



**COUNTY OF SAN MATEO**  
**OFFICE OF THE CONTROLLER**

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**RECEIVED**  
August 25, 2015  
**Commission on  
State Mandates**

August 25, 2015

Via PDF & CSM Dropbox

Ms. Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Subject: County of San Mateo – Incorrect Reduction Claim 05-4282-I-03, Regarding Handicapped & Disabled Students - County Response to the Commission's Revised Draft Proposed Decision dated July 28, 2015

Dear Ms. Halsey:

This letter is in response to the revised draft proposed decision by the Commission on State Mandates ("Commission") regarding the above referenced Incorrect Reduction Claim ("IRC") submitted by the County of San Mateo ("County") for its Handicapped & Disabled Students Program with respect to the 1996-1997, 1997-1998 and 1998-1999 fiscal years. Below are the County of San Mateo's comments, for the administrative record, on each of the Commission's findings regarding the items raised in the revised draft proposed decision:

1. The County agrees with the Commission's finding concerning the statute of limitations; specifically, that the statute of limitations does not bar the instant IRC, and the County concurs with the Commission's determination that the IRC was filed timely.
2. The County agrees with the Commission's finding concerning "residential, other" and "skilled nursing" costs; specifically, that these costs were simply miscoded and that they actually related to eligible day treatment services for patients in residential and skilled nursing facilities. The County notes that these costs were included in the filed IRC, and were identified in detail in support documentation filed with the IRC.
3. The County disagrees with the Commission's decision as it pertains to medication monitoring. The County's position with respect to the recovery of medication monitoring expenditures for the years at issue here has been made in the administrative record and, in the interest of brevity, the County incorporates by reference herein its arguments with respect to this matter.
4. The County agrees with the Commission's finding concerning crisis intervention services; specifically, that costs incurred for such services are reimbursable for FYs 96-97 and 97-98.
5. The County agrees with the Commission's finding that the matter of the Early Periodic Screening, Diagnosis, and Testing ("EPSDT") offset should be remanded to the State Controller's Office (SCO) for determination of an appropriate methodology for calculation of this offset. However, the Commission should retain jurisdiction over this issue to allow the County to seek further relief before the Commission in the event that the parties are unable to reach agreement on an appropriate offset methodology.

Substantively, the County continues to disagree with EPSDT offset methodology utilized to date by the SCO. The County maintains that a proper EPSDT revenue offset calculation must incorporate each of the following points A, B and C below:

**(A) SCO's Proposed EPSDT Methodology Offsets is Incorrect based on Prior State Guidance.**

The SCO's proposed methodology for offsetting EPSDT revenue conflicts with prior guidance issued by the State Department of Mental Health ("DMH") on this subject. In particular, the SCO methodology does not reflect the intent of the State to provide EPSDT revenue for program growth above the established baseline.

In the Short-Doyle Medi-Cal Cost Report instructions for each of the years at issue, DMH provided a specific methodology for determining the appropriate EPSDT offset for Special Education Program (SEP) costs and included directions stating that the DMH process was to be used as the supporting documentation for SB90 State Mandate Claims. That prescribed methodology accounts for baseline program size and appropriate offset of all EPSDT revenue. Those instructions were provided to the County and are posted on the DHCS Information Technology Web Services (ITWS) website. The County used this prescribed DMH methodology to determine the EPSDT offset for SB90 claims for each of the audited years. The DMH Short-Doyle Cost Report instructions and worksheets have also been provided to the SCO by the County.

The method proposed in the draft Audit Report for EPSDT revenue offset would distribute State EPSDT revenue equally to all Medi-Cal services without regard to differences in growth of SEP services relative to growth in other mandated programs. This position is in clear contradiction to prior guidance issued by the State.

**(B) Statute of Limitations has expired on Baseline Prior Audited DMH Cost Reports.**

SCO staff have asked repeatedly for documentation in order to audit baseline calculations of the County. However, those baseline numbers (from 1994-95), as well as prior DMH cost reports for the fiscal years under SCO audit, have been accepted by the state and federal government. Further, the County maintains that data older than three years is deemed true and correct. (Welfare and Institutions Code § 14170; *Redding Medical Center, Bonta* (2004) 115 Cal.App.4<sup>th</sup> 1031.) Further, the County asserts that SCO's attempt to audit those baseline and prior DMH reports after three years is subject to laches, as the delay in making the request is unreasonable and presumptively prejudicial to the County. (*Fountain Valley Regional Hospital and Medical Center v. Bonta* (1999) 75 Cal.App.4<sup>th</sup> 316, citing *Robert F. Kennedy Medical Center v. Belsh* (1996) 13 Cal.4<sup>th</sup> 748.)


**(C) Reasonable Acceptance and Acceptable Reliance based on acceptance of prior year Cost Reports.**

SCO field audit staff have asked repeatedly for documentation in order to audit baseline calculations of the County. However, as noted, those baseline numbers (from 1994-95) as well as prior DMH cost reports for the fiscal years under SCO audit have been accepted by the state and federal government. The SCO position to simplify EPSDT revenue offsets is in conflict with previously prescribed DMH methods. Audit staff can verify the County methods by examining prior cost reports and should not employ a new methodology without an amendment to the program's parameters and guidelines. The audit DMH/DHCS reports for many fiscal years have been provided to SCO staff to confirm that there were no findings related to baseline or EPSDT revenues, methods or calculations, and that the County has acted consistently and in accordance with state procedures.

Heather Halsey, Executive Director  
Commission on State Mandates  
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Again, the County appreciates your efforts on this important matter and looks forward to a final resolution. Please feel free to contact Gina Wilson, Chief Financial Officer for the San Mateo County Health System, if you have any questions or wish to discuss this matter further.

Sincerely,



Juan Raigoza  
Controller  
County of San Mateo

cc: Glenn Kulm, San Mateo County Behavioral Health & Recovery Services  
John Klyver, San Mateo County Behavioral Health & Recovery Services  
Shirley Tourel, San Mateo County Controller's Office  
John Nibbelin, Chief Deputy County Counsel  
Patrick Dyer, MGT of America

**DECLARATION OF SERVICE BY EMAIL**

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.

On August 26, 2015, I served the:

**Claimant Comments**

*Handicapped and Disabled Students, 05-4282-I-03*

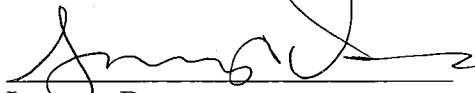
Government Code Sections 7570-7588; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Sections 60000-60200 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28]

Fiscal Years 1996-1997, 1997-1998, and 1998-1999

County of San Mateo, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 26, 2015 at Sacramento, California.



Lorenzo Duran  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 7/28/15

**Claim Number:** 05-4282-I-03

**Matter:** Handicapped and Disabled Students

**Claimant:** County of San Mateo

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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