

COMMISSION ON STATE MANDATES

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August 4, 2008

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
San Bernardino, CA 92415-0018

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Adopted Parameters and Guidelines

In Home Supportive Services II, 00-TC-23

Welfare and Institutions Code Sections 12301.3, 12301.4 and 12302.25

Statutes 1999, Chapter 90

Statutes 2000, Chapter 445

County of San Bernardino, Claimant

Dear Ms. Ter Keurst and Ms. Brummels:

On August 1, 2008, the Commission adopted the parameters and guidelines for the above-named program. The parameters and guidelines are enclosed.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosure

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Welfare and Institutions Code Sections 12301.3,
12301.4 and 12302.25

Statutes 1999, Chapter 90
Statutes 2000, Chapter 445

Filed on June 29, 2001,

By County of San Bernardino, Claimant.

Case No.: 00-TC-23

In-Home Supportive Services II

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557 AND
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Adopted on August 1, 2008)

PARAMETERS AND GUIDELINES

On August 1, 2008, the Commission on State Mandates adopted the attached parameters and guidelines.



PAULA HIGASHI, Executive Director

Dated: August 4, 2008



Adopted: August 1, 2008

PARAMETERS AND GUIDELINES

Welfare and Institutions Code Sections 12301.3, 12301.4 and 12302.25

Statutes 1999, Chapter 90
Statutes 2000, Chapter 445

In-Home Supportive Services II 00-TC-23

I. SUMMARY OF THE MANDATE

The test claim statutes, in part, address the form in which in-home supportive services care providers are employed, referred to as the "mode of service," including requiring that all counties establish an employer of record for IHSS providers, other than the recipient of the services. The test claim statutes also provide that "[e]ach county shall appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals."

On April 16, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Each county shall establish an employer for in-home supportive service providers. This activity is limited to the administrative costs of establishing an employer of record through a public authority, nonprofit consortium, contract, county administration of the individual provider mode, county civil service personnel, or mixed modes of service. It does not include mandate reimbursement for any increased wages or benefits that may be negotiated depending on the mode of service adopted, or any activities related to collective bargaining. (Welf. & Inst. Code, § 12302.25, subd. (a).)¹ (July 12, 1999, until December 31, 2002.)
- Counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers. This activity is limited to the administrative costs of establishing an employer of record in the individual provider mode, upon request. It does not include mandate reimbursement for any increased wages or benefits that may be negotiated, or any activities related to collective bargaining. (Welf. & Inst. Code, § 12302.25, subd. (a).)²
- Each county that does not qualify for the exception provided in section 12301.3, subdivision (d), shall appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals, with membership as required by

¹ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999).

² As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999).

section 12301.3, subdivision (a): "No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article." (Welf. & Inst. Code, §§ 12301.3, subd. (a), 12302.25, subd. (d).)³

- Effective September 14, 2000, counties shall appoint membership of the advisory committee in compliance with Welfare and Institutions Code section 12301.3, subdivision (a)(1) and (a)(4):

In counties with fewer than 500 IHSS recipients, at least one member of the advisory committee shall be a current or former provider of in-home supportive services; in counties with 500 or more IHSS recipients, at least two members of the advisory committee shall be a current or former provider of in-home supportive services.

A county board of supervisors shall not appoint more than one county employee as a member of the advisory committee. (Welf. & Inst. Code, § 12301.3, subd. (a).)⁴

- Prior to the appointment of members to a committee required by section 12301.3, subdivision (a), the county board of supervisors shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations. (Welf. & Inst. Code, § 12301.3, subd. (b).)⁵
- The county shall solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services. (Welf. & Inst. Code, § 12302.25, subd. (d).)⁶
- The advisory committee shall submit recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county for in-home supportive services. (Welf. & Inst. Code, § 12301.3, subd. (c).)⁷
- Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about IHSS on an ongoing basis. (Welf. & Inst. Code, § 12302.25, subd. (e).)⁸
- One advisory committee formed pursuant to sections 12301.3 or 12301.6, shall provide ongoing advice and recommendations regarding in-home supportive services to the

³ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999.)

⁴ As amended by Statutes 2000, chapter 445 (oper. Sept. 14, 2000.)

⁵ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999.)

⁶ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999.)

⁷ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999.)

⁸ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999.)

county board of supervisors, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees. (Welf. & Inst. Code, § 12301.4.)⁹

The Commission concludes that all claims for reimbursement for the approved activities must be offset by any funds already received from state or federal sources, including funds allocated for the direct costs of the advisory committee. The Commission further concludes that Government Code section 16262.5, and Welfare and Institutions Code sections 12301.6, 12301.8, 12302.7, 12303.4, 12306.1, 14132.95, 17600 and 17600.110, as pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

II. ELIGIBLE CLAIMANTS

Any county, and 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, subdivision (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 San Bernardino filed the test claim on June 29, 2001, establishing eligibility for 1999-2000.

