Sent Via Email Only

July 15, 2024

The Honorable Richard D. Roth
Chair, Senate Health Committee
1021 O Street, Room 3310
Sacramento, CA 95814

The Honorable Mia Bonta
Chair, Assembly Health Committee
1020 N Street, Room 390
Sacramento, CA 95814

The Honorable Anna Caballero
Chair, Senate Appropriations Committee
State Capitol, 412
Sacramento, CA 95814

The Honorable Buffy Wicks
Chair, Assembly Appropriations Committee
1021 O Street, Suite 8220
Sacramento, CA 95814

Re: Letter to the 2023-24 California State Legislature on Assembly Bill 3059: Human Milk, as amended on June 17, 2024

Dear Chairs Roth, Caballero, Bonta, and Wicks:

The California Health Benefits Review Program (CHBRP) was asked by Senate Health and Senate Appropriations Committee staff on June 24, 2024, to provide a letter regarding Assembly Bill (AB) 3059, Human Milk. CHBRP submitted an analysis of the bill in April of this year based on the March 11th amendments. This letter details the differences between the two bill versions and provides a fiscal estimate based on the amendments made to the bill on June 17, 2024. Appendix A contains detailed revised Benefit Coverage, Utilization, and Cost estimates and tables.

Context

The American Academy of Pediatrics recommends the use of donor human milk in the neonatal intensive care unit (NICU) setting as a medical therapy for infants that are born preterm with a priority for use in very low—birthweight (<1,500 grams [3 pounds, 4 ounces]) infants.[1] Donor human milk is used to prevent the development of necrotizing enterocolitis (NEC),[2] bronchopulmonary dysplasia (BPD),[3] and other poor health outcomes. NEC and BPD are two of the primary causes of infant morbidity very low-birthweight and preterm infants, and increase the average cost of a NICU stay by approximately $176,000 and $69,000, respectively. Approximately 1.1% of infants born in California require NICU care, of which about 2.6% develop NEC and 25% develop BPD. The risk of development is lowered by 68% and 20%, respectively, when the infants are provided donor human milk in the NICU.

[1] See CHBRP's analysis of **AB 3059, as amended on March 11** for full reference.
[2] NEC is a severe disease of the intestinal tract and is one of the main causes of morbidity and mortality among very low–birthweight (VLBW; <1,500 grams [3 pounds, 4 ounces]) infants.
[3] BPD is a form of chronic lung impairment occurring as a result of lungs that do not develop fully in a newborn. It is the most prevalent, serious morbidity in preterm infants.

Donor human milk is provided through human milk banks that collect donor human milk, screen it for disease, pasteurize it, and freeze it for distribution for hospitals' use in the NICU setting. There are three human milk banks currently in California. It is estimated that across the United States, 87% of hospitals with Level III or Level IV NICUs, which provide care to the most complex and critically ill infants, have donor human milk available.

Bill Language

As amended on June 17, 2024, AB 3059 would require state-regulated health plans and policies[4] to provide coverage for medically necessary pasteurized donor human milk obtained from a licensed tissue bank and would exempt general acute care hospitals from the requirement to acquire a tissue bank license to store or distribute human milk obtained from a licensed tissue bank. The March 11th version of the bill, as analyzed by CHBRP, would have required coverage for donor human milk and human milk-derived fortifiers, and the tissue bank license exemption for general acute care hospitals was only applicable for donor human milk obtained from a mother's milk bank (not-for-profit human milk bank). There are two primary differences between these bill versions:

- **Human milk-derived fortifiers:** The June 17th version of AB 3059 does not include a mandate for coverage for human milk-derived fortifiers.
- **For-profit milk banks:** The benefit mandate under the June 17th version of AB 3059 would apply to donor human milk from a licensed tissue bank. Of the three human milk banks licensed as tissue banks in California, two are not-for-profit and one is for profit. Thus, CHBRP assumes the amended language allows for the inclusion of coverage for donor human milk obtained from a for-profit milk bank.

Analytic Approach

CHBRP's approach and assumptions to calculate the updated fiscal impacts of AB 3059 as amended on June 17, are consistent with the approach taken in its previous analysis of AB 3059, published in April 2024.

