

ITEM 4
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Penal Code Section 4011.10

Statutes 2005, Chapter 481 (SB 159) and Statutes 2006, Chapter 303 (SB 896)

General Health Care Services for Inmates

07-TC-12

Orange County Health Care Agency, Claimant

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Supporting Documentation 42

Senate Floor Analysis, Senate Bill 159, as amended August 31, 2005.

Senate Rules Committee, Third Reading, Senate Bill 159, as amended May 3, 2005.

County Health Care Agency Web site, Medical Services Initiative (MSI),

<http://ohealthinfo.com/about/medical/msi> (accessed on July 8, 2013).

09-TE-12

1. TEST CLAIM TITLE

General Health Care Services for Inmates

2. CLAIMANT INFORMATION

County of Orange/Health Care Agency
 Name of Local Agency or School District
 David L. Riley
 Claimant Contact
 Assistant Agency Director
 Title
 405 W. 5th Street, 7th Floor
 Street Address
 Santa Ana, CA 92701
 City, State, Zip
 (714) 834-6021
 Telephone Number
 (714) 834-3660
 Fax Number
 driley@ochca.com
 E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David L. Riley
 Claimant Representative Name
 Assistant Agency Director
 Title
 Orange County Health Care Agency
 Organization
 405 W. 5th Street, 7th Floor
 Street Address
 Santa Ana, CA 92701
 City, State, Zip
 (714) 834-6021
 Telephone Number
 (714) 834-3660
 Fax Number
 driley@ochca.com
 E-Mail Address

For CSM Use Only

Filing Date:

RECEIVED

JUN 30 2008

COMMISSION ON

Test Claim **STATE MANDATES**

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Penal Code, Section 4011.10
 Statutes 2005, Chapter 481 [SB 159];
 Statutes 2006, Chapter 303 [SB 896].

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 2 .

6. Declarations: pages 3 to 6 .

7. Documentation: pages 7 to 12 .

5. WRITTEN NARRATIVE

Identify the specific sections of statutes or executive orders alleged to contain a mandate.

Senate Bill 159, Statutes of 2005, Chapter 481, added Section 4011.10 of the Penal Code which relates to health care for inmates. As the bill states:

Existing law authorizes the Department of Corrections and Rehabilitation to contract with providers of emergency health care services. Existing law specifies that hospitals and ambulance or other nonemergency response services that do not contract with the department shall provide those services at the Medicare rate. This bill would apply these provisions to county sheriffs, chiefs of police, and directors or administrators of local departments of correction, except that it would specify that hospitals that do not contract with those local law enforcement agencies shall provide their services at a rate equal to 110% of the hospital's actual costs, as specified.

Senate Bill 896, Statutes of 2006, Chapter 303, amended Section 4011.10. As the bill states:

Existing law authorizes the Department of Corrections and Rehabilitation, county sheriff's, and police chiefs to contract with providers of emergency health care services. This bill would, in addition, extend the requirements to include SB 159 to include public agencies that provide for emergency health care services for local law enforcement patients.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.

The Orange County Health Care Agency is the department that pays claims for health care provided to persons in the custody of the Orange County Sheriff. Orange County does not have a County hospital and only contracts with Western Medical Center Anaheim for most of this care. However, there are times when arrestees are taken by peace officers to the nearest emergency room. Since Orange County does not contract with these hospitals, SB 159 mandate services shall be provided at a rate equal to 110% of the hospital's actual costs, as specified.

- (B) A detailed description of existing activities and costs that are modified by the mandate.

The Orange County Health Care Agency, prior to SB 159, paid hospitals for emergency room custody services at established Medical Services Initiative rates; which amounted to \$637,878.33.

- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

Orange County implemented SB 159/896 on July 1, 2007. The resulting increase in cost for claims received and processed through June 26, 2008 is \$1,841,893.49 (see attached report).

- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Orange County believes that the estimated annual costs for this next fiscal year immediately following may increase or remain level to this year's costs.

- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Orange County is not aware of any increased costs incurred by other Counties or Agencies.

- (F) Identification of all of the following funding sources available for this program:

Orange County is not aware of any funding sources for this program.

- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

None.



**COUNTY OF ORANGE
HEALTH CARE AGENCY**

MEDICAL & INSTITUTIONAL HEALTH SERVICES

*Excellence
Integrity
Service*

JULIETTE A. POULSON, RN, MN
DIRECTOR

ROBERT C. GATES
DEPUTY AGENCY DIRECTOR
MEDICAL & INSTITUTIONAL HEALTH SERVICES

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MANAGER
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**Review of Orange County Health Care Agency Comments
SB 159/869 Test Claim
Increased County Cost Mandate for Inmate Medical Care**

Declaration of Melissa Tober

Melissa Tober makes the following declaration and statement under oath:

I, Melissa Tober, Manager of Medical & Institutional Health Operations for the County of Orange Health Care Agency, am responsible for the payment of claims for medical care provided to persons in the custody of the Orange County Sheriff and for administering contractual activities related to the provision of such medical care and/or relating to the payment of medical claims to providers who are not under contract for such services. Specifically, I have prepared the subject review.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

As a result of SB 159 and SB 896, implemented by the County of Orange Health Care Agency on July 1, 2007, the County of Orange Health Care Agency as of June 26, 2008, has paid an additional \$1,841,893.49 to hospitals for emergency services provided to persons in the custody of the Orange County Sheriff. Such hospital charges were previously paid at rates equal to reimbursement rates for services provided through Orange County's Medical Services for Indigents Program mandated by Welfare & Institutions Code 17000 and are now required to be paid at 110% of the hospitals' actual costs as reported to the Office of Statewide Health Planning and Development. No additional local, state, or federal funds, except County General Funds, nor any fee authority, are available to offset these costs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/27/08, Santa Ana, CA.
Date and Place

Melissa Tober
Signature

Advanced Medical Management, Inc.

Orange County CMS

Cumulative Hospital Claims with Old MSI Point Value

RECEIVED DATES: 07/01/2007 TO 6/26/2008

FY2007-2008(07/01/2007 To 06/30/2008)