However, the operative date of Statutes 1999, chapter 90 is July 12, 1999; therefore the reimbursement period for this test claim begins no earlier than July 12, 1999. In addition, Welfare and Institutions Code section 12302.25 mandates that the requirements be completed on or before January 1, 2003. Therefore, costs incurred pursuant to Welfare and Institutions Code section 12302.25 are reimbursable from July 12, 1999 through December 31, 2002.

Statutes 2000, chapter 445 has an operative date of September 14, 2000. Therefore, costs incurred pursuant to amendments to Welfare and Institutions Code section 12301.3 by Statutes 2000, chapter 445, are reimbursable no earlier than September 14, 2000.

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

⁹ As added by Statutes 1999, chapter 90 (oper. Jul. 12, 1999).

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, the following activities are reimbursable:

A. One-time Activities

1. County

- a) Establishing an employer for in-home supportive service providers. This activity is limited to the administrative costs of establishing an employer of record through a public authority, nonprofit consortium, contract, county administration of the individual provider mode, county civil service personnel, or mixed modes of service. (Reimbursement period is limited to July 12, 1999 through December 31, 2002.)
- b) Offering an individual provider employer option, for counties with an IHSS caseload of more than 500, upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers. This activity is limited to the administrative costs of establishing an employer of record in the individual provider mode, upon request. (Reimbursement period begins July 12, 1999.)

B. On-going Activities

1. Board of Supervisors

- a) Appointing an in-home supportive services advisory committee comprised of:
 - i. Not more than 11 individuals, with membership as required by section 12301.3, subdivision (a): "No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article." (Reimbursement period begins July 12, 1999.)
 - ii. In counties with fewer than 500 IHSS recipients, at least one member of the advisory committee shall be a current or former

provider of in-home supportive services. (Reimbursement period begins September 14, 2000.)

- iii. In counties with 500 or more IHSS recipients, at least two members of the advisory committee shall be a current or former provider of in-home supportive services. (Reimbursement period begins September 14, 2000.)
- iv. A county board of supervisors shall not appoint more than one county employee as a member of the advisory committee. (Reimbursement period begins September 14, 2000.)
- b) Soliciting recommendations for qualified advisory committee members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations. (Reimbursement period begins July 12, 1999.)
- c) Soliciting recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services. (Reimbursement period is limited to July 12, 1999 through December 31, 2002.)
- d) Taking the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about IHSS on an ongoing basis. (Reimbursement period begins July 12, 1999.)

2. Advisory Committee

- a) Submitting recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county for in-home supportive services. (Reimbursement period begins July 12, 1999.)
- b) Providing ongoing advice and recommendations regarding in-home supportive services to the county board of supervisors, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees. (Reimbursement period begins July 12, 1999.)

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. 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.

4. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, 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 the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct 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 Circular 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. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹⁰ 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 offsets 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; and federal and state funds, including funds allocated for the direct costs of the IHSS advisory committee pursuant to Welfare and Institutions Code section 12301.4, subdivision (b), county fiscal letters issued by the Department of Social Services allocating state and federal funds for the IHSS advisory committee (DSS CFL Nos. Nos. 00/01-14, 00/01-33, 00/01-48, 01/02-12, 02/03-28, 02/03-73, 03/04-46, 03/04-51, 04/05-16, 04/05-22, 04/05-27, 05/06-10, 06/07-02), and future allocations of state and federal funds for the IHSS advisory committee shall be identified and deducted from this claim.

¹⁰ 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, 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 derived from the test claim decision 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 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, subdivision (d), and 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.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

August 4, 2008, I served the:

RE: Adopted Parameters and Guidelines

In Home Supportive Services II, 00-TC-23

Welfare and Institutions Code Sections 12301.3, 12301.4 and 12302.25

Statutes 1999, Chapter 90

Statutes 2000, Chapter 445

County of San Bernardino, Claimant

By placing a true copy thereof in an envelope addressed to:

