

ITEM 17 J
FINAL STAFF ANALYSIS
PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Statutes 1981, Chapters 102 and 1163

And DHS All County Letters

Medi-Cal Beneficiary Probate
05-PGA-33 (4032)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program (4032) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Medi-Cal Beneficiary Probate* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current "boilerplate language"?**

Staff finds that it is appropriate to approve the SCO's request to insert the source documentation and records retention language because it would conform the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

12/02/1982	Board of Control (predecessor to the Commission on State Mandates) adopts Statement of Decision
02/03/1983	Board of Control adopts parameters and guidelines
03/28/1984	Board of Control amends parameters and guidelines
01/23/2003	The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the <i>School Bus Safety II</i> parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language
04/07/2006	SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the <i>Medi-Cal Beneficiary Probate</i> program analyzed here
04/27/2006	Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment
07/23/2009	Commission reissues SCO's request for amendment of parameters and guidelines for comment
08/18/2009	Department of Finance files comments
10/13/2009	Commission issues draft staff analysis

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program (4032) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Board of Control Decision and Parameters and Guidelines

The test claim statutes provide that where a deceased person has received or may have received health care under the state's Medi-Cal system, the heirs, executor, administrator or person in possession of the decedent's property shall give the Director of Department of Health Services the notice of death no later than 90 days from the date of death. The Department also issued two county letters which provided clarification of these statutes, and requested specific information.

On December 2, 1982, the Board of Control determined that Probate Code Section 700.1, as added or amended by Statutes 1981, Chapters 102 and 1163, and the two Department letters imposed a reimbursable state-mandated program upon local agencies.¹

¹ Exhibit A.

On February 3, 1983, the Board of Control adopted the parameters and guidelines for this program. On March 28, 1984, the Board of Control amended the parameters and guidelines.²

Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.³ The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission's intentions as well as the SCO's expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines:⁴

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 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 under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

²Exhibit B.

³ Exhibit C.

⁴ The Commission also adopted other boilerplate language that is not relevant to this request.

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 chapter 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. 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.*

The Commission has included this language, commonly referred to as “boilerplate language,” in all parameters and guidelines adopted on or after January 23, 2003.

SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.⁵

The parameters and guidelines for the *Medi-Cal Beneficiary Probate* program is one of the 49 programs the SCO is requesting be amended.

Comments on the Proposal

On April 27, 2006, the Commission issued the SCO’s request to amend the parameters and guidelines for comment. No comments were filed. On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.⁶

In its comments, Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

Commission staff issued the draft staff analysis on October 13, 2009.⁷ No comments were filed.

Related Litigation (*Clovis Unified School Dist., et al. v. State Controller*)

This case involves a challenge by school districts and community college districts on reductions made by the State Controller’s Office to reimbursement claims for several mandated programs.⁸ The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

⁵ Exhibit D.

⁶ Exhibit E.

⁷ Exhibit F.

⁸ The Commission is not a party to this action.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the Commission’s parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller’s claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

Court of Appeal Filings (Third District Court of Appeal, Case No. C061696). Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

Discussion

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

Issue: Should the parameters and guidelines be amended to add the Commission’s current “boilerplate language”?

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines that clarify what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO.

The adopted language, as detailed on pages 4 and 5 of this analysis, has been included in all parameters and guidelines adopted since 2003.

In addition, section 1183.1, subdivision (a) (5) and (6) require that the parameters and guidelines contain, among other things, the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller’s authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language. This analysis pertains to the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program.⁹

⁹ The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Medi-Cal Beneficiary Probate* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations.

Therefore, staff finds that it is appropriate to approve the SCO's request, and made the following modifications to the parameters and guidelines:

III. Period of Reimbursement

Government Code section 17557, subdivision (d) states that a parameters and guidelines amendment filed on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. This amendment was filed on April 7, 2006, (after the claiming deadline) establishing reimbursement for fiscal year 2005-2006. Therefore, reimbursement for this amendment shall begin on July 1, 2005.

Staff clarified that the proposed amendments would be effective on July 1, 2005.

V. Reimbursable Activities

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

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 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 under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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

VI. Reimbursable Costs

Staff deleted the existing language and inserted the following updated boilerplate language regarding indirect costs, as requested by the SCO:

before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

Indirect costs are defined as costs, which 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 central government services distributed to 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 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) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB Circular A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VII. Claim Preparation

As requested by the SCO, staff deleted language in this section regarding source documentation that is no longer necessary because the updated boilerplate language was added in Section V.

