

## COMMISSION ON STATE MANDATES

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October 19, 2015

Mr. Ed Hanson  
Department of Finance  
915 L Street, 7th Floor  
Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 14-MR-04  
First Hearing: Adequate Showing  
*Immunization Records: Hepatitis B (98-TC-05)*  
Education Code Section 48216 et al.  
As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)  
Department of Finance, Requester

Dear Mr. Hanson:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

### Written Comments

Written comments may be filed on the draft proposed decision by **November 9, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### Hearing

This matter is set for hearing on **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 8, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**DRAFT PROPOSED DECISION**

Education Code Section 48216 and Health and Safety Code Sections 120325, 120335, 120340, and 120375; as amended by Statutes 1978, Chapter 325; Statutes 1979, Chapter 435; Statutes 1982, Chapter 472; Statutes 1991, Chapter 984; Statutes 1992, Chapter 1300; Statutes 1994, Chapter 1172; Statutes 1995, Chapters 291 and 415; Statutes 1996, Chapter 1023; and Statutes 1997, Chapters 855 and 882

California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075; as amended by Register 90, No. 35; Register 80, Nos. 16, 34, 40; Register 86, No. 6; Register 96, No. 13; Register 97, Nos. 21, 37, 39)

As Alleged to be Modified by:

Statutes 2010, Chapters 434 (AB 354)

*Immunization Records – Hepatitis B (98-TC-05)*

14-MR-04

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Immunization Records -Hepatitis B, 98-TC-05* test claim, finding that the test claim statutes and regulations imposed a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella, and hepatitis B for each pupil seeking admission to school in the state for the first time.
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade.
- Conditionally admit any pupil who has not been fully immunized as required by law; notify the parents or guardians of the deadline to complete the required immunizations;

and review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized.

- Notify parents or guardians of the requirement to exclude a pupil from school if proof of required immunization or lawful exemption is not timely received after notification, and exclude if required; refer parents or guardians to medical professionals for provision of the immunizations, or notify them that the immunizations will be administered at a school of the district.
- Record and maintain documents of each pupil's immunization record or lawful exemption, and maintain the documents in each pupil's permanent record; collect data and prepare reports for the DPH and county health departments.

This mandate finding was based, in part, on Health and Safety Code section 120335(c) which, as added by Statutes 1997, chapter 882 provided:

On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, . . . unless the pupil has been fully immunized against hepatitis B.

The mandate redetermination request in this matter is based upon changes in law made by Statutes 2010, chapter 434 (A.B. 354), amending Health and Safety Code section 120335(c) to provide as follows:

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7<sup>th</sup> grade level of any private or public elementary or secondary school.<sup>1</sup>

The Department of Finance (Finance) argues that this change in law eliminates the mandated activities approved in *Immunization Records – Hepatitis B*, 98-TC-05. Based on the plain language of Statutes 1997, chapter 882, it appears that activities related to the conditional admission of seventh graders are no longer required since admission is no longer conditional. Therefore, Finance has made an adequate showing that the state's liability may have been modified based on a subsequent change in law such that Finance has a substantial possibility of prevailing at the second hearing.

### **Procedural History**

On June 29, 2015, Finance filed a request for redetermination of the *Immunization Records – Hepatitis B* test claim, 98-TC-05.<sup>2</sup> Finance asserts the amendment of Health and Safety Code section 120335 constitutes a “subsequent change in law” and the “state's obligation to reimburse affected local agencies for those related activities has ceased.”<sup>3</sup> On August 4, 2015, the State

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<sup>1</sup> Health and Safety Code section 120335(c), (Stats 2010, ch. 434, §2). Section 3 of Statutes 2010, chapter 434 also replaced section 120335 with a new code section, effective July 1, 2012 with identical language to that in section 2.

<sup>2</sup> Exhibit A, Request for Redetermination, page 1.

<sup>3</sup> Based on the plain language of section 120335(c), the potential period of reimbursement affected by this redetermination begins July 1, 2011.

Controller's Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.<sup>4</sup> On October 19, 2015, Commission staff issued the draft proposed decision for the first hearing.

### **Commission Responsibilities**

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>5</sup>

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>6</sup>

An "adequate showing" is determined in the Commission's regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>7</sup>

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the

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<sup>4</sup> Exhibit D, Controller's Comments on Request for Redetermination, page 1.

