Gray Davis, Governor
State of California
Business, Transportation and Housing Agency

980 9th Street
Suite 500
Sacramento, CA 95814-2725
916-324-8176 voice
916-322-2579 fax

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To: ALL INTERESTED PARTIES

From: Department of Managed Health Care

The following is a brief summary of the comments and events that occurred during the Financial Solvency Standards Board (FSSB) meeting March 19, 2002.

I. Introduction: Opening remarks by Scott Syphax, Chair

1. Prior meeting minutes were approved and adopted by the Board members.

II. Board/Stakeholder Discussion Regarding Recent CMA v. Zingale Ruling

1. The Department presented an overview of the trial court's ruling in *California Medical Association v. Daniel Zingale, Director, and Department of Managed Health Care et al. No.01CS0126.*

While the court's ruling addressed a host of secondary issues, two fundamental determinations directly impacted the Department's ability to continue to implement SB 260. First, the court concluded that Health and Safety Code sections 1375.4(b)(2) is a "limitation on the collection and use of the information regardless of whether the director decides to use an external party." Secondly, the court found that the Department never addressed the issue of whether financial data collection mandated Section 1300.75.4.2 and deemed public information by Section 1300.75.4.4 would adversely affect the integrity of the contract negotiation process between risk-bearing organizations and their contracting health plans. Because the court found no evidence in the rulemaking record that the disclosure of the mandated financial information would not adversely affect the negotiation process, the adoption of 1300.75.4.2 and 1300.75.4.4 was deemed arbitrary and capricious.

Based upon these findings the court: (1) deemed sections 1300.75.4.2 and 1300.75.4.4 invalid; (2) directed that an injunction be issued prohibiting and restraining the implementation of Sections 1300.75.4.2 and 1300.75.4.4; and (3) directed that a *Writ of Mandate* be issued commanding the DMHC to cease and desist its implementation of Sections 1300.75.4.2 and 1300.75.4.4.

Consistent with the court's directive that the Department "cease and desist its implementation" of these sections, risk-bearing organizations are no longer required to submit any financial data to the DMHC pursuant to these regulations. To ensure that no additional information is collected, the Department disabled the SB 260 web portal for risk-bearing organization filings. Finally, the Department removed all Financial Solvency Reporting information relating to risk-bearing organizations from its website.

Without data collection, the Department cannot realistically undertake to review or grade risk-bearing organizations or establish a meaningful process for corrective action.

2. Public Comment:

A. Consumer perspective. Because medical groups are acting like insurance companies, the most responsible course of action is to fully license and regulate the medical groups that assume the financial risk for the delivery of health care services. Short of full regulation, the regulations should be fixed to allow the DMHC to continue its collection and public disclosure of the financial data of risk-bearing organizations. Risk-bearing organizations should be subject to the same public disclosure criteria that applies to health plans.

B. Medical Group perspective. Medical groups do not operate as insurance companies. Before instituting the full regulation of medical groups, the bar against the corporate practice of medicine should be eliminated. The real issue for medical groups remains the confidentiality of their financial disclosures. If confidential treatment protections are assured, then the medical groups could fully support data collection. To protect consumers, consider publicizing each risk-bearing organization's: (1) claims compliance, (2) IBNR calculations and (3) current ratio.

It is recommended that the DMHC attempt to fix the regulations. Alternatively, seek emergency legislation clarifying the meaning of "adversely affect the integrity of the contract negotiation process."

The CMA represented that it never requested the court to bar collection. The Department continues to retain the discretion to adopt regulations to implement SB 260 so long as the disclosure to the public does not adversely affect the integrity of the contract negotiation process.

C. Health Plan perspective. Health plans are disappointed in the court's decision because it interrupts the disclosure of valuable information. It is recommended that the Financial Solvency Standards Board conduct a hearing to determine the meaning of the phrase "adversely affect the integrity of the contract negotiation process." Emergency legislation is not feasible without consensus. Health plans do not currently have a position on the full regulation of medical groups that accept risk.

D. Board Member perspective. Board member views expressed included the following: financial disclosure requirements should apply to all risk-bearing organizations including hospital systems; financial reporting, alone, is not enough to establish an early warning system; a multi-path approach to secure the data collection process should be pursued; one course of action would be to limit disclosures to the four minimum financial solvency criteria enumerated in the statute; there is no point to collecting financial data if the Department is prohibited from disclosing the information; caution should be exercised if a legislative clarification is pursued; the Board should reconsider its confidentiality recommendation that it previously provided the Department; SB 260 was an imperfect vessel because it was negotiated in the last two weeks of the legislative session; considering the level of financial risk involved in these arrangements and the potential for significant harm to the public health and welfare, direct regulation of medical groups should be adopted.

III. Next Steps/Closing Remarks

1. The next Solvency Board meeting will be held on Tuesday, April 23, 2002 at the Burbank Hilton, Burbank, California.

2. Following closing remarks, the meeting was adjourned.