VIII. Records Retention

At the request of the SCO, staff added the following boilerplate language regarding records 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 chapter 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. 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.*

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Medi-Cal Beneficiary Probate* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Proposed Amendment to Parameters and Guidelines

Statutes 1981, Chapters 102 and 1163, ~~Statutes of 1981~~; and
DHS All County Letters)

Medi-Cal Beneficiary Probate
05-PGA-33 (4032)

This amendment is effective beginning with claims filed for the
July 1, 2005 through June 30, 2006 period of reimbursement.

I. SUMMARY OF MANDATE

~~Statutes 1981~~, cChapter 102, ~~Statutes of 1981~~ effective June 28, 1981 added Probate Code Section 700.1; and ~~Statutes 1981~~, cChapter 1163, ~~Statutes of 1981~~ effective October 2, 1981 amended Probate Code Section 700.1. In part, Section 700.1 states that where a deceased person has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) of Chapter 8 (commencing with Section 14200), Part 3, Division 9, Welfare and Institutions Code, the heirs, the executor, the administrator, or the person in possession of any property of the decedent shall give the Director of Health Services or his or her successor notice of the death no later than 90 days from the date of death. Such notice shall be mailed postage prepaid, and addressed to the director at his or her Sacramento office.

The Department of Health Services prepared two (2) all county letters to Public Guardians/Public Administrators; one dated February 118, 1982 and the second dated March 31, 1982 which included a suggested form letter. The purpose of the all county letters was to provide clarification of Probate Code Section 700.1 and request specific information.

II. BOARD OF CONTROL DECISION

On December 2, 1982 the Board of Control found that Statutes 1981, Chapters.102 and 1163, ~~Statutes of 1982~~; and State Department of Health Services all county letters of February 18, 1982 and March 31, 1982 imposed reimbursable state mandated costs.

III. ELIGIBLE CLAIMANTS

Only counties are eligible to file for reimbursement, as under State of California law the Office of Public Guardian/Public Administrator is a county function.

IV. PERIOD OF REIMBURSEMENT

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

~~Chapter 102, Statutes of 1981~~ became operative on June 28, 1981. Statutes 1981, cChapter 1163, ~~Statutes of 1981~~ became operative on October 2, 1981. The test claim was filed on July 8, 1982. Revenue and Taxation Code Section 2253.8 states that test claims must be submitted on or before November 30 following a given fiscal year in order to obtain reimbursement for costs incurred during the given fiscal year. Therefore, costs incurred during 1981-82 and subsequent fiscal years would be reimbursable unless otherwise limited.

V. 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 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 under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

Probate Code Section 700.1, and the all county letters of February 18, 1982 and March 31, 1982 with its form letter requested the following information:

<u>Description</u>	<u>Probate Code</u> <u>Section 700.1</u>	<u>All County</u> <u>letters dated</u> <u>2-18-82 & 3-31-92</u>	
Notice of Death	X	-	
Death Certificate	X	X	
Probate Number	-	X	
Medi-Cal Number		X	X
Estate Inventory & Appraisal		X	X
Date of Death			X
Approximate Estate Value			X
Social Security Number			X
Date of Birth			X
Marital Status			X
Type of Probate			X

Counties shall be reimbursed for the increased costs directly related to providing information as required above.

VI. REIMBURSABLE COSTS

Salary and Fringe Benefits:

Classification of employee, number of- hours devoted to mandated functions, hourly rate, and fringe benefits.

Other Costs:

Computer costs, mileage, death certificates, forms, etc. Claimants must provide justification for these costs.

Allowable Indirect Overhead Costs:

Indirect costs are defined as costs, which 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 central government services distributed to 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 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) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB Circular A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

Counties have the option of using 10% of direct labor as their indirect cost or prepare a departmental rate for the program using the Indirect Cost Rate Proposal Method shown in Controller's Claiming Instruction No. 82-4 dated October 15, 1982.

Offsetting Revenues:

Claimants shall pursue reimbursement for the costs claimed above, from a decedent's estate before seeking SB 90 reimbursement. The full amount of estate reimbursement shall be subtracted from the SB 90 reimbursement claim.

VII. CLAIM PREPARATION

Claimants shall categorize the activities necessary to carry out the mandated functions using the categories cited in the Reimbursable Costs Section. Claimants shall provide appropriate case load statistics to support claimed costs.

Special Note:

~~For audit purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents (i.e., receipts, vouchers, contracts, timesheets, cost plans, etc) must be kept on file and made available on the request of the State Controller.~~

VIII. 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 chapter¹ 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

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

To be Completed by Claimant

REQUIRED CERTIFICATION:

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT Sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and,

THAT I am the person authorized by the local agency to file claims with the State of California.

Signature of Authorized Representative

Date

Title

Telephone Number