

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

Health and Safety Code Section 10901(a), (b), (c)

Statutes 1990, Chapter 1603

Perinatal Services
05-PGA-38 (CSM-4397)

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 *Perinatal Services* program (CSM-4397) 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 *Perinatal Services* 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 *Perinatal Services* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations. 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 *Perinatal Services* 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

Chronology

02/25/1993	Commission on State Mandates (Commission) adopts Statement of Decision
09/23/1993	Commission adopts parameters and guidelines
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 <i>School Bus Safety II</i> 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 <i>Perinatal Services</i> 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 *Perinatal Services* program (CSM-4397) 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.

Test Claim Decision and Parameters and Guidelines

The County of Fresno filed a test claim alleging that the test claim statutes together with the 1991 model needs assessment protocol provided by the State Health and Welfare Agency imposed a reimbursable state mandate upon local agencies regarding establishment of protocols and application of assessment procedures for maternal substance abuse and for intervention activities on behalf of a substance exposed infant.

The Commission partially approved this test claim on February 25, 1993, concluding that the provisions of Health and Safety Code section 10901, subdivisions (a), (b) and (c) do impose a reimbursable state-mandated program upon local agencies regarding establishment of protocols and application of assessment procedures for maternal substance abuse and for intervention activities on behalf of a substance exposed infant pursuant to section 6, article XIII B of the California Constitution.¹

¹ Exhibit A.

On September 23, 1993 the Commission on State Mandates adopted the parameters and guidelines for this program.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.

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.

² Exhibit B.

³ Exhibit C.

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

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 *Perinatal Services* 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 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.

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

⁵ Exhibit D.

⁶ Exhibit E.

⁷ Exhibit F.

⁸ The Commission is not a party to this action.

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.

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 *Perinatal Services* program.⁹

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

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Perinatal Services* 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:

IV. 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.

Staff clarified that the proposed amendments would be effective on July 1, 2005.

V. Reimbursable Costs

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.

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

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.

VII. *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 *Perinatal Services* 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: September 23, 1993
Proposed Amendment: January 29, 2010

Proposed Amendment to Parameters and Guidelines

Health and Safety Code section 10901(a), (b), (c)

Statutes 1990, Chapter 1603, ~~Statutes of 1990~~

Perinatal Services

05-PGA-38 (CSM-4397)

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

I. SUMMARY OF MANDATE

Health and Safety Code section 10901, subdivisions (a), (b), and (c), as added by Chapter 1603, Statutes of 1990, (Chapter 1603/90), requires each county to perform the following:

- (a) Each county shall establish protocols between county health departments, county welfare departments, and all hospitals in the county, regarding the application and use of an assessment of the needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Section 11165.13 of the Penal Code.
- (b) The assessment of the needs shall be performed by a health practitioner, as defined in Section 11165.8 of the Penal Code, or a medical social worker. The needs assessment shall be performed before the infant is released from the hospital.
- (c) The purpose of the assessment of the needs is to do all of the following:
 - (1) Identify needed services for the mother, child, or family, including, where applicable, services to assist the mother caring for her child and services to assist maintaining children in their homes.
 - (2) Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, including a referral to the county welfare department for child welfare services.
 - (3) Gather data for information and planning purposes.

II. COMMISSION ON STATE MANDATES DECISION

At its hearing of February 25, 1993, the Commission determined that Health and Safety Code section 10901, subdivisions (a), (b), and (c) as added by Chapter 1603/90, does impose a new program or a higher level of service in an existing program upon local agencies within the meaning of Government Code section 17514 and section 6 of article XIII B of the California Constitution.

The Commission also determined that the addition of Health and Safety Code sections 10900 and 10902, and Penal Code section 11165.13, the amendment of Penal Code section 11166, and the enactment of the State Health and Welfare Agency Model Needs Assessment Protocol do not impose a new program or higher level of service in an existing program upon local agencies within the meaning of Government Code section 17514 and section 6 of article XIII B of the California Constitution.

III. ELIGIBLE CLAIMANTS

All counties that incur increased costs as the result of this mandated program are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

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

Section 17557 of the Government Code requires test claims to be submitted on or before December 31 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year.