Hospital	Billed %	Billed	Would Have Paid MSI Point Value	Current Paid Amt	Diff
ANAHEIM MEMORIAL MEDICAL CENTER	25.16%	\$11,200.00	\$528.87	\$1,914.94	(\$1,386.07)
COASTAL COMMUNITIES HOSPITAL INC	21.92%	\$33,778.00	\$1,676.84	\$7,235.85	(\$5,559.01)
FOUNTAIN VALLEY REGIONAL HOSP & MED CTR	20.54%	\$4,330.25	\$186.90	\$229.88	(\$42.98)
GARDEN GROVE HOSPITAL & MED CTR	20.71%	\$255,550.65	\$11,277.13	\$43,798.29	(\$32,521.16)
HOAG MEMORIAL HOSPITAL PRESBYTERIAN	44.48%	\$177,518.12	\$16,176.65	\$71,980.44	(\$55,803.79)
IRVINE MEDICAL CENTER	18.69%	\$70,207.14	\$1,676.79	\$8,763.59	(\$7,086.80)
LONG BEACH MEMORIAL MEDICAL CENTER	28.89%	\$1,418.00	\$143.41	\$409.67	(\$266.26)
LOS ALAMITOS MEDICAL CENTER	15.94%	\$7,377.35	\$231.67	\$1,104.23	(\$872.56)
MISSION HOSPITAL REGIONAL MEDICAL CENTER	29.91%	\$177,625.67	\$19,198.78	\$29,788.94	(\$10,590.16)
PLACENTIA LINDA HOSPITAL	19.68%	\$25,577.01	\$264.58	\$4,961.67	(\$4,697.09)
PRIME HEALTHCARE ANAHEIM LLC	21.89%	\$33,215.03	\$1,784.58	\$7,237.07	(\$5,452.49)
PRIME HEALTHCARE HUNTINGTON BEACH	25.92%	\$243,209.99	\$14,137.80	\$58,761.57	(\$44,623.77)
PRIME HEALTHCARE LA PALMA LLC	30.22%	\$3,105.24	\$286.82	\$938.41	(\$651.59)
REGENTS OF THE UNIVERSITY OF CALIFORNIA	29.19%	\$5,200,596.46	\$226,440.08	\$1,248,864.83	(\$1,022,424.75)
SADDLEBACK MEMORIAL MEDICAL CENTER	32.64%	\$215,847.72	\$9,525.91	\$68,014.96	(\$58,489.05)
SOUTH COAST MEDICAL CENTER	28.62%	\$125,118.00	\$6,545.31	\$25,648.92	(\$19,103.61)
SOUTHWEST HEALTHCARE SYSTEM	28.59%	\$1,847.00	\$0.00	\$0.00	\$0.00
ST JOSEPH HOSPITAL	27.89%	\$274,204.78	\$12,525.67	\$76,475.58	(\$63,949.91)
ST JUDE HOSPITAL INC	28.47%	\$57,981.59	\$3,822.68	\$14,113.57	(\$10,290.89)
THE HUNTINGTON BEACH LIMITED PARTNERSHIP	25.92%	\$2,996.70	\$143.41	\$0.00	\$143.41
TUSTIN HOSPITAL & MEDICAL CENTER	21.47%	\$34,570.88	\$1,935.58	\$7,308.29	(\$5,372.71)
WMC SA INC	20.72%	\$5,576,225.72	\$309,368.87	\$802,221.12	(\$492,852.25)
Total		\$12,533,501.30	\$637,878.33	\$2,479,771.82	(\$1,841,893.49)

Emergency Healthcare Services for Inmates
Orange County Health Care Agency
Section 6

Declaration of Allan P. Burdick
In support of Test Claim

I, Allan P. Burdick, state as follows:

1. I am currently employed by MAXIMUS, Inc. and have worked with California's state mandate cost local program since 1978 as an employee of MAXIMUS or the California State Association of Counties. I have personal knowledge of the facts stated herein and if called upon to testify, I could do so competently.
2. To establish a statewide cost estimate, I discussed the test claim statutes with a number of entities.
3. I consulted the office of Warner and Pank, who provides legislative services to the California State Sheriff's Association, and talked to Ms. Pank concerning the legislation. Warner and Pank provide legislative advocacy services to the California Sheriff's Association and other statewide law enforcement groups. Association's legislative staff was contacted to determine what agencies may have incurred increased costs. They were not aware of any agencies, but referred me to the Los Angeles Sheriff's Department.
4. I consulted Sgt. Wayne Billowit of the Los Angeles Sheriff's Department who reported that he was familiar with the legislation. He said only one area in Antelope Valley contracts for medical and he thinks there has been no increase in the cost of existing contracts.
5. I consulted Ms. Kelly Brooks, the CSAC Health and Human Services legislative advocate, who was not aware of any counties that had reported any increased costs. She did report that there was concern when the bill was being considered by the legislature that it could result in increased costs.
6. I consulted Judith Reigel of the County Health Executives Association of California's Executive Office who indicated that Marin County was concerned about the possible impact of the legislation, and Sonoma County may also have been affected. Both counties health

care agencies were contacted and neither county reported any increased costs to date as a result of the legislation.

7. I consulted the office of Senator George C. Runner (bill's author) and spoke to Mr. Chris Win who was not aware of any county that reported any increased cost. Tanya Vandrick reported that SB 1169 (Runner) which extends the sunset to January 2014 was on concurrence and that that had not received any letters of concern from any counties.

I declare under penalty of perjury that the foregoing is true and correct as based upon my personal knowledge, information or belief, and that this declaration is executed this 30th day of June, 2008, at Sacramento, California.



