

ITEM 11

PROPOSED PARAMETERS AND GUIDELINES FINAL STAFF ANALYSIS

Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128, Statutes 1996, Chapter 654

California Code of Regulations, Title 2, Sections 60000 et seq.
(emergency regulations effective July 1, 1998 [Register 98, No. 26],
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students II (02-TC-40/02-TC-49)

Counties of Stanislaus and Los Angeles, Claimants

Executive Summary

Background

On May 26, 2005, the Commission on State Mandates (Commission) adopted its Statement of Decision in *Handicapped and Disabled Students II*, finding that Government Code sections 7572.55 and 7576, as added or amended in 1994 and 1996, and the joint regulations adopted by the Departments of Mental Health and Education as emergency regulations in 1998 and final regulations in 1999 (Cal. Code Regs., tit. 2, §§ 60000 et seq.), impose a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Handicapped and Disabled Students program was initially enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education. Three other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *Handicapped and Disabled Students* (CSM 4282)¹, *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10)², and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).³ The Commission's decision in *Handicapped and Disabled Students II* addresses the statutory and regulatory amendments to the program.

¹ The parameters and guidelines for *Handicapped and Disabled Students* were adopted in August 1991, and amended in 1996.

² The parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students* have not yet been adopted.

³ The parameters and guidelines for *Seriously Emotionally Disturbed Pupils* were adopted on October 26, 2000.

Staff originally proposed to present consolidated parameters and guidelines to the Commission that included all Statements of Decision addressing the Handicapped and Disabled Students program. Due to the complexity of the program, however, staff recommends that the Commission first adopt the parameters and guidelines for *Handicapped and Disabled Students II*, which has a reimbursement period beginning July 1, 2001. Proposed parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students*, with a reimbursement period beginning July 1, 2004, is tentatively scheduled for the January agenda. Thereafter, staff will propose the consolidation of the parameters and guidelines for the Handicapped and Disabled Students program, including *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)*, into a single document for future reimbursement periods.

The draft staff analysis and proposed parameters and guidelines for *Handicapped and Disabled Students II* were issued for comment on October 18, 2005. The Commission received no comments on the draft analysis or proposed parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt staff's Proposed Parameters and Guidelines, beginning on page 11.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimants

Counties of Stanislaus and Los Angeles

Chronology

- 05/26/05 Commission on State Mandates (Commission) adopts Statement of Decision
- 06/20/05 County of Los Angeles submits draft parameters and guidelines on *Handicapped and Disabled Students II*
- 06/27/05 County of Stanislaus submits proposed consolidated parameters and guidelines for *Handicapped and Disabled Students*, *Handicapped and Disabled II*, and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*
- 07/20/05 State Controller's Office submits comments on the draft parameters and guidelines for *Handicapped and Disabled Students II*
- 08/16/05 Department of Finance submits comments on the draft parameters and guidelines for *Handicapped and Disabled Students II*
- 09/28/05 Pre-hearing conference conducted
- 10/14/05 County of Stanislaus files declaration regarding the Medi-Cal offset
- 10/18/05 Staff issues draft parameters and guidelines on *Handicapped and Disabled Students II*
- 11/14/05 County of Los Angeles files comments agreeing with draft parameters and guidelines.

Summary of the Mandate

On May 26, 2005, the Commission on State Mandates (Commission) adopted its Statement of Decision in *Handicapped and Disabled Students II*, finding that Government Code sections 7572.55 and 7576, as added or amended in 1994 and 1996, and the joint regulations adopted by the Departments of Mental Health and Education as emergency regulations in 1998 and final regulations in 1999 (Cal. Code Regs., tit. 2, §§ 60000 et seq.), impose a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Handicapped and Disabled Students program was initially enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education. Three other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *Handicapped and Disabled Students* (CSM 4282)⁴, *Reconsideration of Handicapped and*

⁴ The parameters and guidelines for *Handicapped and Disabled Students* were adopted in August 1991, and amended in 1996.

*Disabled Students (04-RL-4282-10)*⁵, and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)*.⁶ The Commission's decision in *Handicapped and Disabled Students II* addresses the statutory and regulatory amendments to the program.

Staff originally proposed to present consolidated parameters and guidelines to the Commission that included all Statements of Decision addressing the Handicapped and Disabled Students program. Due to the complexity of the program, however, staff recommends that the Commission first adopt the parameters and guidelines for *Handicapped and Disabled Students II*, which has a reimbursement period beginning July 1, 2001. Proposed parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students*, with a reimbursement period beginning July 1, 2004, is tentatively scheduled for the January agenda. Thereafter, staff will propose the consolidation of the parameters and guidelines for the Handicapped and Disabled Students program, including *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)*, into a single document for future reimbursement periods.

