Hearing Date: March 28, 2014
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ITEM 8

PROPOSED STATEMENT OF DECISION

AND

PARAMETERS AND GUIDELINES

Welfare and Institutions Code Section 14029.5

Statutes 2006, Chapter 657

Medi-Cal Eligibility of Juvenile Offenders
08-TC-04

County of Alameda, Claimant

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates (Commission) regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.[1] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.[2] Oral or written testimony is offered under oath or affirmation in article 7 hearings.[3]

I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities of county juvenile detention facilities and county welfare departments (CWDs) to assist juveniles whose Medi-Cal coverage is terminated as a result of incarceration in a juvenile detention facility for 30 days or more to obtain Medi-Cal or other health coverage immediately upon release from custody. Beginning January 1, 2008, county juvenile detention facilities are required to provide specified information regarding Medi-Cal eligibility to CWDs and, if the ward is a minor, provide notice to the ward's parent or guardian. The CWD is then required to perform specified mandated activities related to initiating an application for Medi-Cal benefits for the ward. *The CWD is also required to determine the ward's Medi-Cal eligibility; however, this requirement does not impose a reimbursable state-mandated program because it is not new.*

II. PROCEDURAL HISTORY

The test claim statement of decision was adopted on December 6, 2013. Commission staff issued draft expedited parameters and guidelines for comment on December 16, 2013. On

[1] California Code of Regulations, title 2, section 1187.

[2] Government Code section 17559(b); California Code of Regulations, title 2, section 1187.5.

[3] *Ibid*.

December 30, 2013, the State Controller's Office (Controller) filed comments requesting minor changes for clarity and consistency. No other comments were received.

III. DISCUSSION

The Controller recommended changes to the parameters and guidelines for clarity and consistency, all of which were inserted into the parameters and guidelines. Other changes were made to conform the parameters and guidelines to those recently adopted.

Reimbursable Activities

The statement of decision included the following reimbursable activity for CWDs: "If the ward meets eligibility requirements for the Medi-Cal program, provide sufficient documentation to enable the ward to obtain necessary medical care upon release from custody." This is the wording in the test claim statute.

According to a memo from the Department of Health Care Services (DHCS), the requirement to provide sufficient documentation means that the county is required to "issue an immediate need paper Medi-Cal card for the juvenile as soon as eligibility is established." Staff therefore recommends inserting the sentence from the DHCS memo: "The documentation consists of issuing an immediate need paper Medi-Cal card for the juvenile as soon as eligibility is established" into the parameters and guidelines to clarify the documentation required.

The DHCS memo is the statutory interpretation of the state agency with expertise of the program, and its interpretation is therefore subject to deference by the Commission. Moreover, because the DHCS memo is a directive already issued to CWDs, the parameters and guidelines should conform to the existing practices for documentation.

IV. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the attached proposed statement of decision and proposed parameters and guidelines; and authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Welfare and Institution Code Section 14029.5 as added by Statutes 2006, Chapter 657 Period of reimbursement begins January 1, 2008.	Case No.: 08-TC-04 *Medi-Cal Eligibility of Juvenile Offenders* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 28, 2014*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on March 28, 2014. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the statement of decision and parameters and guidelines by a vote of [Vote count will be included in the final statement of decision].

I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities of county juvenile detention facilities and county welfare departments (CWDs) to assist juveniles whose Medi-Cal coverage is terminated as a result of incarceration in a juvenile detention facility for 30 days or more to obtain Medi-Cal or other health coverage immediately upon release from custody. The activities require, beginning January 1, 2008, county juvenile detention facilities to provide specified information regarding Medi-Cal eligibility to CWDs and, if the ward is a minor, provide notice to the ward's parent or guardian. The CWD is then required to perform specified mandated activities related to initiating an application for Medi-Cal benefits for the ward. *The CWD is also required to determine the ward's Medi-Cal eligibility; however, this requirement is not reimbursable because it is not new.*

On December 6, 2013, the Commission adopted a statement of decision on the test claim finding that Welfare and Institutions Code section 14029.5, as amended by test claim statute, imposes a partially reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. PROCEDURAL HISTORY

The test claim statement of decision was adopted on December 6, 2013.[4] Commission staff issued draft expedited parameters and guidelines for comment on December 16, 2013.[5] On December 30, 2013, the State Controller's Office (Controller) filed comments requesting minor changes for clarity and consistency.[6] No other comments were received.

III. COMMISSION FINDINGS

The Controller recommended changes to the parameters and guidelines for clarity and consistency, all of which were inserted into the parameters and guidelines. Other changes were made to conform the boilerplate language to recently adopted parameters and guidelines.

Reimbursable Activities

The statement of decision included the following reimbursable activity for CWDs: "If the ward meets eligibility requirements for the Medi-Cal program, provide sufficient documentation to enable the ward to obtain necessary medical care upon release from custody." This is the wording of the test claim statute.