Allan P. Burdick
Executive Director
MAXIMUS

Senate Bill No. 159

CHAPTER 481

An act to add and repeal Section 4011.10 of the Penal Code, relating to health care.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 159, Runner. Inmates: health care services.

Existing law authorizes the Department of Corrections and Rehabilitation to contract with providers of emergency health care services. Existing law specifies that hospitals and ambulance or other nonemergency response services that do not contract with the department shall provide those services at the Medicare rate.

This bill would apply these provisions to county sheriffs, chiefs of police, and directors or administrators of local departments of correction, except that it would specify that hospitals that do not contract with those local law enforcement agencies shall provide their services at a rate equal to 110% of the hospital's actual costs, as specified.

This bill would prohibit a county sheriff or police chief from releasing inmates from custody for the purpose of seeking medical care, with the intent to rearrest, unless the hospital determines the action would enable it to collect from a third-party source. By imposing new duties on local law enforcement, the bill would impose a state-mandated local program. Further, this bill would direct specified stakeholders to convene a working group to assist in resolving issues affecting cost and emergency health care for inmates.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The provisions of the bill would be repealed as of January 1, 2009.

The people of the State of California do enact as follows:

SECTION 1. Section 4011.10 is added to the Penal Code, to read:

4011.10. (a) It is the intent of the Legislature in enacting this section to provide county sheriffs, chiefs of police, and directors or administrators of local detention facilities with an incentive to not engage in practices

designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services. Further, it is the intent of the Legislature to encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services. The Legislature has set a date of January 1, 2009, for this section to be repealed, and does not intend to delete or extend that date if county sheriffs, chiefs of police, and directors or administrators have not complied with the intent of the Legislature, as expressed in this subdivision.

(b) Notwithstanding any other provision of law, a county sheriff or police chief may contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.

(c) A county sheriff or police chief shall not request the release of an inmate from custody for the purpose of allowing the inmate to seek medical care at a hospital, and then immediately rearrest the same individual upon discharge from the hospital, unless the hospital determines this action would enable it to bill and collect from a third-party payment source.

(d) The California Hospital Association, the University of California, the California State Sheriffs' Association and the California Police Chiefs' Association shall, immediately upon enactment of this section, convene the Inmate Health Care and Medical Provider Fair Pricing Working Group. The working group shall consist of at least six members from the California Hospital Association and the University of California, and six members from the California State Sheriffs' Association and the California Police Chiefs' Association. Each organization should give great weight and consideration to appointing members of the working group with diverse geographic and demographic interests. The working group shall meet at least three times annually to identify and resolve industry issues that create fiscal barriers to timely and affordable emergency inmate health care. In addition, the working group shall address issues including, but not limited to, inmates being admitted for care and later rearrested and any other fiscal barriers to hospitals being able to enter into fair market contracts with public agencies. No reimbursement is required under this provision.

(e) Nothing in this section shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for health services for those departments, has with his or her health care providers.

(f) An entity that provides ambulance or any other emergency or nonemergency response service to a sheriff or police chief, and that does not contract with their departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither the sheriff nor the police chief shall reimburse a provider of any of these services that their department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.

(g) For the purposes of this section, "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

(h) For purposes of this section, in those counties in which the sheriff does not administer a jail facility, a director or administrator of a local department of corrections established pursuant to Section 23013 of the Government Code is the person who may contract for services provided to jail inmates in the facilities he or she administers in those counties.

(i) This section is repealed as of January 1, 2009.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Senate Bill No. 896

CHAPTER 303

An act to amend Section 4011.10 of the Penal Code, relating to inmates, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 2006. Filed with
Secretary of State September 18, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 896, Runner. Inmates: health care services.

Existing law authorizes the Department of Corrections and Rehabilitation, county sheriffs, and police chiefs to contract with providers of emergency health care services.

This bill would, in addition, allow other public agencies that contract for emergency health services to contract with providers for emergency health care services for care to local law enforcement patients.