Discussion

The parties have raised the following issues:

- whether eligible claimants are entitled to reimbursement for the ongoing activity of updating the interagency agreements on an annual basis;
- whether Statutes 2005, chapter 78 (Sen. Bill No. 68), effective July 19, 2005, should be identified as an offset for purposes of this test claim; and
- whether the county match of funds for Medi-Cal should be excluded from the Medi-Cal offset determined by the Commission to be identified and deducted from the claim.

In addition, the State Controller's Office proposed language to address claims that have been previously filed.

The draft analysis of these issues and staff's proposed parameters and guidelines were issued for comment on October 18, 2005. The County of Los Angeles filed comments, agreeing with the proposed parameters and guidelines. The Commission received no other comments on the draft analysis or proposed parameters and guidelines.

These issues are discussed below.

Updating the Interagency Agreements

The County of Los Angeles contends that counties are entitled to reimbursement for the ongoing activity of updating the interagency agreements on an annual basis. The County cites section 60030, subdivision (b), of the joint regulations. That regulation states that the local interagency agreements shall be reviewed "no less frequently than every three years" and revised to assure compliance with the law.

⁵ The parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students* have not yet been adopted.

⁶ The parameters and guidelines for *Seriously Emotionally Disturbed Pupils* were adopted on October 26, 2000.

Staff disagrees with the County's request. In the Statement of Decision for *Handicapped and Disabled Students II*, the Commission concluded that updating and renewing the interagency agreements every three years did not constitute a new program or higher level of service and, thus, was not reimbursable within the meaning of article XIII B, section 6 of the California Constitution for purposes of this claim. Under prior law, section 60030, subdivision (a)(2), of the regulations adopted by the Departments of Mental Health and Education⁷ required the local mental health director and the county superintendent of schools to renew, and revise if necessary, the interagency agreements every three years or at any time the parties determine a revision is necessary. Thus, the ongoing activity of updating the interagency agreement conflicts with the Commission's Statement of Decision in *Handicapped and Disabled II* and is not reimbursable here.

The ongoing activity to update and renew the interagency agreement, however, was approved by the Commission in the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10) and, thus, will be addressed in the parameters and guidelines for the reconsideration, which has a reimbursement period beginning July 1, 2004.

What is eligible for reimbursement in *Handicapped and Disabled Students II*, beginning July 1, 2001, is the one-time activity of revising the interagency agreement with each local educational agency to include the following eight new procedures:

- 1) Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
- 2) A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
- 3) Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
- 4) At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- 5) The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- 6) The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)

⁷ The regulations referred to are the emergency regulations adopted by the Departments of Mental Health and Education to implement the original 1984 and 1985 legislation. The original emergency regulations are not the subject of *Handicapped and Disabled Students II*.

- 7) The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- 8) Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This one-time activity is included in Section IV of the Draft Parameters and Guidelines.

Statutes 2005, chapter 78 (Sen. Bill No. 68)

The Department of Finance requests that the Commission identify section 36.5 of Statutes 2005, chapter 78 as an offset in the parameters and guidelines. Section 36.5 of Statutes 2005, chapter 78 added section 18355.5 to the Welfare and Institutions Code, effective July 19, 2005, to provide the following:

Notwithstanding any other provision of law, counties shall not claim reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs of 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code, if those costs are claimed by the county under this chapter [realignment funds under the Welfare and Institutions Code] and the county receives reimbursement for those costs through the Local Revenue Fund established pursuant to Section 17600.

The Department requests that the following offset language be included in the parameters and guidelines:

Section 36.5 of Chapter 78, Statutes 2005 (SB 68, the Social Services Trailer Bill), which was chaptered on July 19, 2005, adds WIC Section 18355.5 which prohibits counties from claiming as a state mandate, the county's 60 percent share-of-costs for residential placements of SED children, if the county receives reimbursement for those costs from State-Local Program Realignment funds (i.e., the Local Revenue Fund established pursuant to [Welfare and Institutions Code] section 17600.)

For purposes of this test claim, staff disagrees with the Department's proposal. The county's 60 percent share of the total residential and non-educational costs of a seriously emotionally disturbed pupil placed in an out-of-home residential facility was found eligible for reimbursement by the Commission in the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), **not** in *Handicapped and Disabled Students II*. Thus, Welfare and Institutions Code section 18355.5 is not relevant for purposes of this claim, but will be addressed in the parameters and guidelines for the *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10).

For purposes of this claim, the Commission found that authorizing payments to the residential facilities in accordance with section 60200, subdivision (e), of the regulations constitutes a reimbursable state-mandated program. This activity requires counties to determine that the residential placement meets all the criteria established in the Welfare and Institutions Code

before authorizing payment. This activity is included in Section IV of the Draft Parameters and Guidelines.

The Medi-Cal Offset

The Commission's Statement of Decision states that, to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal governments for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed. The Commission determined that federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.

