bill related to the gross premium tax for MCMC plans January 1, 2011.

8) Make inoperable specific provisions of this bill if certain conditions occur, including lack of federal approval and matching funds, diversion of the revenues raised by the premiums tax to purposes not contained in this bill, or a judicial determination that this tax is found to be in lieu of all other taxes that insurers must ordinarily pay.

9) Direct DHCS to use the funds attributable to the tax on MCMC plans established in this bill for the purposes of ensuring that MCMC plans receive contracted rates of payment for services that are actuarially sound, and allow MCMC plans to delay in paying the tax due if DHCS has not met specified statutory obligations related to calculating rates and making payments. Authorize DHCS to retroactively increase rates and make payments to plans.

10) Authorize the Director of Finance (DOF) to make necessary budget adjustments to allow the expenditure of funds allocated by CCFC and require DOF to notify specified appropriate committees of the Legislature within 30 days of any budgetary adjustments, and to include in the notice a description of the revenues and expenditures.

EXISTING LAW :

1) Establishes HFP, administered by MRMIB, to provide low-cost insurance, including health, dental, and vision coverage, to children who do not have health insurance, do not qualify for free Medi-Cal and are in families at or below 250% of the FPL, and establishes monthly premium amounts that families must pay for HFP coverage.

2) Establishes the state's Medicaid program, known as Medi-Cal, administered by the DHCS, which provides comprehensive health benefits to low-income children, their parents or caretaker relatives, pregnant women, seniors, persons with disabilities, nursing home residents, and refugees who meet specified eligibility criteria.

- 3) Authorizes DHCS to contract, on a bid or nonbid basis, with any qualified individual, organization, or entity to provide services to, arrange for, or case manage, the care of Medi-Cal beneficiaries. Defines a MCMC plan as any entity that enters into one of several types of contracts with DHCS including county organized health systems, geographic managed care plans, and local initiatives. Requires DHCS to use actuarial methods in calculating rates for MCMC plans.
- 4) Imposes a Medi-Cal quality improvement fee (QIF) on MCMC plans and a quality assurance fee on skilled nursing facilities and intermediate care facilities for the developmentally disabled.
- 5) Establishes the California Children and Families Program (CCFP), also known as First Five California, which was created by the enactment of Proposition 10 in November 1998, and is funded by a tax on tobacco products equivalent to \$.50 per pack of cigarettes. Creates the California Children and Families Trust Fund to receive revenue from the tax on tobacco products, and requires the revenues to be appropriated for the purposes of promoting, supporting, and improving the development of children from birth to five years of age and to offset certain revenue losses to Proposition 99 tobacco-tax programs (the California Health Protection Act of 1988). Allocates funds for specified purposes and places those allocated funds in specified accounts.
- 6) Creates CCFC, with members appointed by the Governor, the Speaker of the Assembly, and the Senate Rules Committee, to administer CCFP, formulate statewide program guidelines, distribute educational materials, provide technical assistance to counties, and conduct research and evaluation of early childhood development programs.
- 7) Requires insurers certificated by CDI (insurers selling property insurance, life insurance, casualty insurance, and specific types of disability insurance, including health insurance) to pay a tax based upon gross premiums received. Establishes in Section 28 of Article XIII of the California Constitution the gross premiums tax at 2.35% of annual gross premiums as a tax that is in lieu of all other taxes and licenses upon insurers and their property, with certain specified exceptions (including taxes upon real estate and Department of Motor Vehicles license fees).

AS PASSED BY THE ASSEMBLY , this bill allowed a redevelopment agency to use tax increment funds, not held in the Low and Moderate Income Housing Fund, to acquire, assume or refinance loans to eligible homeowners with subprime or nontraditional mortgages in default or at risk of default.

FISCAL EFFECT : According to the Assembly Appropriations Committee, the table below displays the funding allocations from the gross premiums tax, Medi-Cal and related federal matching funds. For 2009-10, the 2.35% gross premiums tax on the existing MCMC plan revenues of \$6.7 billion generates \$157 million General Fund (GF). In 2010-11, when the gross premiums tax is in place for only half the year, the gross premiums tax collected is \$79 million GF. The estimate for 2009-10 assumes implementation of the gross premiums tax within the current budget year. HFP has a 35%/65% (state/federal) match and, until January 2011, Medi-Cal has a 38.41%/61.59% (state/federal) match.

Fiscal Impact of AB 1422  
Healthy Families Funding  
(dollars in millions)

Year	GF allocated from gross premiums tax (61.59%)	Federal Match	Total Funding
2009-10	97	180	277
2010-11	49	91	140

Medi-Cal Funding paid to MCMC (in millions)

Year	GF allocated from gross premiums tax (38.41%)	Federal Match	Total Funding
2009-10	60	97	157
2010-11	30	49	79

In addition, this bill results in GF savings associated with

increased HFP premiums of \$5 million to \$6 million in 2009-10. Premium collections in 2010-11 will depend on caseload, subsequent policy changes, and demand for the program.