Existing law provides that specified associations convene a working group to address fiscal issues relating to the provision of this contracted emergency medical health services. This bill would provide that to the extent that these contracts result in a disproportionate share of local law enforcement inmates being treated at any one hospital or system of hospitals, this working group shall address this issue.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 4011.10 of the Penal Code is amended to read:

4011.10. (a) It is the intent of the Legislature in enacting this section to provide county sheriffs, chiefs of police, and directors or administrators of local detention facilities with an incentive to not engage in practices designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services. Further, it is the intent of the Legislature to encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services. The Legislature has set a date of January 1, 2009, for this section to be repealed, and does not intend to delete or extend that date if county sheriffs, chiefs of police, and directors or administrators have not complied with the intent of the Legislature, as expressed in this subdivision.

(b) Notwithstanding any other provision of law, a county sheriff, police chief or other public agency that contracts for emergency health services, may contract with providers of emergency health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for emergency health care services shall provide emergency health care services to local law enforcement patients at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.

(c) A county sheriff or police chief shall not request the release of an inmate from custody for the purpose of allowing the inmate to seek medical care at a hospital, and then immediately rearrest the same individual upon discharge from the hospital, unless the hospital determines this action would enable it to bill and collect from a third-party payment source.

(d) The California Hospital Association, the University of California, the California State Sheriffs' Association and the California Police Chiefs' Association shall, immediately upon enactment of this section, convene the Inmate Health Care and Medical Provider Fair Pricing Working Group. The working group shall consist of at least six members from the California Hospital Association and the University of California, and six members from the California State Sheriffs' Association and the California Police Chiefs' Association. Each organization should give great weight and consideration to appointing members of the working group with diverse geographic and demographic interests. The working group shall meet at least three times annually to identify and resolve industry issues that create fiscal barriers to timely and affordable emergency inmate health care. In addition, the working group shall address issues including, but not limited to, inmates being admitted for care and later rearrested and any other fiscal barriers to hospitals being able to enter into fair market contracts with public agencies. To the extent that the rate provisions of this statute result in a disproportionate share of local law enforcement patients being treated at any one hospital or system of hospitals, the working group shall address this issue. No reimbursement is required under this provision.

(e) Nothing in this section shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for emergency health services for care to local law enforcement patients.

(f) An entity that provides ambulance or any other emergency or nonemergency response service to a sheriff or police chief, and that does not contract with their departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither the sheriff nor the police chief shall reimburse a provider of any of these services that their department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.

(g) For the purposes of this section, “reasonable and allowable costs” shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

(h) For purposes of this section, in those counties in which the sheriff does not administer a jail facility, a director or administrator of a local department of corrections established pursuant to Section 23013 of the Government Code is the person who may contract for services provided to jail inmates in the facilities he or she administers in those counties.

(i) This section is repealed as of January 1, 2009.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that existing arrangements for emergency health services for care to local law enforcement patients are maintained, it is necessary that this bill take effect immediately.

O

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

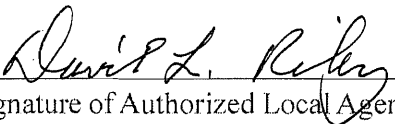
This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

David L. Riley

Print or Type Name of Authorized Local Agency
or School District Official

Assistant Agency Director

Print or Type Title



Signature of Authorized Local Agency or
School District Official

6/27/08

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

RECEIVED

August 22, 2008

AUG 27 2008

**COMMISSION ON
STATE MANDATES**

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

Dear Ms. Higashi:

As requested in your letter of July 23, 2008, the Department of Finance (Finance) has reviewed test claim No. 07-TC-12 "General Health Care Services for Inmates" submitted by the County of Orange Health Care Agency (COHCA). The COHCA asserts that the increased costs incurred under Section 4011.10 of the Penal Code are reimbursable state mandated costs.

