

State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
Governor

April 8, 2013

COPY

Jennifer Kent  
Commission Chair  
First 5 California  
2389 Gateway Oaks Drive, Suite 260  
Sacramento, CA 95833

Dear Ms. Kent: *Jennifer*

I would like to request that you and the First 5 Commission give consideration to providing \$40 million to fund new pregnancy, labor, and deliveries caseload in the Medi-Cal program. Using 2009 data, Department of Health Care Services estimates that the cost of these deliveries in 2012-13 will be \$857 million.

Over the last several years, the First 5 Commission has stepped up to support vital state programs, including the Healthy Families Program and several Developmental Disabled programs. Without this support, thousands of children were at risk of not receiving vital services.

As you are aware, the Medi-Cal program is a public health insurance program that provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, foster care, pregnant women, and low income people with specific diseases such as tuberculosis, breast cancer or HIV/AIDS.

AB 1497, the Budget Act of 2012, appropriates \$59.3 billion (\$14.4 billion General Fund) in 2012-13 for the program, including \$40 million from First 5 California.

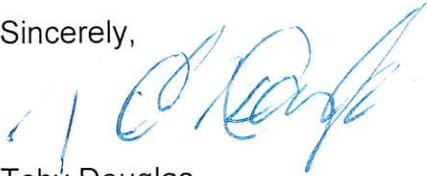
State General Fund revenue has not kept pace with growth in the program. Absent the funding assumed in the 2012 Budget Act, \$40 million in General Fund reductions will be necessary in the Medi-Cal program, which would have significant consequences for the state's most vulnerable children.

The Administration requests the First 5 Commission consider the extremely serious choices facing the state and the estimated 8.2 million low income Californians who rely on the Medi-Cal program as a primary source of health coverage.

Jennifer Kent  
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Thank you for your consideration of this request. I look forward to working with you to meet the health care needs of California children now and into the future.

Sincerely,



Toby Douglas  
Director

cc: Ms. Camile Maben  
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California First 5  
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AGENDA ITEM: 9  
DATE OF MEETING: April 25, 2013  
ACTION:   X    
INFORMATION: \_\_\_\_\_

**REQUEST TO TRANSFER \$40 MILLION TO THE DEPARTMENT OF HEALTH CARE SERVICES FOR THE MEDI-CAL PROGRAM**

**SUMMARY OF REQUEST**

This is an action item to approve or reject a request from the Department of Health Care Services (DHCS) to provide \$40 million to DHCS during Fiscal Year (FY) 2012-13 for Medi-Cal program caseload.

**BACKGROUND**

The Medi-Cal program is a public health insurance program administered by DHCS that provides needed health care services for low-income individuals, including families with children, seniors, persons with disabilities, foster care, pregnant women, and low income individuals with specific diseases such as tuberculosis, breast cancer, or HIV/AIDS. At the October 17, 2012 Commission Meeting, the Commissioners briefly discussed the potential impact of the combined transfer of this \$40 million to DHCS, plus an additional \$40 million to the Department of Developmental Services, based on the inclusion of both proposed transfers in the May 2012 Revised Budget for Fiscal Year 2012-13 released by the Governor.

On April 8, 2013, DHCS sent a letter signed by the Director, Toby Douglas, to Commission Chair Jennifer Kent. (See Attachment A.) The letter requests that the Commission give consideration to providing \$40 million to DHCS to fund new pregnancy, labor, and deliveries caseload in the Medi-Cal program for the current fiscal year.

**DISCUSSION**

The May 2012 Revised Budget states:

- For the Medi-Cal budget: “This proposal reflects \$40 million to be provided by the First 5 California Children and Families Commission for programs servicing children ages birth through five. This would decrease Medi-Cal General Fund by \$40 million.” [May Revision 2012-13, Health and Human Services, p.53.]

In other words, the proposal recognizes that the First 5 California funding would offset – not supplement – the General Fund by \$40 million for services planned to be provided.

The letter states that State General Fund revenue has not kept pace with growth in the entitlement program. The letter provides no additional program or fiscal data.

The DHCS letter alleges that the Budget Act of 2012 (AB 1464, Ch. 29) “appropriates” \$40 million from First 5 California to fund growth in the Medi-Cal program. However, staff finds no legislative language appropriating this funding in the Budget Act or budget trailer bills. The lack of such language is not surprising since the Legislature does not have the authority to appropriate funding from First 5 California.

First 5 California funds have been depleted or redirected for four prior years for a total of \$329,550,000, while the State’s General Fund revenues have improved during the same period. If a new federal tobacco tax is enacted to support universal preschool, First 5 California’s projected revenue will decline at an even faster rate than currently calculated. Depleting the funds any further would seriously restrict the Commission’s ability to develop a new strategic plan to support present and future initiatives to provide integrated and comprehensive services to families and children ages 0 to 5, as required by Proposition 10 and as codified in Health and Safety Code sections 130100 to 130158.

Moreover, staff believes this request would violate the Revenue and Taxation Code Section 30131.4 which states, “All moneys raised pursuant to taxes imposed by section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act. . . . No moneys in the California Children and Families Trust Fund shall be used to supplant state or local General Fund money for any purpose.” DHCS has provided insufficient evidence to demonstrate that this funding would be used to increase levels of services beyond what the General Fund is required to fund. Before the April 8, 2013 letter was delivered, staff of First 5 California informed DHCS that the request appears to contravene the prohibition against supplanting and encouraged DHCS to provide evidence and argument to the contrary. However, the letter is silent on this point.

For the Commissioners’ reference, please refer to Attachments B through D for Agenda Item 8 for this Commission Meeting, which include current and draft financial plans depicting the fiscal impact of approving this request, or of approving both this request and the similar request from the Department of Developmental Services for this fiscal year. In addition, Attachment E to Agenda Item 8 is a copy of the trial court decision in *Children and Families Commission of Fresno County v. Brown* (November 21, 2011). While trial court decisions are not binding, this decision contains an opinion – which the Governor’s Office declined to appeal – on impermissible uses of Proposition 10 funding, including what constitutes supplanting.

Staff from DHCS will present this request at the Commission Meeting.

#### **ADVISORY COMMITTEE REVIEW**

Staff discussed this request with the Executive Committee of the Commission, including Chair Jennifer Kent and Vice Chair Patrick Duterte.

**ATTACHMENTS**

- A – Letter from DHCS dated April 8, 2013.