Update in Expenditure Impacts

In its analysis of AB 3059, as amended on March 11, CHBRP estimated total net annual expenditures would increase by $9,668,000 for enrollees in state-regulated plans and policies. This figure was inclusive of an approximate $8.6 million shift in expenses for donor human milk and human milk-derived fortifiers from providers (hospitals) to health insurance subject to AB 3059, and cost offsets due to an estimated increase in prevented cases of NEC and BPD. CHBRP's revised estimates of AB 3059, as amended on June 17, project an increase of $2,225,000 in total annual expenditures; this estimate is $7,443,000 lower than CHBRP's previous estimated fiscal impact of the bill, as amended on March 11. See Appendix A of this letter for additional details on the analysis of benefit coverage, utilization, and expenditure estimates of the bill as amended on June 17.

The difference between the two estimates is due primarily to the lack of the mandate to cover human milk-derived fortifiers under the bill as amended on June 17; the unit cost of the human milk-derived fortifiers is approximately $10,000 per NICU stay, compared to $1,000 per NICU stay. Although the inclusion of for-profit milk banks, in the bill as amended June 17, would potentially expand the supply of donor human milk available under the proposed benefit, this change is not anticipated to significantly alter utilization or cost. At baseline, most medically eligible infants already receive donor human milk, therefore the fiscal impacts of the mandate would be due primarily to existing utilization rather than new utilization occurring as a result of the mandate.

[4] Plans regulated by the Department of Managed Health Care (DMHC) and policies regulated by the California Department of Insurance (CDI).

Public Health Impacts

As amended on June 17, AB 3059 no longer impacts the benefit coverage of human milk-derived fortifiers. In its previous analysis of AB 3059, CHBRP found inconclusive evidence on the general use of human milk-derived fortifiers versus bovine milk-derived fortifiers in health outcomes for preterm and VLBW infants. Therefore, CHBRP does not anticipate the absence of the mandate to cover human milk-derived fortifiers in the June 17th version of the bill to impact public health outcomes.

CHBRP does not anticipate any changes from its estimates of the public health impacts of AB 3059 as amended on June 17, to the donor human milk benefit mandate. In the first year postmandate, CHBRP estimates AB 3059 as amended on June 17, would result in a reduction in the average number of NEC and BPD cases of 0.62 and 1.75 cases per year, respectively, as well as a corresponding reduction in length of hospital stay (18 days for medically-treated NEC; 50 days for surgically-treated NEC; 26 days for BPD). This estimate is supported by clear and convincing evidence that donor human milk is medically effective in preventing NEC and BPD in preterm infants and an assumed increase in utilization (1%) of donor human milk.

CHBRP's faculty and staff appreciate the opportunity to provide these analyses and we will be happy to respond to any of your questions.

Sincerely,

Garen L. Corbett, MS
Director
California Health Benefits Review Program

Appendix A. Benefit Coverage, Utilization, and Cost

This appendix provides details related to the fiscal analysis of AB 3059 as amended on June 17.

Benefit Coverage

If enacted, AB 3059 would apply to the state-regulated plans offered through the California Public Employees' Retirement System (CalPERS), and Medi-Cal beneficiaries enrolled in DMHC-regulated plans. However, donor human milk is a covered benefit under the Medi-Cal program and therefore AB 3059 would not impact benefit coverage for Medi-Cal beneficiaries in DMHC-regulated plans.

As shown in Table 1 below, at baseline, CHBRP estimates for baseline coverage of donor human milk do not change due to the amendments taken on June 17, 2024. CHBRP estimates that 39.13%, or 8,724,735 enrollees have coverage for donor human milk. This primarily includes Medi-Cal beneficiaries in DMHC-regulated plans. Postmandate, CHBRP estimates that 100%, or 22,297,000 enrollees, would have coverage for donor human milk, a 155.56% increase. This increase is based on the CHBRP assumption that all noncompliant plans and policies at baseline would become compliant postmandate.