Chapter 481, Statutes of 2005 (SB 159), effective January 1, 2006, added Section 4011.10 to the Penal Code authorizing local law enforcement agencies to contract with providers of emergency health care and medical response services for local law enforcement patients and to reimburse the non-contracted providers at the Medicare rate for medical response services and at a rate of 110 percent of actual hospital costs for emergency health care services. Chapter 303, Statutes of 2006 (SB 896), effective September 18, 2006, was a technical and clarifying measure amending Section 4011.10 of the Penal Code.

Subdivision (c) of Section 17551 of the Government Code requires that:

"Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."

Subdivision (c) of Section 1183 of Title 2, California Code of Regulations says in part:

"... 'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

The test claim from COHCA was filed on June 30, 2008, approximately 30 months after the effective date of SB 159 and 21 months after the effective date of SB 896 (which was observed above to be a technical, clean-up bill). Accordingly, for the test claim to be timely, costs asserted by COHCA could not have been first incurred within the six months between SB 159's effective date of January 1, 2006 and June 30, 2006. COHCA's test claim states Orange County implemented SB 159/896 on July 1, 2007 (approximately 18 months after the effective date of SB 159) with a resulting increase in costs for claims processed through June 26, 2008 of \$1,841,893.49.

Finance understands the test claim to say SB 159 caused the increased costs, as Finance reads the test claim at section B of page 2 and on the attached report "Orange County CMS Cumulative Hospital Claims with Old MSI Point Value" to mean that prior to the county's implementation of SB 159, they would have paid \$637,878.33 for the same emergency health care services. Finance does not possess information to explain why Orange County implemented SB 159 approximately 18 months after its effective date, unless the county's use of the word "implementation" signifies "first incurred costs as a result of." Further, Finance does not have information regarding whether Orange County first incurred costs between January 1, 2006 and June 30, 2006, which, if true, would render the test claim late under either test in Section 17551 of the Government Code. Finance has concerns that there may be a threshold issue in analyzing the test claim.

Should the Commission staff determine the test claim is timely, Finance asserts that the increases in the cost-based rates for non-contractual emergency health care and medical response services are not state mandated costs subject to subvention within the meaning of Section 6 of Article XIII B of the California Constitution. The rate provisions do not impose a new program or higher level of service on local health jurisdictions. The county had a pre-existing obligation to provide indigent inmates with medical care under Section 17000 of the Welfare and Institutions Code. The test claim legislation did not impose new duties, a higher level of service, or a higher standard of care on the counties with respect to their pre-existing duty.

In the test claim declaration of Melissa Tober, she acknowledges that the COHCA had a pre-existing obligation to satisfy the mandate for providing health care services to the indigents pursuant to Section 17000 of the Welfare and Institutions Code, and the test claim legislation has imposed increased costs on COHCA by an additional \$1,841,893.49. Under Section 6 of Article XIII B of the California Constitution and Section 17514 of the Government Code, increased costs alone are not reimbursable. The Supreme Court emphasized this point in *San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal.4th 859, 877*, saying "...simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting 'service to the public' under Section 6 of Article XIII B of the California Constitution and Section 17514 of the Government Code."

Further, in enacting the test claim legislation, the Legislature has not shifted to the county financial responsibility for providing the health care programs to indigents. The test claim should be denied.

Finance notes that counties have the option to manage costs and avoid the test claim legislation's rate provisions by negotiating a service contract with the emergency health care and medical response providers.

