

ITEM 17 H
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Labor Code Section 3212.1

Statutes 1982, Chapter 1568

Statutes 2006, Chapter 78, Section 8 (AB 1805)

Cancer Presumption - Firefighters

05-PGA-31 (CSM-4081, 06-RL-4081/4416-01)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Cancer Presumption - Firefighters* program (CSM-4081, 06-RL-4081/4416-01) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Cancer Presumption - Firefighters* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current "boilerplate language"?**

Staff finds that it is appropriate to approve the SCO's request to insert the source documentation and records retention language because it would conform the parameters and guidelines for the *Cancer Presumption - Firefighters* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulation. Therefore, staff included the language requested by the SCO.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Cancer Presumption - Firefighters* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Requestor

State Controller's Office

Test Claim Chronology

02/23/1984 Board of Control (predecessor to the Commission) adopts Statement of Decision

10/24/1985 Commission adopts parameters and guidelines

03/26/1987 Commission amends parameters and guidelines

07/18/2006 Statutes 2006, chapter 78 (AB 1805) is enacted requiring the Commission to reconsider the Statements of Decision and parameters and guidelines for the *Cancer Presumption - Firefighters* program

09/27/2007 Commission adopts Statement of Decision on Reconsideration, and amends parameters and guidelines to end reimbursement for program effective July 1, 2008

State Controller's Request to Amend Parameters and Guidelines to add Boilerplate Language Chronology

01/23/2003 The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the *School Bus Safety II* parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language

04/07/2006 SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the *Cancer Presumption - Firefighters* program analyzed here

04/27/2006 Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment

07/23/2009 Commission reissues SCO's request for amendment of parameters and guidelines for comment

08/18/2009 Department of Finance files comments

10/13/2009 Commission issues draft staff analysis

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Cancer Presumption - Firefighters* (CSM-4081, 06-RL-4081/4416-01) add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit.

Test Claim Decision and Parameters and Guidelines

Labor Code section 3212.1 provides a limited presumption easing the burden of proving industrial causation for specified firefighters that developed cancer during the period of employment. Under this statute, the employee could have the benefit of the presumption that the cancer arose out of and in the course of employment if the employee could show that he or she

was exposed, while in the service of the department or unit, to a known carcinogen and that the carcinogen was reasonably linked to the disabling cancer.

On February 23, 1984, the Board of Control adopted a Statement of Decision on Labor Code section 3212.1, determining that the statute constituted a reimbursable state-mandated program.

On October 24, 1985, the Commission adopted the parameters and guidelines for this program.

In 2006, AB 1805 (Statutes 2006, chapter 78) was enacted requiring the Commission to reconsider the Statements of Decision and parameters and guidelines for the *Cancer Presumption - Firefighters* program. On September 27, 2007, the Commission adopted a Statement of Decision on Reconsideration, finding that the effective July 1, 2008, the program was no longer a state-mandated program.¹ The Commission also amended the parameters and guidelines ending reimbursement on June 30, 2008.²

Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.³ The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission's intentions as well as the SCO's expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines:⁴

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

⁴ The Commission also adopted other boilerplate language that is not relevant to this request.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

VI. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.*

The Commission has included this language, commonly referred to as "boilerplate language," in all parameters and guidelines adopted on or after January 23, 2003.

SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.⁵

The parameters and guidelines for the *Cancer Presumption - Firefighters* program is one of the 49 programs the SCO is requesting be amended.

Comments on the Proposal

On April 27, 2006, the Commission issued the SCO's request to amend the parameters and guidelines for comment. No comments were filed. On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.⁶

In its comments, Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

⁵ Exhibit D.

⁶ Exhibit E.

Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

Commission staff issued the draft staff analysis on October 13, 2009.⁷ No comments were filed.

Related Litigation (*Clovis Unified School Dist., et al. v. State Controller*)

This case involves a challenge by school districts and community college districts on reductions made by the State Controller's Office to reimbursement claims for several mandated programs.⁸ The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

Court of Appeal Filings (Third District Court of Appeal, Case No. C061696). Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

Discussion

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

Issue: Should the parameters and guidelines be amended to add the Commission's current "boilerplate language"?

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines that clarify what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, as detailed on pages 4 and 5 of this analysis, has been included in all parameters and guidelines adopted since 2003.

⁷ Exhibit F.

⁸ The Commission is not a party to this action.

In addition, section 1183.1, subdivision (a) (5) and (6) require that the parameters and guidelines contain, among other things, the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language. This analysis pertains to the parameters and guidelines for the *Cancer Presumption - Firefighters - Firefighters* program.⁹

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Cancer Presumption - Firefighters* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations.

Therefore, staff finds that it is appropriate to approve the SCO's request, and made the following modifications to the parameters and guidelines:

III. Period of Reimbursement

Government Code section 17557, subdivision (d) states that a parameters and guidelines amendment filed on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. This amendment was filed on April 7, 2006, (after the claiming deadline) establishing reimbursement for fiscal year 2005-2006. Therefore, reimbursement for this amendment shall begin on July 1, 2005, and end on June 30, 2008 because the reimbursement for the program ends on that date.

Staff clarified that the proposed amendments would be effective from July 1, 2005 through June 30, 2008.

IV. Reimbursable Activities

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

⁹ The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate

VI. D. Records Retention

At the request of the SCO, staff removed the existing language regarding records retention, and replaced it with the following boilerplate language regarding records retention.

