

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

PROPOSED AMENDMENT AND SET-ASIDE
OF PARAMETERS AND GUIDELINES

As Directed or Required by:

Statutes 2004, Chapter 316 (Assem. Bill No. 2851, effective August 25, 2004);

Statutes 2004, Chapter 895, (Assem. Bill No. 2855, eff. January 1, 2005); and

Statutes 2005, Chapter 72 (Assem. Bill No. 138, eff. July 19, 2005)

And Requested by the State Controller's Office

Nos.: 04-PGA-12, 23, 26, and 05-PGA-02, 11

Residential Care Services

*Pupil Classroom Suspensions: Counseling
Caregiver Affidavits*

Presidential Primaries 2000

*School Crimes Reporting, Statistics and
Validation and School Crimes Reporting II*

NOTICE OF HEARING

HEARING DATE: December 9, 2005

Room 126, State Capitol

Sacramento, California

10:30 a.m.

TO: Department of Finance
State Controller's Office
Legislative Analyst's Office
Interested Parties
Legislative Committees

**Notice of Hearing on Proposed Amendments and Set-Aside
of Parameters and Guidelines**

In 2004 and 2005, the Legislature enacted statutes to repeal or modify numerous state-mandated reimbursable programs. On November 8, 2004, the State Controller's Office requested the Commission on State Mandates (Commission) to amend the parameters and guidelines for these mandated programs. The parameters and guidelines for five of the programs are proposed for amendment or set-aside.

The staff analyses and proposed modifications to the parameters and guidelines on the five matters named above are being posted to the Commission's website:

[http://www.csm.ca.gov/Hearing_Agendas/July 28, 2005/Items 13, 15, 16, 17, and 21](http://www.csm.ca.gov/Hearing_Agendas/July_28,_2005/Items_13,_15,_16,_17,_and_21)

Commission Hearing – December 9, 2005

The Commission will hear and determine these items on December 9, 2005.

These items are proposed for the consent calendar unless any party objects. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions regarding this matter, please contact Nancy Patton, Assistant Executive Director at (916) 323-8217.

Dated: November 22, 2005

PAULA HIGASHI, Executive Director

ITEM 13
PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

Welfare and Institutions Code Sections 4075, 4076, and 5705.6

Statutes 1985, Chapter 1352

Title 9, California Code of Regulations, Section 549

Department of Mental Health (DMH) Letter Nos.
85-40, 86-14, 86-26, 86-30, 87-17

Residential Care Services
04-PGA-12 (CSM-4292)

EXECUTIVE SUMMARY

In 1988, the Commission on State Mandates (Commission) determined that Statutes 1985, chapter 1352 and various executive orders imposed a reimbursable mandate on counties by requiring counties to implement a *residential care supplemental rate program* in county Short-Doyle programs. The Commission further determined that the reimbursable costs were limited to the county's 10% cost share of the new Short-Doyle program as specified in the county Short-Doyle Plan. In 1989, the Commission adopted parameters and guidelines for this program.

In 1991, the Legislature enacted realignment legislation that repealed the Short-Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89.) The Bronzan-McCorquodale Act amended Welfare and Institutions Code section 4075, the Department of Mental Health's (DMH) regulatory and rate setting authority and repealed sections 4076 and 5705.6. Since 1992, the Legislature has suspended this program in each budget act pursuant to Government Code section 17581.

In 2004, Statutes 2004, chapter 316 (Assem. Bill No. 2851) enacted the following findings and declarations:

The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

...(b) Short-Doyle case management, Short-Doyle audits, and *residential care services* (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991. [Emphasis added.]

On November 1, 2005, the State Controller's Office requested that the parameters and guidelines for this program be set aside based on Statutes 2004, chapter 316.¹

Discussion

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.² To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute . . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

Test Claim Statute and Commission Decision

The Legislature enacted Statutes 1985, chapter 1352, as urgency legislation, to provide "an adequate reimbursement rate structure for private residential care facilities" and to encourage "such facilities to serve mentally disabled persons, and meeting the shelter needs of mentally disordered persons whose homelessness is a threat to their health and safety and, in some cases, to public safety, and to provide a vital component of local Short-Doyle programs."³ The Legislature made the following findings of legislative intent in Section 1:

The Legislature finds as follows:

- (a) The patient population in private residential care facilities for the mentally disordered has changed dramatically over recent years. Where previously, the majority of such patients were in their 50's, the majority are now in their 30's, and likely to be more active and violent with problems of alcohol or drug addiction and behavior control.
- (b) Rates set for private residential care facilities for the mentally disordered are insufficient to assure adequate treatment of patients' programmatic needs because the rate structure is not based on such needs.

¹ Exhibit A

² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

³ Statutes 1985, chapter 1353, section 5.

- (c) Due to such insufficient payments, operators of private residential care facilities are not given any incentive to serve the more severely disturbed, and it is difficult to recruit sufficient private residential care facilities.
- (d) Due to lack of incentive to serve the mentally disordered, the number of residential care facilities serving such persons has decreased rapidly in recent years. At the same time, research reports document a significant increase to the number of homeless persons, many of them mentally disordered.
- (e) The homeless mentally disordered have become significant burdens on local governments and charitable relief organizations whose resources are overwhelmed by the number of persons requiring emergency food and shelter. Lack of access by mentally disordered homeless persons to necessities such as shelter, food, medical care, and mental health treatment represents a threat to their health and safety. Businesses and local economies are also impacted by the presence of homeless mentally disordered persons who do not have access to these necessities.