<sup>5</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>6</sup> Government Code section 17570, as added by Statutes 2010, chapter 719.

<sup>7</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>8</sup>

Thus, the first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission's regulations, only whether the requester has made an adequate showing that the state's liability may be modified based on a subsequent change in law, as defined. Therefore, this analysis will be limited to whether "the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing."<sup>9</sup> If the Commission finds that there has been an adequate showing, a thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

### **Staff Analysis**

Staff finds that Finance has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Immunization Records – Hepatitis B* mandate, may be modified based on a subsequent change in law, and that Finance has a substantial possibility of prevailing at the second hearing. Specifically, Health and Safety Code section 120335 has been amended by Statutes 2010, chapter 434 (AB 354) to remove the hepatitis B immunization as a condition by which a school district admits or advances a pupil to the seventh grade, effective July 1, 2011. This change in law appears to have removed the requirement to perform activities related to the conditional admission of seventh graders since, based on the plain language of the statute, admission is no longer conditional on proof of hepatitis B vaccination.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for March 25, 2016.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed decision following the hearing.

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<sup>8</sup> California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>9</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
FIRST HEARING: ADEQUATE SHOWING  
ON:

Education Code Section 48216 and  
Health and Safety Code Sections  
120325, 120335, 120340, and 120375;  
as amended by Statutes 1978, Chapter  
325; Statutes 1979, Chapter 435;  
Statutes 1982, Chapter 472; Statutes  
1991, Chapter 984; Statutes 1992,  
Chapter 1300; Statutes 1994, Chapter  
1172; Statutes 1995, Chapters 291 and  
415; Statutes 1996, Chapter 1023; and  
Statutes 1997, Chapters 855 and 882

California Code of Regulations, Title  
17, Sections 6020, 6035, 6040, 6055,  
6065, 6070, and 6075;

As Alleged to be Modified by:

Statutes 2010, Chapter 434 (AB 354)

Filed on June 29, 2015

By the Department of Finance, Requester

Case No.: 14-MR-04

*Immunization Records – Hepatitis B  
(98-TC-05)*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION  
17500, ET SEQ.; CALIFORNIA CODE  
OF REGULATIONS, TITLE 2,  
DIVISION 2, CHAPTER 2.5,  
ARTICLE 7.

*(Adopted January 22, 2016)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 22, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision as follows:

<b>Member</b>	<b>Vote</b>
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

### **Summary of Findings**

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Immunization Records – Hepatitis B*, 98-TC-05 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Health and Safety Code section 120335 has been amended by Statutes 2010, chapter 434 (AB 354) to remove the hepatitis B immunization as a condition by which a school district admits or advances a pupil to the seventh grade, effective July 1, 2011. This change in law appears to have removed the requirement to perform activities related to the conditional admission of seventh graders since, based on the plain language of the statute, admission is no longer conditional on proof of hepatitis B vaccination. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

### **COMMISSION FINDINGS**

#### **I. Chronology**

- 08/24/1998                      The Commission adopted the test claim statement of decision.<sup>10</sup>
- 07/31/2003                      The Commission adopted the parameters and guidelines.<sup>11</sup>
- 09/29/2010                      Statutes 2010, chapter 434 was enacted and became effective January 1, 2011.
- 07/01/2011                      Section 2 of Statutes 2010, chapter 434, which amends Health and Safety Code section 120335 by adding subdivision (c), became operative.
- 06/29/2015                      Finance filed a request for redetermination on *Immunization Records – Hepatitis B*, 98-TC-05.<sup>12</sup>

<sup>10</sup> Exhibit B, Test Claim Statement of Decision, 98-TC-05.

<sup>11</sup> Exhibit C, Parameters and Guidelines, 98-TC-05.

<sup>12</sup> Exhibit A, Request for Redetermination.

- 08/04/2015 The State Controller's Office (Controller) submitted written comments on the redetermination request.<sup>13</sup>
- 10/19/2015 Commission staff issued the draft proposed decision for the first hearing.