Table 1: AB 3059 Impacts on Benefit Coverage, 2025

	Baseline (2025)	Postmandate Year 1 (2025)	Increase/ Decrease	Percentage Change
Total enrollees with health insurance subject to state benefit mandates (a)	22,297,000	22,297,000	0	0.00%
Total enrollees with health insurance impacted by AB3059	13,572,265	13,572,265	0	0.00%
Percentage of enrollees with coverage for mandated benefit	39.13%	100.00%	60.87%	155.56%
Number of enrollees with fully compliant coverage for mandated benefit	8,724,735	22,297,000	13,572,265	155.56%

Source: California Health Benefits Review Program, 2024.
Notes: (a) Enrollees in plans and policies regulated by DMHC or CDI. Includes those associated with Covered California, CalPERS, or Medi-Cal.[5]
Key: CalPERS = California Public Employees' Retirement System; CDI = California Department of Insurance; DMHC = Department of Managed Health Care.

Utilization

CHBRP's estimates on utilization of the proposed donor human milk benefit would not change based on the June 17th amendments. The majority of infants eligible to receive donor human milk are provided the milk at baseline; CHBRP estimates that 3,471 enrollees, or 99% of VLBW and very preterm infants in California NICUs, utilize donor human milk in the inpatient setting. Postmandate, CHBRP estimates that 3,507, or 100%, of medically eligible enrollees, would utilize donor human milk in the inpatient setting, an increase of 1% or 35 infants (Table 2).

At baseline, CHBRP estimates limited use of donor human milk in the outpatient setting due to medical necessity guidelines and utilization management approaches such as prior authorization. While coverage for donor human milk would increase to 100% postmandate, it is important to note that benefit coverage does not equal utilization. CHBRP assumed continued limited use of donor human milk in the outpatient setting postmandate due to the continued use of medical necessity guidelines and utilization management approaches and to access barriers such as availability of the local supply, access to a local milk bank, and the requirement of a prescription from a physician.

[5] For more detail, see CHBRP's resource *Sources of Health Insurance in California*, available on CHBRP's website.

It is possible that postmandate, AB 3059 as amended on June 17, may alleviate potential challenges with the supply of donor human milk because the bill increases the number of tissue banks from which donor human milk would be available as a covered benefit for eligible patients. CHBRP estimates that medically eligible infants would be less likely to face delays in the provision of donor human milk postmandate.

Table 2: Impacts of AB 3059 on Utilization and Unit Cost, 2025.

	Baseline (2025)	Postmandate Year 1 (2025)	Increase/ Decrease	Percentage Change
Eligible babies at risk for NEC	3,507	3,507	-	0.00%
Eligible babies at risk for BPD	3,507	3,507	-	0.00%
Utilization				
Enrollees utilizing donor human milk benefit	3,471	3,507	35	1.01%
Unit Costs				
Average unit cost of donor human milk (per NICU stay)	$1,000	$1,000	-	0.00%
Average expenses paid for donor human milk (per NICU stay) by providers (hospitals) for services related to the mandated benefit that are not covered by insurance	$1,000	$0	n/a	n/a
Expenditures for donor human milk benefit per enrollee covered by insurance	$0	$1,000	n/a	n/a
Cost offsets				
Utilization of NEC-related services	29.79	29.17	(0.62)	-2.08%
Utilization of BPD-related services	703.06	701.31	(1.75)	-0.25%
Average cost of NEC-related hospitalization	$176,172.81	$176,172.81	-	0.00%
Average cost of BPD-related hospitalization	$68,775.14	$68,775.14	-	0.00%
Total cost offsets for NEC-related services	n/a	n/a	-$109,219.21	n/a
Total cost offsets for BPD-related services	n/a	n/a	-$120,581.14	n/a

Source: California Health Benefits Review Program, 2024.
Key: BPD = bronchopulmonary dysplasia; NEC = necrotizing enterocolitis; NICU = neonatal intensive care unit.

Expenditures

Postmandate, AB 3059 would result in changes in total premiums paid by employers and enrollees of DMHC-regulated plans and CDI-regulated policies of newly covered benefits]
pl Total employee-sponsored premiums would increase by $1,335,000 (0.0021% increase) and total CalPERS employer premiums would increase by $132,000 (a 0.0019% increase). Total Medi-Cal premiums would decrease by $77,000 (0.0003% decrease). Enrollee premiums (expenditures) would increase by $414,000 for enrollees with individually purchased insurance, a 0.0020% increase, and $421,000 for enrollees with group insurance, a 0.0021% increase (Table 3).