Ms. Paula Higashi
August 22, 2008
Page 3

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your August 22, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Diana L. Ducay
Program Budget Manager

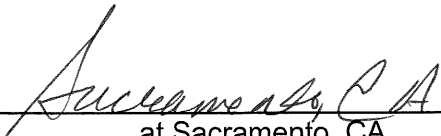
Enclosure

Attachment A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-07-TC-12

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.


at Sacramento, CA


Carla Shelton

PROOF OF SERVICE

Test Claim Name: General Health Care Services for Inmates
Test Claim Number: CSM-07-TC-12

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On August 22, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to COHCA and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Mr. David Wellhouse
David Wellhouse and Associates, Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor – Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

A-15

Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

B-08

Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Ms. Jollene Tollenaar
MGT of America
455 Capitol Mall, Suite 600
Sacramento, CA 95814

A-15

Ms. Carla Castaneda
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

Mr. Allan Burdick
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

B-08

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

Mr. Glen Everroad
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92659-1768

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

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Ave.
Clovis, CA 93611

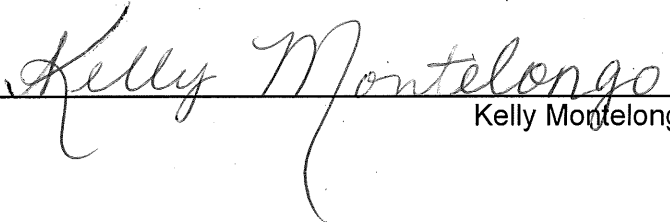
Mr. Mark Hagiya
Department of Health Services
P.O. Box 997413, MS 0010
Sacramento, CA 95899

A-15
Ms. Donna Ferebee
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Executive Director
California State Sheriff's Association
P.O. Box 980790
West Sacramento, CA 95798

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

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 22, 2008 at Sacramento, California.



Kelly Montelongo

Hearing Date: May 24, 2013

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ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Penal Code Section 4011.10

Statutes 2005, Chapter 481 (SB 159) and Statutes 2006, Chapter 303 (SB 896)

General Health Care Services for Inmates

07-TC-12

Orange County Health Care Agency, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This executive summary and the draft proposed statement of decision also function as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

Overview

This test claim seeks reimbursement for costs incurred by local law enforcement agencies for treatment of law enforcement patients receiving emergency medical care. Penal Code section 4011.10 allows local agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. It also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services at a rate equal to 110 percent of the hospital's actual costs. Prior to the enactment of the test claim statutes, local agencies were not expressly authorized to contract for emergency health care services for law enforcement patients and no cap for the cost of services provided by non-contracting hospitals was in place. The test claim statutes were intended to "...save taxpayers dollars by enabling county sheriffs and police chiefs reasonable control over medical costs for inmates, suspects and victims of crime..."¹

The claimant, County of Orange Health Care Agency², seeks reimbursement for costs incurred to treat law enforcement patients at contracting and non-contracting hospitals. Claimant alleges

¹ Senate Rules Committee, Third Reading, Senate Bill 159, as amended May 3, 2005, p. 5.

² Government Code section 17581 defines local agency as "any city, county, special district, authority, or other political subdivision of the state." Although there is no evidence in the record

that the test claim statute's rate structure for non-contracting hospitals has caused claimant to incur \$1,841,893.49 in additional emergency medical costs during the 2007-2008 fiscal year and will cause claimant to incur an amount similar to the \$1,841,893.49 in additional medical costs for each year going forward.³ Prior to the enactment of Penal Code section 4011.10, claimant reimbursed emergency service providers at lower rates set by claimant's "Medical Services Initiate" (MSI) program, which is a federal, state, and county funded health care program that provides medical care for Orange County's low-income citizens.

Procedural History

Claimant filed the test claim on June 30, 2008. Based on the June 30, 2008 filing date, the potential period of reimbursement for this test claim begins on July 1, 2007. On July 23, 2008, Commission staff deemed the filing complete and numbered it 07-TC-12. On August 22, 2008, the Department of Finance (Finance) submitted comments opposing the test claim.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including school districts, are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions: all members of the class have the opportunity to participate in the test claim process, and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

that the County of Orange authorized the Orange County Health Care Agency to file this test claim, staff notes that the County of Orange has adopted a policy, revised July 2000, authorizing departments/agencies and districts governed by the Board of Supervisors to review legislation and executive orders to determine if they include a reimbursable mandate. *See* County of Orange Auditor-Controller Web site, <http://ac.ocgov.com/info/manual/b/mandated> (accessed on March 19, 2013).