## II. Background

On August 24, 2000, the Commission adopted the Statement of Decision for the *Immunization Records - Hepatitis B* test claim, finding that the test claim statutes and regulations imposed a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The test claim statutes and regulations added mumps, rubella, and hepatitis B to the list of diseases an entering pupil must be immunized against, or show proof of a lawful exemption, prior to the pupil's first admission into a school. Hepatitis B immunizations, or proof of a lawful exemption, were also required by the test claim statute for students entering the seventh grade on or after July 1, 1999. Section IV of the parameters and guidelines identifies the following reimbursable activities:

A. Proof of Immunizations for New Entrants: Kindergarteners and/or Out-of-State Transfers  
(*Reimbursement period begins: July 1, 1997.*)

1. Request and review lawful exemption from, or proof of, immunization against mumps and rubella from each pupil seeking admission to school in the state for the first time. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
2. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil entering specified institutions in the state for the first time at the kindergarten level after August 1, 1997. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

B. Proof of Hepatitis B Immunizations for Students Entering Seventh Grade on or after July 1, 1999  
(*Reimbursement Period begins: July 1, 1999.*)

1. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

C. Conditional Admission of Pupils and Parent Notification Requirements  
(*Reimbursement Period begins: July 1, 1997.*)

1. Conditionally admit any pupil who has not been fully immunized for mumps, rubella, and hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)

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<sup>13</sup> Exhibit D, Controller's Comments on Request for Redetermination.



2. Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)

D. Mandatory Pupil Exclusion and Parent Notification Requirements

*(Reimbursement Period begins: July 1, 1998.)*

1. Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
2. Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
3. Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)

E. Documentation and Reporting Requirements for Immunizations

*(Reimbursement Period begins: July 1, 1997.)*

1. Record each pupil's immunization for, or exemption from mumps, rubella, and hepatitis B on an immunization record and maintain the document in each pupil's permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
2. Document additional vaccine doses on the pupil's immunization record as they are administered.<sup>14</sup> (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
3. Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
4. Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

In lieu of claiming reimbursement based on actual costs incurred, Section V of the parameters and guidelines contains a base uniform cost allowance to reimburse school districts for all reimbursable activities required for new pupil entrants at \$2.12 per pupil, and a separate base uniform cost allowance to reimburse school districts for all reimbursable activities related to the hepatitis B immunization for 7th grade pupils at \$3.23 per pupil, adjusted for inflation. Section V(B) of the parameters and guidelines further states that the “[a]ctivities that are reimbursable under the uniform cost allowance for “Seventh Grade Pupils” are as follows: Section IV. B, C, D

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<sup>14</sup> This activity is only for *documenting* additional vaccine doses on the pupil's immunization record. The test claim legislation does not mandate school districts to administer vaccines.

and E – new activities for the hepatitis B immunization.” The uniform cost allowance for the hepatitis B immunization for 7th grade pupils therefore pays for the following activities:

- Section IV. B - Request and review lawful exemption from, or proof of, immunization against . . . hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
- Section IV. C -Conditionally admit any pupil who has not been fully immunized for hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
- Section IV. C - Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)
- Section IV. D - Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
- Section IV. D - Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
- Section IV. D - Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)
- Section IV. E - Record each pupil’s immunization for, or exemption from . . . hepatitis B on an immunization record and maintain the document in each pupil’s permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Section IV. E - Document additional vaccine doses on the pupil’s immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Section IV. E - Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

#### The Alleged Subsequent Change in Law

Statutes 2010, chapter 434, amended Health and Safety Code section 120335(c), operative July 1, 2011 and inoperative July 1, 2012, to read:

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority

admits or advances any pupil to the 7<sup>th</sup> grade level of any private or public elementary or secondary school.<sup>15</sup>

Section 3 of Statutes 2010, chapter 434 then added a new section 120335(c), operative July 1, 2012. Section 120335(c) again stated:

Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7<sup>th</sup> grade level of any private or public elementary or secondary school.<sup>16</sup>

Finance alleges that Statutes 2010, chapter 434, is a subsequent change in law that modifies the state's liability by eliminating the condition that schools require proof of immunization against hepatitis B as a condition of a pupil advancing or being admitted to the seventh grade.

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for a two hearing process. At the first hearing, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution."<sup>17</sup> A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>18</sup>

An "adequate showing" is determined in the Commission's regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>19</sup>

If the Commission finds, at the first hearing, that:

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<sup>15</sup> Health and Safety Code section 120335(c), Statutes 2010, chapter 434 (AB 354), section 2.

<sup>16</sup> Health and Safety Code section 120335(c), Statutes. 2010, chapter 434 (AB 354, §§ 2 and 3).