CHBRP estimates that enrollee expenses for covered benefits would not increase postmandate.

Table 3: AB 3059 Impacts on Expenditures, 2025.

	Baseline (2025)	Postmandate Year 1 (2025)	Increase/ Decrease	Percentage Change
Premiums				
Employer-sponsored (a)	$64,203,365,000	$64,204,700,000	$1,335,000	0.0021%
CalPERS employer (b)	$6,974,311,000	$6,974,443,000	$132,000	0.0019%
Medi-Cal (excludes COHS) (c)	$30,043,243,000	$30,043,166,000	-$77,000	-0.0003%
Enrollee Premiums (expenditures)				
Enrollees, individually purchased insurance	$20,751,015,000	$20,751,429,000	$414,000	0.0020%
Outside Covered California	$5,089,510,000	$5,089,614,000	$104,000	0.0020%
Through Covered California	$15,661,505,000	$15,661,815,000	$310,000	0.0020%
Enrollees, group insurance (d)	$20,397,418,000	$20,397,839,000	$421,000	0.0021%
Enrollee out-of-pocket expenses				
Cost sharing for covered benefits (deductibles, copayments, etc.)	$15,689,351,000	$15,689,351,000	$0	0.0000%
Expenses for noncovered benefits (e) (f)	$0	$0	$0	0.0000%
Total Expenditures	$158,058,703,000	$158,060,928,000	$2,225,000	0.00001%

Source: California Health Benefits Review Program, 2024.
Notes: (a) In some cases, a union or other organization. Excludes CalPERS.
(b) Includes only CalPERS enrollees in DMHC-regulated plans. Approximately 51.6% are state retirees, state employees, or their dependents.
(c) Includes only Medi-Cal beneficiaries enrolled in DMHC-regulated plans. In addition, it seems likely that there would also be a proportional decrease of $0.01 million for Medi-Cal beneficiaries enrolled in COHS managed care.
(d) Enrollee premium expenditures include contributions by enrollees to employer (or union or other organization)-)-sponsored health insurance, health insurance purchased through Covered California, and any contributions to enrollment through Medi-Cal to a DMHC-regulated plan.
(e) Includes only expenses paid directly by enrollees (or other sources) to providers for services related to the mandated benefit that are not covered by insurance at baseline. This only includes those expenses that will be newly covered postmandate. Other components of expenditures in this table include all health care services covered by insurance.
(f) For covered benefits, such expenses would be eliminated, although enrollees with newly compliant benefit coverage might pay some expenses if benefit coverage is denied (through utilization management review).
Key: CalPERS = California Public Employees' Retirement System; COHS = County Organized Health Systems; DMHC = Department of Managed Health Care.

Postmandate, CHBRP estimates that hospitals' expenses for the provision of donor human milk to medically eligible infants would decrease by $2,146,000 (Table 4).

Table 4: AB 3059 Impacts on Provider Expenditures, 2025.

	Baseline (2025)	Postmandate Year 1 (2025)	Increase/ Decrease	Percentage Change
Provider expenses for noncovered benefits (e) (f)				
Donor Human Milk	$2,146,000	$0	-$2,146,000	-100.00%
Total Provider Expenditures	$2,146,000	$0	-$2,146,000	-100.0000%

Source: California Health Benefits Review Program, 2024.

Premiums

Table 5 and Table 6, below, present baseline and postmandate expenditures by market segment for DMHC-regulated plans and CDI-regulated policies. The tables present per member per month (PMPM) premiums, enrollee expenses for both covered and noncovered benefits, and total expenditures (premiums as well as enrollee expenses). Changes in premiums as a result of AB 3059 would vary by market segment.[6]

Postmandate, for DMHC-regulated plans, the changes in total premiums would range from a decrease of $0.0008 PMPM in Medi-Cal Under 65 plans (0.0003% decrease) to an increase of $0.0151 PMPM (0.0023% increase) in DMHC-regulated small-group commercial plans. For CDI-regulated plans, the changes in total premiums would range from a decrease of $0.0009 PMPM in large-group commercial plans (0.0001% decrease) to an increase of $0.0151 PMPM in individual commercial plans (0.0021% increase).

