

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

Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701

Statutes 1991, Chapter 999,
Statutes 1992, Chapter 224

Rape Victims Counseling Center Notice
05-PGA-41 (CSM-4426)

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 *Rape Victims Counseling Center Notice* program (CSM-4426) 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 *Rape Victims Counseling Center Notice* 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 *Rape Victims Counseling Center Notice* 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 *Rape Victims Counseling Center Notice* 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

09/23/1993	Commission on State Mandates (Commission) adopts Statement of Decision
05/26/1994	Commission adopts parameters and guidelines
12/19/1996	Commission amends 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>Rape Victims Counseling Center Notice</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 *Rape Victims Counseling Center Notice* program (CSM-4426) 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 program requires local law enforcement agencies to revise their "Victims of Domestic Violence" cards to add information to assist rape victims; furnish a rape victim with the "Victims of Domestic Violence" card; notify the local rape victim counseling center when a victim is transported to a hospital for examination if approved by the victim, and verify whether the counseling center has been notified.

The County of Los Angeles filed a test claim on this program on December 29, 1991. The Commission approved the test claim on September 23, 1993, concluding that the test claim statutes constituted a reimbursable state-mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution.¹

¹ Exhibit A.

On May 26, 1994, the Commission adopted the parameters and guidelines for this program and on December 19, 1996, the Commission amended the parameters and guidelines.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 *Rape Victims Counseling Center Notice* 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 *Rape Victims Counseling Center Notice* 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 programs. There are other sections of the boilerplate language regarding the remedies available

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Rape Victims Counseling Center Notice* 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 Activities and Related 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

VII. Records Retention

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

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.

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 *Rape Victims Counseling Center Notice* 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: May 26, 1994
Amended: December 19, 1996
Proposed Amendment: January 29, 2010

Proposed Amended Amendment to Parameters and Guidelines

Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701

Statutes 1991, Chapter 999, ~~Statutes of 1991~~
Statutes 1992, Chapter 224, ~~Statutes of 1992~~

Rape Victims Counseling Center Notice
05-PGA-41 (CSM-4426)

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

I. Summary of Mandate

The provisions of Penal Code section 264.2, subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to: reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

II. Commission on State Mandates Decision

At its July 22, 1993, hearing, the Commission on State Mandates determined that the provisions of Penal Code section 264.2, subdivisions (b)(1), and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code section 13701, as amended by Chapter 999, Statutes of 1991, impose a reimbursable state mandated program by requiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon a request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the "Victims of Domestic Violence" card by adding information to assist rape victims, and to furnish a rape victim with a "Victims of Domestic Violence" card.

III. Eligible Claimants

Any city or county which incurs increased costs as a result of the subject state mandates is 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.

Chapter 999, Statutes of 1991, was approved by the Governor on October 13, 1991 and became operative on January 1, 1992 and Chapter 224, Statutes of 1992, was approved by the Governor on July 14, 1992 and became effective operative on January 1, 1993.

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for the state subject mandates was filed by the County of Los Angeles on December 29, 1992. Therefore, costs incurred for Chapter 999, Statutes of 1991, on or after its operative date of January 1, 1992, and costs incurred for Chapter 224, Statutes of 1992, on or after its effective operative date of January 1, 1993, are eligible for reimbursement.

Pursuant to Government Code section 17561, actual costs for one fiscal year shall be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

V. Reimbursable Activities and Related 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 Mandate

Local law enforcement agencies shall be reimbursed for the increased costs which they are required to incur to: reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape counseling center, notify the victim-selected local rape counseling center, and subject to the victim's approval and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

B. For each eligible claimant, the following one-time costs and continuing costs are reimbursable:

1. Reimbursable One-Time Costs

- a. Costs of updating policies and procedures to conform with the special requirements of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992.
- b. Costs of modifying existing record-keeping systems to provide reliable and timely retrieval of verification information required by Chapter 224, Statutes of 1992, but not to exceed \$2,000.

2. Reimbursable Continuing Costs

- a. Costs of reprinting the existing "Victims of Domestic Violence" card to add information, relating to rape victim services, required by Chapter 999, Statutes of 1991, but not to exceed one reprinting per fiscal year.
- b. Law enforcement's road officer, clerical, and dispatcher costs required to: request each victim's consent to notify a rape counseling center, each time alleged violation(s) include at least one violation of Penal Code section 261, 261.5, 262, 286, 288a, 289, alleged separately or in combination with other violations; furnish a rape victim with a "Victims of Domestic Violence" card; record, file, and/or data-process state mandated information; and, provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim.

VI. Claim Preparation and Submission

One-time costs and continuing costs that are reimbursable are limited to:

A. Employee Salaries and Benefits

- 1. For one-time costs and reprinting costs described in part V, paragraph B, 2 (a), show the name of the employee involved, the classification of the employee, state mandated functions performed, number of hours devoted to the function, productive hourly rates and benefits.
- 2. For continuing costs, excluding reprinting costs described in part V, paragraph B, 2 (a), unit costs must be claimed for each specified victim, based upon the following standard times:
 - a. 10 minutes - road officer's time related to the subject state mandates
 - b. 4 minutes - clerical duties related to recording, filing, and/or data processing
 - c. 2 minutes - dispatcher's time related to hospital verification

Each standard time is multiplied by the average productive hourly rate, including applicable indirect cost as specified in part VI, paragraph D herein, for road officers, clerical staff, and dispatchers assigned state mandated duties, and, the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is

then multiplied by the total number of reported incidents regarding alleged violations described in part V, paragraph B, 2 (b), above.

B. Services, Equipment and Supplies

Allowed only for one-time costs and reprinting costs described in part V, paragraph B, 2 (a). Claimed expenditures must be identified with a direct cost reimbursable activity resulting from the subject state mandates. List the cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of the subject state mandates.

C. Contract Services

Allowed only for one time costs and reprinting costs described in part V, paragraph B, 2 (a). List costs incurred for contract services for the subject state mandates. Contracting costs are reimbursable to the extent that the function performed requires special skills or knowledge that is not readily available from the claimant's staff. Use of contract services must be justified by the claimant.

D. Allowable Overhead Cost

Allowed for one-time costs and for continuing costs. Cities and counties have the option of using 10% of direct labor as indirect costs or preparing a departmental Indirect Cost Rate Proposal. If the city or county elects to prepare an Indirect Cost Rate Proposal, the Proposal must be prepared in accordance with Office of Management and Budget Circular A-87 (OMB A-87).

VII. 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 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 claimed costs, from the date of initial payment of the claim. Pursuant to Government to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the~~

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

~~program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.~~

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject statutes must be deducted from the costs claimed. In addition, reimbursements for the subject state mandates received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.