The County of Stanislaus requests that the counties' match toward the Medi-Cal funding used for a pupil under this program should not be included as part of the offset. The County requests the following language be included in the offset provision of the parameters and guidelines:

Medi-Cal Federal Financial Participation funds obtained from the State for the purposes of this mandated program in accordance with federal law. Funding received and used by Counties from the State for the purpose of matching federal funding requirements, including Realignment funds, shall be considered local discretionary funding and therefore are not to be identified as an offset or deducted from the costs claimed.

The County supports its language with the following contentions:

The reason for the foregoing is that Medi-Cal reimburses the Federal Financial Participation (FFP) share, which is currently 50% of the allowable costs for eligible students, with counties required to pay the balance.

In many counties, including Stanislaus, County Realignment funds are used to pay the required county match. Realignment funds are state sales tax and vehicle license fees that are allocated to counties to cover their costs for providing mental health services. These funds have been found by the Commission to not constitute offsets to the required expenditures on Handicapped and Disabled Students.

Staff agrees with the County. Under federal law, payment is authorized to the states for medical assistance on behalf of families with dependent children and on behalf of the aged, blind, or disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services. (42 U.S.C. § 1396.) The amount of the federal share of costs for such medical services "shall in no case be less than 50 per centum or more than 83 per centum." (42 U.S.C. § 1396d.) According to the County, the federal share of costs for the state's Medi-Cal program is 50 percent.

Under state law, the state's share of funding for Medi-Cal is split with the counties. Welfare and Institutions Code section 12306 provides that "the state shall pay to each county, from the General Fund and any funds available for that purpose 65 percent of the nonfederal cost of providing services under [the Medi-Cal program], and each county shall pay 35 percent of the nonfederal cost of providing those services."

Thus, the counties' share of funding under the Medi-Cal program used for purposes of this program should not be identified as an offset. Article XIII B, section 6 was designed to protect

the tax revenues of local governments from state mandates that would require expenditure of such revenues. (*County of Fresno v. State of California* (53 Cal.3d 482, 487.)) In addition, county realignment funds used by a county to fund the local share of Medi-Cal costs used for the Handicapped and Disabled Students program are not required to be identified as an offset and deducted from the costs claimed. The Commission’s Statement of Decision concluded, pursuant to Statutes 2004, chapter 493 (Sen. Bill No. 1895), that realignment funds under the Bronzan-McCorquodale Act that are used by a county for the Handicapped and Disabled Students program are not required to be deducted from the costs claimed. Statutes 2004, chapter 493 states in relevant part the following:

Counties may utilize money received from the Local Revenue Fund [realignment] ...to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. *If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs* to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations [IDEA] and required by Chapter 26.5 ... of the Government Code. (Emphasis added.)

Senate Bill 1895 was a budget trailer bill to the 2004 budget. However, based on language in the statute that “this section is declaratory of existing law,” the Commission determined that the language was retroactive and applies to the reimbursement period for this test claim, beginning July 1, 2001.

Thus, Section VII of the Draft Parameters and Guidelines identifies the offsets as follows:

Any offsetting savings 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 received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), and the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
3. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
4. Medi-Cal proceeds obtained from the state or federal government that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.

5. Any other reimbursement received from the federal or state government, or other non-local source.

Beginning July 1, 2001, realignment funds under the Bronzan-McCorquodale Act that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (SB 1895).)

Language Proposed by the State Controller's Office

The State Controller's Office requested that the parameters and guidelines state that claims should exclude reimbursable costs included in previously filed claims for the Handicapped and Disabled Students program (CSM 4282). Some costs previously disallowed by the State Controller's Office in prior years are now reimbursable, beginning July 1, 2001 (e.g., medication monitoring).

Staff included the following language regarding the previously filed claims in the boilerplate paragraphs under Section IV, Reimbursable Activities:

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2001-2002, for the Handicapped and Disabled Students program (CSM 4282).⁸ Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Staff Recommendation

Staff recommends that the Commission adopt staff's Proposed Parameters and Guidelines, beginning on page 11.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁸ Some costs disallowed by the State Controller's Office in prior years are now reimbursable beginning July 1, 2001 (e.g., medication monitoring). Rather than claimants re-filing claims for those costs incurred beginning July 1, 2001, the State Controller's Office will reissue the audit reports.