Enrollee Expenses

AB 3059–related changes in cost sharing for covered benefits (deductibles, copays, etc.) and out-of-pocket expenses for noncovered benefits would vary by market segment.[7]

Postmandate, for DMHC-regulated plans, the changes in total enrollee expenses would range from a decrease of $0.0008 PMPM (0.0003% decrease) in Medi-Cal Under 65 plans to an increase of $0.0017 PMPM (0.0002% increase) in small-group commercial plans. For CDI-regulated plans, changes in total enrollee expenditures would range from a decrease of $0.0009 PMPM (0.0001% decrease) in large group commercial plans to $0.0017 (0.0010% increase) PMPM in individual commercial plans.

[6] Note that such changes are related to the number of enrollees (see Table 1, Table 5, and Table 6), with health insurance that would be subject to AB 3059.

[7] Note that such changes are related to the number of enrollees (see Table 1, Table 5, and Table 6) with health insurance that would be subject to AB 3059 expected to use the relevant tests, treatments, or services during the year after enactment.

Table 5: Baseline Per Member Per Month Premiums and Total Expenditures by Market Segment, California, 2025

	DMHC-Regulated						CDI-Regulated			
	Commercial Plans (by Market) (a)			Publicly Funded Plans			Commercial Plans (by Market) (a)			
	Large Group	*Small Group*	*Individual*	*CalPERS (b)*	*Medi-Cal (excludes COHS) (c)*		*Large Group*	*Small Group*	*Individual*	**TOTAL**
					Under 65	*65+*				
Enrollee Counts										
Total enrollees in plans/policies subject to state mandates (d)	7,864,000	2,161,000	2,378,000	894,000	7,791,000	818,000	293,000	62,000	36,000	22,297,000
Total enrollees in plans/policies subject to AB3059	7,864,000	2,161,000	2,378,000	894,000	7,791,000	818,000	293,000	62,000	36,000	22,297,000
Premium Costs										
Average portion of premium paid by employer (e)	$527.59	$461.25	$0.00	$650.10	$263.09	$554.83	$585.36	$533.03	$0.00	$101,220,919,000
Average portion of premium paid by enrollee	$138.26	$193.80	$716.04	$133.99	$0.00	$0.00	$215.50	$174.12	$736.61	$41,148,433,000
Total Premium	**$665.85**	**$655.05**	**$716.04**	**$784.09**	**$263.09**	**$554.83**	**$800.87**	**$707.15**	**$736.61**	**$142,369,352,000**
Enrollee Expenses										
Cost sharing for covered benefits (deductibles, copays, etc.)	$48.82	$146.52	$209.79	$56.41	$0.00	$0.00	$119.25	$246.95	$203.25	$15,689,351,000
Expenses for noncovered benefits (f)	$0.01	$0.01	$0.01	$0.01	$0.00	$0.00	$0.00	$0.01	$0.01	$2,146,000
Total Expenditures	**$714.68**	**$801.58**	**$925.84**	**$840.52**	**$263.09**	**$554.83**	**$920.12**	**$954.11**	**$939.87**	**$158,060,849,000**

Source: California Health Benefits Review Program, 2024.
Notes: (a) Includes enrollees with grandfathered and nongrandfathered health insurance acquired outside or through Covered California (the state's health insurance marketplace).
(b) Includes only CalPERS enrollees in DMHC-regulated plans. Approximately 51.6% are state retirees, state employees, or their dependents.
(c) Includes only Medi-Cal beneficiaries enrolled in DMHC-regulated plans. Includes those who are also Medicare beneficiaries.
(d) Enrollees in plans and policies regulated by DMHC or CDI. Includes those associated with Covered California, CalPERS, or Medi-Cal.[8]
(e) In some cases, a union or other organization, or Medi-Cal for its beneficiaries.
(f) Includes only those expenses that are paid directly by enrollees (or other sources) to providers for services related to the mandated benefit that are not covered by insurance at baseline. This only includes those expenses that will be newly covered, postmandate. Other components of expenditures in this table include all health care services covered by insurance.
Key: CalPERS = California Public Employees' Retirement System; CDI = California Department of Insurance; COHS = County Organized Health Systems; DMHC = Department of Managed Health Care.