COMMENTS : According to the author, this bill establishes a funding mechanism that will avoid the disenrollment of 670,000 low-income children from HFP and will remove the current HFP waiting list through 2010. The author identifies the three part funding in this bill as a shared solution to the \$194 million HFP funding shortfall resulting from General Fund (GF) cuts made to the program this year. The three-part funding solution is as follows: \$81.4 million in funds pledged by First Five California to support HFP coverage for children ages 0-5; \$157 million in gross premiums taxes which yield \$97 million in additional federal funds for HFP; and, savings from program changes to HFP, including the increased family premiums proposed in this bill and other program changes being adopted by MRMIB. The author points out that this bill is supported by a broad coalition including the health plans that will pay the tax, DHCS, and consumer and children's health advocates.

Healthy Families Program.

HFP is California's version of the federal Children's Health Insurance Program and provides health, dental and vision coverage to children in families with incomes between 100-250% of the FPL who are not eligible for Medi-Cal and do not have private insurance. California receives a 2:1 federal match for every dollar spent on HFP. As of August 1, 2009, there were approximately 920,000 children enrolled in HFP.

HFP currently has a \$194 million GF shortfall resulting from budget-related cutbacks and has been closed to all new enrollments since July of this year. As of August 25, 2009, there were 70,788 children on the HFP waiting list. Without additional funding, MRMIB had scheduled to begin disenrolling nearly 700,000 children in October 2009. At an August 27, 2009, emergency meeting, MRMIB adopted the following changes to HFP:

1) Approved emergency regulations to increase HFP copayments:

- a) \$10 (increase of \$5) for various non-preventative health, dental, and vision services;
- b) \$15 (\$10 increase) for emergency room visits; and,
- c) \$10 (\$5 increase) for generic drugs and \$15 (\$10 increase)

for brand name drugs;

- 2) Approved emergency regulations to conform HFP dental coverage to the approach used for state employees.
- 3) In light of the infusion of funding from First Five California, delayed any program disenrollments from October 1, 2009 to November 1, 2009.

Gross Premiums Tax

The gross premiums tax is paid by insurers certificated to sell insurance under provisions of the Insurance Code and subject to the jurisdiction of the Commissioner of Insurance (generally defined as property insurance, life insurance, casualty insurance, and disability insurance, including health insurance). The gross premiums tax is established in the California Constitution at 2.35% of gross revenues and is considered an excise tax on insurers for the privilege of transacting insurance in the state.

Health plans that operate under the regulation of the Department of Managed Health Care (DMHC), generally prepaid health plans that are health maintenance organizations, and some preferred provider organizations, are legally not considered to be in the business of insurance and not subject to regulation under the Insurance Code, pursuant to court rulings dating back to the 1940s and the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene). Knox-Keene licensed plans do not pay the gross premiums tax. Most MCMC plans are Knox-Keene licensed health plans.

Medi-Cal Provider Fees

Federal law authorizes states to levy fees on health care providers if the fees meet federal requirements. Many states (including California) fund a portion of their share of Medicaid Program costs through a fee on health care providers. Under these funding methods, states collect funds (through fees, taxes, or other means) from providers, which can then be matched with federal funds to increase Medicaid reimbursement to providers. Forty-five states have Medicaid provider fees, including California. California currently imposes provider fees for MCMC plans, skilled nursing facilities, and intermediate care facilities for the developmentally disabled.

MCMC plans currently pay a QIF at the rate of 5.5% of revenues. The net increase in revenue is deposited into the state GF, and is estimated to be \$238.8 million (total funds) in 2008-09 and projected to raise \$89.9 million in FY 2009-10. Half of the fee is used to draw down federal funds and is returned to the plans through increased Medi-Cal rates. The QIF is currently assessed on MCMC revenue. Federal law requires that provider fees be broad-based and uniformly imposed throughout a jurisdiction, and not just on Medicaid providers. The current MCMC plan QIF does not meet that federal requirement and is scheduled under state law to sunset October 1, 2009.

The gross premiums tax imposed on MCMC plans in this bill is an existing tax already imposed on the broad group of insurers certificated in California and will not be considered a Medicaid provider fee under federal law. This means that California does not have to meet other requirements of federal law applicable to provider fees in order to obtain federal matching funds.

Medi-Cal Managed Care

Under the traditional Medi-Cal fee-for-service arrangement, providers are reimbursed for every service they provide and assume no financial risk. Under MCMC, DHCS reimburses MCMC plans on a "capitated" basis, a per-person, per-month payment, regardless of the number of services, if any, a Medi-Cal beneficiary receives. The contracting health plans, in return, assume financial risk, in that it may cost them more or less money than the capitated amount paid to them to deliver the care. Currently, some form of MCMC serves approximately 3.2 million Medi-Cal beneficiaries; 2.8 million Medi-Cal beneficiaries in medical managed care and approximately 400,000 in dental managed care plans.