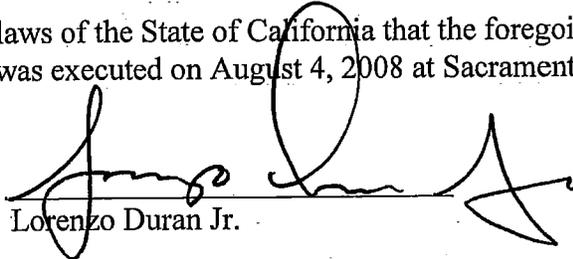
Ms. Bonnie Ter Keurst
County of San Bernardino
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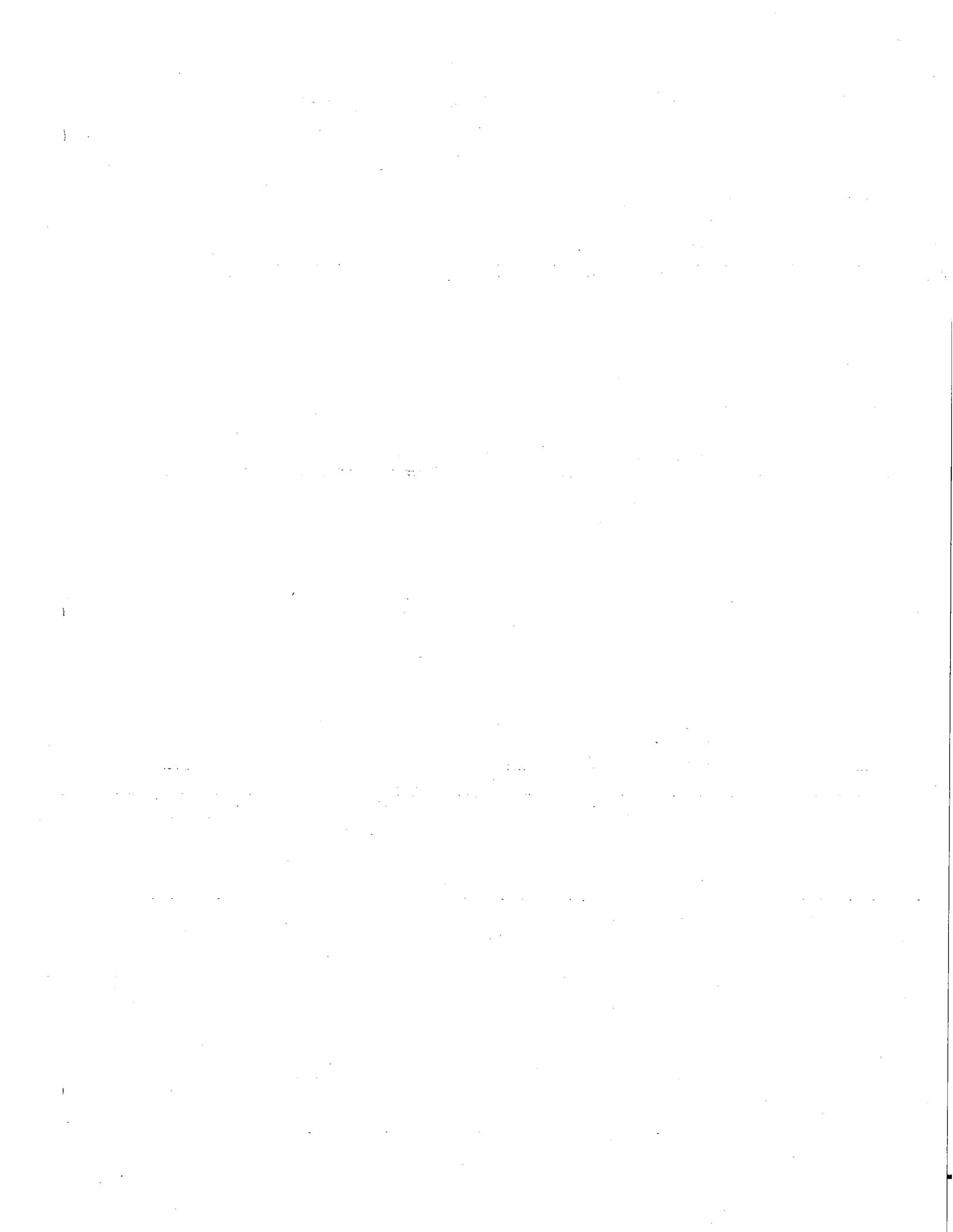
Ms. Ginny Brummels
State Controller's Office
3301 C Street, Suite 500
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State Agencies and Interested Parties (See attached mailing list);

And by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 4, 2008 at Sacramento, California.


Lorenzo Duran Jr.



Commission on State Mandates

Original List Date: 7/6/2001
Last Updated: 7/7/2006
List Print Date: 07/31/2008
Claim Number: 00-TC-23
Issue: In Home Supportive Services II

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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