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.*

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Cancer Presumption - Firefighters* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Adopted: December 24, 1985
Amended: March 26, 1987
Amended: September 27, 2007
Proposed Amendment: January 29, 2010

Proposed Amendment to Parameters and Guidelines

Labor Code Section 3212.1

Statutes 1982, Chapter 1568

Statutes 2006, Chapter 78, Section 8 (AB 1805), ~~Statutes of 1982~~

Firefighter's Cancer Presumption

05-PGA-31 (CSM-4081, 06-RL-4081/4461-01)

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement and ends on June 30, 2008

I. SUMMARY OF MANDATE

Chapter 1568, Statutes of 1982, added Section 3272.1 to the Labor Code. This section states that cancer that has developed or manifested itself in firefighters will be presumed to have arisen out of and in the course of employment, unless the presumption is controverted by other evidence. The presumption is extended to a firefighter following termination of service for a period of three calendar months for each year of requisite service, but not to exceed sixty (60) months in any circumstance, commencing with the last date actually worked in the specified capacity.

II. BOARD OF CONTROL DECISION

On February 23, 1984, the Board of Control determined that fire departments will incur "costs mandated by the state" as a result of Chapter 7568, Statutes of 1982.

III. ELIGIBLE CLAIMANTS

Any fire department of a city, a county, a city and county, a focal fire protection district, or other public or municipal corporation or political subdivision of the state which employs firefighters.

IV. OPERATIVE DATE OF MANDATE

The operative date of Chapter 1568, Statutes of 1982 is January 7, 1983 through January 1, 1989, unless a statute which is chaptered before January 1, 1989 deletes or extends the repealer date for Labor Code Section 3212.1.

V. PERIOD OF CLAIM

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement and ends on June 30, 2008.

Claims may be filed for costs paid for workers' compensation claims where the date of injury is from January 1, 1983 to January 1, 1989, unless a statute which is chaptered before January 1, 1989 deletes or extends the repealer date for Labor Code Section 3212.1.

The claims must be submitted to the State Controller in accordance with existing statutory deadlines, except that a claimant shall be entitled to file a claim for all costs associated with a particular case upon completion of the case or at such earlier or later time as costs have accrued

and been paid on an interim or post-award/compromise and release basis. Beginning July 1, 2008, reimbursement is not required for this program.

VI. FORMULA FOR DETERMINATION OF CASES SUBJECT TO REIMBURSEMENT

Reimbursement requires a demonstration of elements as follows:

A. A claim under Chapter 1568, Statutes of 1982 is reimbursable if:

- A. The worker is a firefighter within the meaning of Labor Code Section 3212.1; and
- B. The worker has cancer which has caused the disability; and
- C. The worker's cancer developed or manifested itself during a period while the worker was in the service of the employer, or within the extended period provided for in Labor Code Section 3212.1; and
- D. The worker was exposed, while in the service of the employer, to one or more known carcinogens as defined by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations; and
- E. The one or more carcinogens to which the worker was exposed are reasonably linked to the disabling cancer, as demonstrated by competent medical evidence.

VII. CLAIMING FORMULA

If a case is reimbursable under Section VI, fifty percent (50%) of the reimbursable costs as defined in Section VIII shall be paid to claiming agencies.

VIII. REIMBURSABLE COSTS

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

A. Insured Local Agencies and Fire Districts

Insured local entities may be reimbursed for any increases for workers' compensation premium costs directly and specifically attributable to Labor Code Section 3212.1.

B. Self-Insured Local Agencies

All actual costs of a claim based upon the presumption set forth in Labor Code Section 3212.1 are reimbursable, including but not limited to the following:

(1) Administrative Costs

(a) Staff Costs

1. Salaries and employee benefits;
2. Costs of supplies;
3. Legal counsel costs;
4. Clerical support;
5. Normal local rates of reimbursement for necessary and reasonable travel and related expenses for staff;
6. Amounts paid to adjusting agencies.

(b) Overhead Costs

Counties, cities and special districts may claim an indirect cost through an indirect cost rate proposal prepared in accordance with the provision of Federal Regulation OASC-10 (used in conjunction with FMC 74-4) as a percentage of direct salaries and wages. Indirect costs may include costs of space, equipment, utilities, insurance, administration, etc. (i.e., those elements of indirect cost incurred as the result of the mandate originating in the performing unit and the costs of central government services distributed through the central services cost allocation plan and not otherwise treated as direct costs). Computation of the indirect cost rate must accompany the claim showing how that vote was derived.

(2) Benefit Costs

Actual benefit costs under this presumption shall be reimbursable and shall include, but are not limited to:

(a) All medical expenses.

(b) Necessary and reasonable travel and related expenses.

(c) All compensation benefits, including but not limited to:

1. Permanent disability benefits;
2. Life pension benefits;
3. Death benefits;
4. Temporary disability benefits or full salary in lieu of temporary disability benefits as required by Labor Code Section 4850, or other local charter provision or ordinance in existence on January 1, 1983.

Provided, however, that salary in lieu of temporary disability benefits were payable under local charter provision or ordinance in existence on January 1, 1983. Provided, however, that salary in lieu of temporary disability benefits

payable under local charter provision or ordinance shall be reimbursable only to the extent that those benefits do not exceed the benefits required by Labor Code Section 4850.

IX. OFFSETTING, SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claimed. Such offsetting savings shall include, but not be limited to, savings in the cost of personnel, service or supplies, or increased revenues obtained by the claimant.

In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

X ~~SUPPORTING DATA~~ RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section VIII, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. ~~For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file and made available on the request of the State Controller.~~

XI. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the Law have been complied with; and

THAT I am the person authorized by the local agency to file claims with the State of California.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code