[8] For more detail, see CHBRP's resource *Sources of Health Insurance in California*, available on CHBRP's website.

Table 6: Postmandate Change in Per Member Per Month Premiums and Total Expenditures by Market Segment, California, 2025

	DMHC-Regulated						CDI-Regulated			
	Commercial Plans (by Market) (a)			Publicly Funded Plans			Commercial Plans (by Market) (a)			
	Large Group	*Small Group*	*Individual*	*CalPERS (b)*	Medi-Cal (excludes COHS) (c) *Under 65*	Medi-Cal (excludes COHS) (c) *65+*	*Large Group*	*Small Group*	*Individual*	**TOTAL**
Enrollee Counts										
Total enrollees in plans/policies subject to state mandates (d)	7,864,000	2,161,000	2,378,000	894,000	7,791,000	818,000	293,000	62,000	36,000	22,297,000
Total enrollees in plans/policies subject to AB3059	7,864,000	2,161,000	2,378,000	894,000	7,791,000	818,000	293,000	62,000	36,000	22,297,000
Premium Costs (postmandate change)										
Average portion of premium paid by employer (e)	$0.0112	$0.0107	$0.0000	$0.0122	-$0.0008	$0.0000	-$0.0006	$0.0102	$0.0000	$1,389,000
Average portion of premium paid by enrollee	$0.0029	$0.0045	$0.0143	$0.0025	$0.0000	$0.0000	-$0.0002	$0.0033	$0.0151	$834,000
Total Premium	$0.0141	$0.0151	$0.0143	$0.0147	-$0.0008	$0.0000	-$0.0009	$0.0135	$0.0151	**$2,225,000**
Enrollee Expenses (postmandate change)										
Cost sharing for covered benefits (deductibles, copays, etc.)	$0.0000	$0.0000	$0.0000	$0.0000	$0.0000	$0.0000	$0.0000	$0.0000	$0.0000	$0
Expenses for noncovered benefits (f)	-$0.0133	-$0.0135	-$0.0135	-$0.0133	$0.0000	$0.0000	$0.0000	-$0.0135	-$0.0135	-$2,146,000
Total Expenditures	$0.0008	$0.0017	$0.0008	$0.0015	-$0.0008	$0.0000	-$0.0009	$0.0001	$0.0017	**$77,000**
Postmandate Percent Change										
Percent change insured premiums	0.0021%	0.0023%	0.0020%	0.0019%	-0.0003%	0.0000%	-0.0001%	0.0019%	0.0021%	0.0016%
Percent Change total expenditures	0.0001%	0.0002%	0.0001%	0.0002%	-0.0003%	0.0000%	-0.0001%	0.0000%	0.0002%	0.0000%

Source: California Health Benefits Review Program, 2024.
Notes: (a) Includes enrollees with grandfathered and nongrandfathered health insurance acquired outside or through Covered California (the state's health insurance marketplace).
(b) Includes only CalPERS enrollees in DMHC-regulated plans. Approximately 51.6% are state retirees, state employees, or their dependents.
(c) Includes only Medi-Cal beneficiaries enrolled in DMHC-regulated plans. Includes those who are also Medicare beneficiaries.
(d) Enrollees in plans and policies regulated by DMHC or CDI. Includes those associated with Covered California, CalPERS, or Medi-Cal.[9]
(e) In some cases, a union or other organization, or Medi-Cal for its beneficiaries.
(f) Includes only those expenses that are paid directly by enrollees (or other sources) to providers for services related to the mandated benefit that are not covered by insurance at baseline. This only includes those expenses that will be newly covered, postmandate. Other components of expenditures in this table include all health care services covered by insurance.
Key: CalPERS = California Public Employees' Retirement System; CDI = California Department of Insurance; COHS = County Organized Health Systems; DMHC = Department of Managed Health Care.

[9] For more detail, see CHBRP's resource *Sources of Health Insurance in California*, available on CHBRP's website.