



JOHN CHIANG
California State Controller

April 22, 2011

Ms. Nancy Patton, Asst. Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Greta S. Hansen
Office of the County Counsel
County of Santa Clara
70 W. Hedding Street, East Wing 9th Fl.
San Jose, CA 95110

RE: Incorrect Reduction Claim

Handicapped and Disabled Students, 09-4282-I-5
Government Code Sections 7570 et seq. (AB 3632)
Fiscal Years: 2003-04, 2004-05, and 2005-06
Santa Clara County, Claimant

Dear Ms. Patton and Ms. Hansen:

This letter is in response to the above-entitled Incorrect Reduction Claim and related Draft Staff Analysis. The subject claims were reduced because the Claimant included costs for services that were not reimbursable under the Parameters & Guidelines in effect during the audited years. In addition, the Claimant failed to document to what degree AB3632 students were also covered by the Wraparound Program, requiring that those revenues be offset. The reductions were appropriate and in accordance with law.

The Controller's Office believes that Commission staff has placed too much reliance on the expert opinions provided by Dr. Margaret Rea and Laura Champion. While they may qualify as experts in psychology, or the provision of psychological services for handicapped and disabled students, the issue of reimbursability is primarily one of a legal nature, not medical. Reimbursability is based in large part on statutory and regulatory interpretation of the provisions that are the subject of the test claim. The mere fact that a certain treatment was required by law, or the best and most appropriate action in a specific case, does not make the associated costs reimbursable. To qualify for reimbursement the relevant legal provisions must be submitted to the Commission in a test claim and be approved as a mandate, then the specific reimbursable activities must be

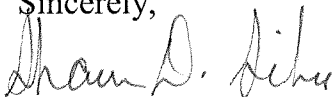
set forth in the Parameters & Guidelines. We believe that the Commission has intermingled the question of appropriate treatment with that of reimbursability.

The Controller's Audits Division did not make up the reporting categories utilized by the claimant, nor did they adjust the costs or services between the categories. They simply utilized the existing cost reporting categories as submitted by the claimant in support of their claim. Page 9 [Section IV, G, (7)] of the Parameters & Guidelines states that "[w]hen providing psychotherapy or other mental health services, the activities of crises intervention, *vocation services*, and *socialization services* are not reimbursable." (Emphasis added.) Dr. Rea concedes that some of the treatments may have included vocational or socialization services, but that they were not the ultimate goal of the treatment. The fact that the provision of vocational services and socialization services may not have been an end goal of the treatment, but part of a larger framework of rehabilitation does not make them reimbursable. No provision of law has been cited that makes a distinction between providing the services for their own end, or providing them as part of a larger plan. As the Staff notes in the DSA (page 43) those services were deleted from Section 60020 in 1998, thus excluding them from reimbursement. When the language is clear and explicit, there is no need to rely on statutory or regulatory interpretation, especially when that leads to rendering express terms of the Parameters & Guidelines nugatory. To the extent that the claimant identifies services provided as vocation or socialization services, those costs are not reimbursable.

The Commission should fully consider the issue of other sources of funds such as the Wraparound program, which uses non-federal Aid of Families with Dependent Children Foster Care (AFDC-FC) revenues, as offsetting revenue before coming to a final conclusion on this IRC. Although it may not have been fully developed in the audit, the problem was raised in the audit and is an appropriate subject for the Commission to consider. The Parameters & Guidelines require that certain revenues from other sources shall be claimed as offsetting revenue. To the extent that some of the services may overlap, AFDC-FC revenues for the overlapping services should be claimed as offsetting revenue. The Commission has the authority to conduct hearings or take additional evidence if they believe the issue is not yet ripe for determination. We do not believe that the IRC can be resolved without fully considering the issue.

Attached please find a complete detailed response to the IRC as well as a response to the Draft Staff Analysis from our Division of Audits, exhibits, and supporting documentation with declaration.

Sincerely,



SHAWN D. SILVA
Senior Staff Counsel

Attachments

cc: Jill Kanemasu (w/o attachments)
Jim Spano (w/o attachments)