As noted in the statement of decision for the test claim,[7] a Department of Health Care Services (DHCS) memo that implemented the test claim statute requires that, for counties to provide "sufficient documentation," they must "issue an immediate need paper Medi-Cal card for the juvenile as soon as eligibility is established." [8]

The DHCS memo is the statutory interpretation of the state agency with expertise of this program, and its interpretation is therefore subject to deference by the Commission.[9] Moreover, because the DHCS memo is a directive already issued to CWDs, the parameters and guidelines should conform to the existing practices for documentation. For these reasons, the Commission has included the following underlined sentence into the parameters and guidelines under Section IV. Reimbursable Activities:

> If the ward meets eligibility requirements for the Medi-Cal program, provide sufficient documentation to enable the ward to obtain necessary medical care upon release from custody. The documentation consists of issuing an immediate need paper Medi-Cal card for the juvenile as soon as eligibility is established.

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[4] Exhibit A.

[5] Exhibit B.

[6] Exhibit C.

[7] Exhibit A, page 13.

[8] DHCS memo to County Welfare Directors "Medi-Cal Pre-Release Application Process for Wards in County Juvenile Facilities Re: Senate Bill (SB) 1469, Chapter 657, Statutes of 2006, Welfare and Institutions (W&I) Code section 14029.5" January 2, 2008, page 2.

[9] *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, 1104. The agency interpretation is entitled to great weight unless unauthorized or clearly erroneous. *Id.* at 1107.

IV. CONCLUSION

Based on the foregoing analysis, the Commission hereby adopts the proposed statement of decision and attached proposed amendments to the parameters and guidelines.

PROPOSED PARAMETERS AND GUIDELINES

Welfare and Institution Code Section 14029.5

Statutes 2006, Chapter 657

Medi-Cal Eligibility of Juvenile Offenders
08-TC-04

County of Alameda, Claimant

Period of reimbursement begins January 1, 2008

I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities of county juvenile detention facilities and county welfare departments (CWDs) to assist juveniles whose Medi-Cal coverage is terminated as a result of incarceration in a juvenile detention facility for 30 days or more to obtain Medi-Cal or other health coverage immediately upon release from custody. Beginning January 1, 2008, county juvenile detention facilities are required to provide specified information regarding Medi-Cal eligibility to CWDs and, if the ward is a minor, provide notice to the ward's parent or guardian. The CWD is then required to perform specified mandated activities to initiate an application for Medi-Cal benefits for the ward. *The CWD is also required to determine the ward's Medi-Cal eligibility; however, this requirement does not impose a reimbursable state-mandated program because it is not new.*

On December 6, 2013, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Welfare and Institutions Code section 14029.5, as amended by test claim statute, imposes a partially reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

Any county and city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Alameda filed the test claim on January 29, 2009, establishing eligibility for reimbursement for the 2007-2008 fiscal year. However, the effective date of the reimbursable state-mandated activities begins January 1, 2008, the effective date of the test claim statute. As a result, any costs incurred for the activities in these parameters and guidelines are reimbursable on or after January 1, 2008.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.

2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.

3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560(b).)

5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. 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.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

For County Juvenile Detention Facilities:

1. Subject to the provisions in Activity 2 below, immediately following the issuance of an order of the juvenile court committing the ward to a juvenile hall, camp, or ranch for 30 days or longer, provide the appropriate CWD with the following information: (a) the ward's name, (b) scheduled or actual release date, (c) any known information regarding the ward's Medi-Cal status prior to disposition, and (d) sufficient information when available for the CWD to begin the process of determining the ward's eligibility for the

Medi-Cal program, including available contact information for the ward's parent or guardian if the ward is a minor.

2. If the ward is a minor and before providing information to the CWD, notify the parent or guardian in writing of the intention to submit the information to the CWD. The parent or guardian shall be given a reasonable time to opt out of the Medi-Cal eligibility determination. If the parent or guardian opts out of the Medi-Cal eligibility determination, the county detention facility shall not provide information to the CWD.

For County Welfare Departments:

1. From January 1, 2008, until December 31, 2008, upon receipt of the information from the county detention facility, and pursuant to the protocols and procedures developed by the Department of Health Services (DHCS), initiate an application for benefits under the Medi-Cal program for all juvenile wards.
2. Beginning January 1, 2009, upon receipt of the information from the county detention facility, and pursuant to the protocols and procedures developed by DHCS, initiate an application for benefits under the Medi-Cal program only for wards not already enrolled in the Medi-Cal program. If the ward is a minor, promptly contact the parent or guardian to arrange for completion of the application. Applications shall be expedited for those wards scheduled to be released in fewer than 45 days.
3. If the ward does not meet the eligibility requirements for the Medi-Cal program, forward the ward's information to the appropriate entity to determine eligibility for the Healthy Families Program, or other appropriate health coverage program, with the consent of the ward's parents or guardian if the ward is a minor.
4. If the ward meets eligibility requirements for the Medi-Cal program, provide sufficient documentation to enable the ward to obtain necessary medical care upon release from custody. The documentation consists of issuing an immediate need paper Medi-Cal card for the juvenile as soon as eligibility is established.

The activity to "determine the individual's eligibility for benefits under the Medi-Cal program" is not reimbursable because it is not new.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B). However,

unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] 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 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.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the statements of decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.