Chapter 1603, Statutes of 1990, became effective January 1, 1991. The test claim for this mandated program was filed by the County of Fresno on July 15, 1991. Therefore, reimbursement claims may be filed for costs incurred on or after January 1, 1991.

NOTE: Penal Code sections 11165.13 and 11166 became operative July 1, 1991. The Commission determined that these two sections did not impose reimbursable program activities.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code, section 17561 (d) (3), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs per claimant for a given fiscal year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

V. 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) Scope of the Mandate

Counties shall be reimbursed for the increased costs which they are required to incur to ensure needs assessments and referrals are performed for substance- exposed infants prior to release from a hospital.

Protocols are to be established between county health departments, county welfare departments, and all hospitals in the county to ensure needs assessments and referrals are performed.

Needs assessments are to be performed by a health practitioner, as defined, or a medical social worker. The purpose of the needs assessments includes all of the following: (1) identify needed services for mother, child, or family, including, where applicable, services to assist the mother caring for her child and to maintain the child in the home, (2) determine the newborn's risk level upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, and (3) gathering of data for information and planning purposes.

Referrals shall be to county health and welfare departments for maternal, child and family health and welfare services.

(b) Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable:

1. One-time only costs incurred in establishing protocols between county health departments, county welfare departments, and all hospitals in the county.
2. Costs incurred for first-line direct program supervision and quality assurance.
3. Costs incurred in identification of substance-exposed newborns by an employee in the health care setting, in accordance with hospital protocol.
4. Costs incurred for an initial screening and a more detailed needs assessment, as indicated, by health practitioner, as defined in Penal Code section 11165.8, or medical social worker prior to release from the hospital and identifying needed services for the mother, child, or family, including, where applicable, suggested services to maintain children in their homes.
5. Costs incurred for referral of a child and family to county health and welfare departments, when substance abuse affects the ability of the mother to be an effective parent. Referrals solely regarding suspected child abuse are not reimbursable activities.
6. Costs incurred for determining through the needs assessment the level of intervention and future services, if any, necessary to protect the newborn's health and safety. This decision-making activity is restricted to the time period in which the needs assessment is being completed before the infant is released from the hospital.

7. Costs incurred for data collection, analysis and planning, as required by a state agency and as necessary for completion of the needs assessment before release of a substance exposed infant from the hospital.

Allowable costs include salary and benefits (including clerical costs), services and supplies, postage, travel, laboratory costs, contract costs, overhead, and related costs that are incurred in discharge of this mandated program.

VI. CLAIM PREPARATION

Each reimbursement claim should show the actual increased costs incurred by the local agencies in complying with this mandated program. Actual costs for one fiscal year should be included in each claim. All claims for reimbursement of costs shall be submitted within 120 days of the issuance of the claims and instructions by the State Controller. If the initial costs do not exceed \$200, no reimbursement shall be allowed except as otherwise provided by Government Code section 17564. Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

Description of Activity

Claimed costs must be allocated according to the components of reimbursable activity described in Section V.B.

Supporting Documentation

Claimed costs should be supported by the following information. Detail and supporting documentation should be kept at the county level.

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandated program can be claimed. List cost of materials which have been consumed or expended specifically for the purposes of this mandate, including travel costs.

3. Allowable Overhead Costs

Indirect costs may only be claimed in the manner described by the State Controller in his claiming instructions, and utilizing county-approved indirect cost rate, if applicable.

VII. RECORD RETENTION SUPPORTING DATA

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 V, 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 and/or worksheets that show evidence of the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandated program, and made available on request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings that claimant experiences as a direct result of this mandated program must be deducted from the costs claimed. In addition, reimbursement specifically received from this mandate from any non-local source (e.g., federal or state grant) shall be identified and deducted so only net local costs are claimed.

Reimbursement claims submitted for costs incurred in providing services to Medi-Cal recipients under this mandated program must also be reduced by the amounts of any funds received for the provision of those services from: (a) the Federal government pursuant to Chapter 1179, Statutes of 1991 (SB 910); and (b) the State and/or Federal government under the provisions of the Medi-Cal program.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct;

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

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

Signature of Authorized Representative

Date

Title

Telephone Number

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