<sup>17</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>18</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>19</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>20</sup>

### **III. Positions of the Parties, Interested Parties, and Interested Persons**

#### **A. Department of Finance, Requester**

Finance asserts that the enactment of Health and Safety Code section 120335(c), as amended, is a subsequent change in law that eliminates the condition that schools require proof of immunization against hepatitis B as a condition of a student advancing or being admitted to the seventh grade. Finance states that “since the statute has been amended, no reimbursement for the specified activity is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514 as of July 1, 2013.”<sup>21</sup>

#### **B. State Controller**

The Controller states that it “concur[s] with the Department of Finance’s request to adopt a new test claim decision and to amend the parameters and guidelines for the Immunization Records: Hepatitis B program.”<sup>22</sup>

### **IV. Discussion**

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state’s liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether the request, when considered in light of all of the written comments and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.”<sup>23</sup> A thorough mandates

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<sup>20</sup> California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>21</sup> Exhibit A, Request for Redetermination, page 5.

<sup>22</sup> Exhibit D, Controller’s Comments on Request for Redetermination, page 1.

<sup>23</sup> California Code of Regulations, Title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting

analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

**Finance Has Made an Adequate Showing That Statutes 2010, Chapter 434, Which Amended Health and Safety Code Section 120335(c), Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570 That May Modify the State's Liability For the *Immunization Records – Hepatitis B Program*.**

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that, pursuant to article XIII B section 6, the state's liability has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>24</sup>

The test claim statement of decision and parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, found reimbursable activities resulting from "amendments to Health and Safety Code section 120335 which establishes a list of diseases which an entering student must be immunized against prior to the first admission into the school."<sup>25</sup> More specifically, Statutes 1997, chapter 882 required that "on and after July 1, 1999, the governing authority [of a school district] shall not unconditionally admit any pupil to the seventh grade level, nor unconditionally advance any pupil to the seventh grade level, ...unless the pupil has been fully immunized against hepatitis B."

The Commission found activities related to this requirement, as well as numerous other requirements as specified in the Background, above, to be reimbursable and included those activities in the parameters and guidelines adopted July 31, 2003.

Finance alleges that Health and Safety Code section 120335(c) as amended by Statutes 2010, chapter 434, requires a new finding that the costs relating to the hepatitis B immunization for seventh graders are not costs mandated by the state. Health and Safety Code section 120335(c) as amended in Section 2 of the bill provides:

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documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

<sup>24</sup> Government Code section 17570(a)(2).

<sup>25</sup> Exhibit B, Test Claim Decision 98-TC-05, page 3.

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7<sup>th</sup> grade level of any private or public elementary or secondary school.<sup>26</sup>

Section 120335(c) is “a change in mandates law,” as defined in Government Code section 17570, since it amends section 120335(c) to remove the requirement for immunization prior to admitting or advancing a student to the seventh grade level. This appears to make the activities related to the conditional admission pending hepatitis B vaccination no longer required. Therefore, the state’s liability for some of the activities approved in the test claim may be modified.

At this hearing the Commission is required only to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>27</sup> Based upon the amendment to section 120335(c) which is a subsequent change in law, the Commission finds that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

## V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *Immunization Records – Hepatitis B*, 98-TC-05, mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision on *Immunization Records – Hepatitis B*, 98-TC-05.

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<sup>26</sup> Section 3 of Statutes 2010, chapter 434, then, repeals and replaces section 120335(c), operative July 1, 2012, to delete the July 1, 2011 operative date language. Section 120335(c) now states:

Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7<sup>th</sup> grade level of any private or public elementary or secondary school.

<sup>27</sup> California Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

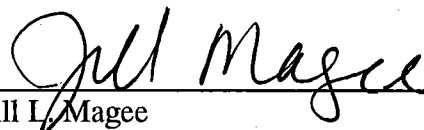
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 19, 2015, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 14-MR-04  
First Hearing: Adequate Showing  
*Immunization Records: Hepatitis B (98-TC-05)*  
Education Code Section 48216 et al.  
As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)  
Department of Finance, Requester

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 October 19, 2015 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 10/19/15

**Claim Number:** 14-MR-04

**Matter:** Immunization Records: Hepatitis B (98-TC-05)

**Requester:** Department of Finance

### 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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