In 1988, the Commission on State Mandates determined that Statutes 1985, chapter 1352 and various executive orders imposed a reimbursable mandate on counties by requiring counties to implement a *Residential Care Services* program in county Short-Doyle programs.

The Commission found that amendments to Welfare and Institutions Code sections 4075 and 4076, and the addition of section 5705.6, resulted in the following changes to existing law:

- Deleted the condition that the rates of payment to the providers of services be operative only if sufficient funds were appropriated.
- Added the requirement that DMH establish a standardized assessment tool and client monitoring system for counties to use in determining the needs of mentally disordered clients.
- Directed DMH to adopt regulations by October 1, 1985, to establish eligibility criteria for private residential care facilities.
- Established minimum rates of payment to the service providers as those amounts which equal the rates established by the State Department of Developmental Services for equivalent categories on July 1, 1985, of regional center clients in private residential care facilities for the developmentally disabled.

The Commission further determined that the reimbursable costs were limited to the county's 10% cost share of the new Short-Doyle program as specified in the county Short-Doyle Plan.

In 1989, the Commission adopted parameters and guidelines for this program which authorized reimbursement for a county's 10% cost share of the new *Residential Care Services* program as specified in the county's Short-Doyle Fiscal Year-End Cost Report.

Repeal of Welfare and Institutions Code Sections 4076 and 5705.6

In 1991, the Short-Doyle Act was repealed and replaced with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89.) The Bronzan-McCorquodale Act repealed Welfare and Institutions Code sections 4076 and 5705.6. The repealed sections addressed county applications for adjusted rates and county administrative costs.

Prior to repeal in 1991, sections 4076 and 5705.6 stated:

4076. Each county shall apply for the adjusted rates and county administrative costs established under this chapter as part of the Short-Doyle plan pursuant to Section 5651 or a negotiated net amount contract by the state and county. However, notwithstanding Section 5705, no county matching funds are required under this section for fiscal years 1985-86 and 1986-87.

5705.6. In addition to the waiver provided for in Section 5705.4, for 1985-86 and 1986-87 fiscal years, *the cost requirement for local financial participation* pursuant to Section 5705, including county administrative costs, shall be waived for supplemental rates of payment for residential care facilities for the mentally disordered pursuant to Section 4076. (Emphasis added.)

Thus, staff finds that the repeal of sections 4076 and 5705.6 deleted the statutory authority for the county's 10% cost share requirement, as specified in the Statement of Decision and parameters and guidelines.

Amendment of Welfare and Institutions Code Section 4075

The 1991 amendments to section 4075 deleted references to the initial implementation dates and reporting requirements to the Legislature. Section 4075 requires DMH to "establish and maintain an equitable system of payment for the special needs of mentally disordered persons in private residential care facilities for the mentally disabled." The subdivisions further clarify the duties and authority of the department to establish this program.

Staff finds that the plain meaning of section 4075 does not require counties to pay 10% cost share of the new Residential Care Services program as specified in the county's Short-Doyle Fiscal Year-End Cost Report and as specified in the Statement of Decision and parameters and guidelines.

Executive Orders

Several executive orders are included in this test claim.

Title 9, California Code of Regulations Section 549. Supplemental Residential Care Services

According to the Statement of Decision, section 549 is "a regulation promulgated by DMH in compliance with Chapter 1352, Statutes of 1985, to implement the residential care supplemental rate program." These services are designed to augment basic living and care services for mentally disordered adults in licensed community care facilities.

Although included within the original test claim, the Commission's Statement of Decision and parameters and guidelines did not identify any reimbursable activities based on the regulation.

DMH Letters No. 85-40, 86-14, 86-26, 86-30, 87-17

The test claim decision and parameters and guidelines identify five letters issued by DMH between 1985 and 1987. According to the Statement of Decision, DMH Letter Nos. 85-40, 86-17, 86-26, 86-30, and 87-17 were issued to all eligible claimants to clarify provisions of the residential care supplemental rate program.

Although included within the original test claim, the Statement of Decision and parameters and guidelines did not identify any reimbursable activities based on these DMH letters. Moreover, there is no evidence on the DMH's website that these letters are still in effect. The DMH routinely issues new letters to all local mental health directors, program chiefs, administrators, county administrative officers, and chairpersons of local mental health boards after enactment of the budget.

Conclusion

Staff finds that with the repeal of sections 4076 and 5075.6 by the Bronzan-McCorquodale Act (Stats. 1991, ch. 89), there is *no new program or higher level of service or costs mandated by the state* on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a county's 10% cost share of the new *Residential Care Services* program as specified in the county's Short-Doyle Fiscal Year-End Cost Report.. Without reimbursable costs, there is no need for parameters and guidelines. Therefore, staff concludes that the parameters and guidelines for this program should be set aside.

Staff Recommendation

Staff recommends the Commission adopt the proposed Order to Set Aside the Parameters and Guidelines for the *Residential Care Services* program.

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STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code Sections 4075,
4076, and 5705.6

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Title 9, California Code of Regulations,
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Nos. 85-40, 86-14, 86-30, 87-17

Nos. 04-PGA-12 (CSM-4292)

Residential Care Services

PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

(Proposed on December 9, 2005)

ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES

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5075.7. In addition to the waiver provided for in Section 5705.4, for 1985-86 and 1986-87 fiscal years, *the cost requirement for local financial participation* pursuant to Section 5705, including county administrative costs, shall be waived for supplemental rates of payment for residential care facilities for the mentally disordered pursuant to Section 4076. (Emphasis added.)

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Therefore, the Commission sets aside the parameters and guidelines for the *Residential Care Services* program.

Paula Higashi, Executive Director

Date: December 9, 2005

Attachment: Parameters and Guidelines