MCMC plans operate in 22 of the state's 58 counties - generally those in large, urban counties. There are three major types of Medi-Cal managed care plans:

- 1) Geographic Managed Care operates in Placer, Sacramento, and San Diego Counties and allows Medi-Cal beneficiaries to choose from among multiple contracting commercial health plans.
- 2) County Organized Health System (COHS) plans operate in eight counties, with one health plan run by a public agency and

governed by an independent board that includes local representatives. All Medi-Cal enrollees residing in the county receive care from this system on a mandatory basis. COHS plans operate in Monterey, Napa, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Solano, and Yolo Counties.

3) Two-Plan Model programs operate in 12 counties and are based on DHCS contracts with two managed care plans in each county. There are some exceptions, but generally two-plan counties have a publicly organized plan, originally developed by the county with local stakeholders, known as the Local Initiative, and one commercial health plan.

DHCS contracts with a total of 20 health plans to provide services to Medi-Cal members in 22 counties. Some MCMC plans contract under more than one model and some act as subcontractors for other MCMC plans. Some are commercial plans and some are health plans whose primary or sole line of business is Medi-Cal and other government-funded populations such as HFP enrollees.

Both state and federal law require that MCMC plans be paid rates that are actuarially sound, so that MCMC plans are paid a rate that takes into consideration the costs they incur and the populations that they serve. Medicaid plans have sued in federal court in other states to force compliance with the federal Medicaid rate requirements. The federal rules do not require all costs of a MCMC plan to be covered but the state is required to set rates that accurately reflect the costs of doing business for MCMC plans as a whole. In 2006-07, DHCS contracted with Mercer Consulting to develop a rate-setting methodology for MCMC plans that would meet these requirements and DHCS is now using this methodology.

MCMC plans that will be subject to the tax under this bill will be able to avoid having to pay on their revenues from other programs by shifting the Medi-Cal enrollment to a separate corporate entity, which many plans already did as a result of the imposition of the QIF. However, public plans, like the COHS, are less likely to have separated their lines of business and may pay a slightly higher tax as a result of other lines of business, with the exception being any Medicare revenues which, according to DHCS, cannot be taxed by states.

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First Five California was established by the enactment of Proposition 10 in November 1998 and is funded by a tax on tobacco products equivalent to \$.50 per pack of cigarettes. The revenues are appropriated at both the state and local levels for the purposes of promoting, supporting, and improving the development of children from birth to five years of age and to offset certain revenue losses to Proposition 99 programs. Proposition 10 allocated a defined proportion of the funds raised to specific purposes and accounts.

Among other things, by granting the CCFC flexibility to transfer funds among the specific accounts, this bill will allow CCFC to increase funding for children's health programs. At the August 13, 2009 meeting, CCFC voted to approve providing up to \$81.4 million to HFP for the period from August 13, 2009, through June 30, 2010, for children ages 0 through 5 who would otherwise not be enrolled in HFP due to implementation of a waiting list, or who would be disenrolled on their annual review date due to insufficient HFP funding.

#### Arguments in Support

Health plans, health care consumer groups, children's advocates, and counties support this bill to ensure that children currently enrolled in HFP do not lose their health care coverage. Supporters point to this bill as a shared approach to addressing the funding shortfall in HFP, including First Five funding, the health plan tax to secure additional federal funds, and HFP program changes, such as the increase in the monthly HFP premiums. Supporters point out that without HFP coverage children will lack access to preventive services which will likely drive up overall health care costs in the remainder of the system when children must seek treatment after health conditions have worsened and become more costly to treat. Health plans that will pay the tax support this bill and point out that the tax will provide revenues to draw down critical federal funding for HFP but will not have any impact on consumers in commercial coverage products.

#### Arguments in Opposition

The Howard Jarvis Taxpayers Association opposes this bill stating that it is a tax and not a fee and should be subject to a 2/3 vote of the Legislature.

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REGISTERED SUPPORT / OPPOSITION :

Support

100% Campaign  
California Association of Health Plans  
California State Association of Counties  
Center to Promote Health Care Access  
Children NOW  
Children's Defense Fund, California  
City and County of San Francisco  
Community Health Councils  
County Health Executives Association of California  
County Welfare Directors Association  
Health Net  
Insure the Uninsured Project  
Latino Coalition for a Healthy California  
Local Health Plans of California  
PICO California  
The Children's Partnership  
United Way  
Urban Counties Caucus

Opposition

Howard Jarvis Taxpayers Association

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