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PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 7572.55 and 7576
Statutes 1994, Chapter 1128, Statutes 1996, Chapter 654

California Code of Regulations, Title 2, Sections 60000 et seq.
(emergency regulations effective July 1, 1998 [Register 98, No. 26],
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students II (02-TC-40/02-TC-49)

Counties of Stanislaus and Los Angeles, Claimants

I. SUMMARY OF THE MANDATE

On May 26, 2005, the Commission on State Mandates (Commission) adopted its Statement of Decision in *Handicapped and Disabled Students II*, finding that Government Code sections 7572.55 and 7576, as added or amended in 1994 and 1996, and the joint regulations adopted by the Departments of Mental Health and Education as emergency regulations in 1998 and final regulations in 1999 (Cal. Code Regs., tit. 2, §§ 60000 et seq.), impose a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Handicapped and Disabled Students program was initially enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education. Three other Statements of Decision have been adopted by the Commission on the Handicapped and Disabled Students program. They include *Handicapped and Disabled Students* (CSM 4282), *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

Eligible claimants are **not** entitled to reimbursement under these parameters and guidelines for the activities approved by the Commission in *Handicapped and Disabled Students* (CSM 4282), *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05).

These parameters and guidelines address only the amendments to the Handicapped and Disabled Students program. The Commission found, pursuant to the court's ruling in *Hayes v. Commission on State Mandates* (1992) 11 Cal. App.4th 1564, that Government Code sections 7572.55 and 7576, as added or amended in 1994 and 1996, and the joint regulations adopted by the Departments of Mental Health and Education as emergency regulations in 1998 and final regulations in 1999, constitute a reimbursable state-mandated program since the state "freely chose" to impose the costs upon counties as a means of implementing the federal IDEA program.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the County of Stanislaus (02-TC-40) on June 27, 2003, and filed by the County of Los Angeles (02-TC-49) on June 30, 2003. Therefore, the period of reimbursement begins July 1, 2001.

Actual costs for one fiscal year shall 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, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given 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, calendars, 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 reported 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. Claims should *exclude* reimbursable costs included in claims previously filed, beginning in fiscal year 2001-2002, for the Handicapped and Disabled Students program (CSM 4282).⁹ Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

⁹ Some costs disallowed by the State Controller's Office in prior years are now reimbursable beginning July 1, 2001 (e.g., medication monitoring). Rather than claimants re-filing claims for

For each eligible claimant, the following activities are eligible for reimbursement:

A. Interagency Agreements (Cal. Code Regs., tit. 2, § 60030)

The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures:

- 1) Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term “appropriate” means any service identified in the pupil’s IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
- 2) A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
- 3) Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
- 4) At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
- 5) The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)
- 6) The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
- 7) The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
- 8) Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

(The activities of updating or renewing the interagency agreements are not reimbursable.)

those costs incurred beginning July 1, 2001, the State Controller’s Office will reissue the audit reports.

B. Referral and Mental Health Assessments (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045)

- 1) Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
- 2) A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
- 3) If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal Code Regs., tit. 2, § 60045, subd. (a)(1).)
- 4) If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
- 5) Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- 6) Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- 7) Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
- 8) Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
- 9) Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)
- 10) The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

C. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)

- 1) Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.
- 2) Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.

D. Participate as a Member of the Expanded IEP Team When Residential Placement of a Pupil is Recommended (Gov. Code, § 7572.55; Cal Code Regs., tit. 2, § 60100)

- 1) When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. (Gov. Code, § 7572.55, subd. (c).)
 - 2) The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
 - 3) The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
 - 4) When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)
- E. Case Management Duties for Pupils Placed in Residential Care (Cal. Code Regs., tit. 2, §§ 60100, 60110)
- 1) Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(1).)
 - 2) When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
 - 3) Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs., tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)
 - 4) Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
 - 5) Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(7).)

- 6) Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)
 - 7) Evaluate every 90 days the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
 - 8) Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)
- F. Authorize Payments to Out-Of-Home Residential Care Providers (Cal. Code Regs., tit. 2, § 60200, subd. (e))
- 1) Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.
- G. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c))
- 1) The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
 - 2) The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
 - 3) Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
 - 4) Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
 - 5) Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness.

This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subs. (f) and (i).)

- 6) Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

(When providing psychotherapy or other mental health treatment services, the activities of mental health assessments, collateral services, intensive day treatment, case management, crisis intervention, vocational services, and socialization services are not reimbursable.)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV. 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 invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes,

delivery costs, and installation costs. If the fixed asset or equipment 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.

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 (1) the 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 the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and 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 and 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 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 and 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 allowable indirect costs bears to the base selected.

VI. 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 chapter¹⁰ is subject to the initiation of an audit by the State 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.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings 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 received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Act of 2001, which appropriated funds to counties in the amounts of \$12,334,000 (Stats. 2001, ch. 106, items 4440-131-0001), and the \$69 million appropriations in 2003 and 2004 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17; Stats. 2004, ch. 208, item 6110-161-0890, provision 10).
3. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
4. Medi-Cal proceeds obtained from the state or federal government that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
5. Any other reimbursement received from the federal or state government, or other non-local source.

Beginning July 1, 2001, realignment funds under the Bronzan-McCorquodale Act that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (SB 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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

¹⁰ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (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 State 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 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, subdivision (a), and the California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.