³ Test claim, dated June 30, 2008, section 6 ("Declarations"), pp. 3-4, "Declaration of Melissa Tober."

Claims

The following chart provides a summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
<u>Penal Code section 4011.10, as added by Statutes 2005, chapter 481.</u>	Penal Code section 4011.10 permits a county sheriff or police chief to contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs.	<i>Deny</i> – the plain language of section 4011.10 allows county sheriffs and police chiefs to contract for emergency health care services, but does not impose any state-mandated activities on these local agencies.
<u>Penal Code section 4011.10, as amended by Statutes 2006, chapter 303.</u>	Penal Code section 4011.10 permits a county sheriff, police chief, <u>or other public agency that contracts for emergency health services</u> to contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs.	<i>Deny</i> – the plain language of section 4011.10 allows public agencies that contract for emergency health services to contract with providers of emergency health care services, but does not impose any state-mandated activities on these local agencies.

Analysis

Staff recommends that the Commission deny this test claim. Penal Code section 4011.10 does not require local law enforcement agencies to perform any activities. Penal Code section 4011.10, as added by Statutes 2005, chapter 481, and amended by Statutes 2006, chapter 303, authorizes local agencies to contract for emergency medical services for law enforcement patients and caps the amount that non-contracting hospitals may charge. However, nothing in section 4011.10 directs or obligates police chiefs, county sheriffs, or other local agencies that contract for emergency health care services to engage in any activity or task. Although the claimant has filed a declaration showing that it has incurred increased costs as a result of Penal Code section 4011.10, the statute does not impose any mandated activities on the claimant. A

statute that simply results in increased costs, without mandating local agencies to perform new activities, does not require reimbursement under the Constitution.⁴

Accordingly, staff finds that Penal Code section 4011.10, as added and amended in 2005 and 2006, does not impose a state-mandated program on local agencies.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

⁴ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874 (stating that “..simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting ‘service to the public’ under Section 6 of Article XIII B of the California Constitution and Section 17514 of the Government Code.)

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 4011.10, as enacted by Statutes 2005, Chapter 481 (SB 159), and amended by Statutes 2006, Chapter 303 (SB 896)

Filed on June 30, 2008

By Orange County Health Care Agency,
Claimant.

Case No.: 07-TC-12

General Health Care Services for Inmates

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

(Adopted May 24, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 24, 2013. [Witness list will be included in the final statement of 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., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim addresses a 2005 test claim statute and 2006 amendment thereto that allows local law enforcement agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. Penal Code section 4011.10, as added and amended by the test claim statutes, also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services at a rate equal to 110 percent of the hospital's actual costs. Prior to the enactment of the test claim statute, local law enforcement agencies procuring emergency health care services for law enforcement patients

were not expressly authorized to contract with hospitals for emergency health care services and the amount that non-contracting hospitals could charge for these services was not capped.

The Commission denies this test claim. Penal Code section 4011.10, as added by Statutes 2005, chapter 481, and amended by Statutes 2006, chapter 303, is intended to reduce health care costs by authorizing local law enforcement agencies, notwithstanding any other provision of law, to contract with hospitals for emergency health care services for local law enforcement patients and capping the amount that non-contracting hospitals can charge for emergency health care services. Penal Code section 4011.10 does not direct or obligate local agencies to contract with hospitals for emergency health care services for law enforcement patients and does not require local agencies to perform any other activities. Rather, section 4011.10 gives local agencies the option to contract for emergency services. Accordingly, the Commission finds that Penal Code section 4110.10, as added and amended in 2005 and 2006, does not impose a state-mandated program on local agencies.

COMMISSION FINDINGS

I. Chronology

- 06/30/2008 Claimant, Orange County Health Care Agency, filed the test claim with the Commission.
- 07/23/2008 Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.
- 08/22/2008 Department of Finance (Finance) filed comments on the test claim.

II. Background

This test claim seeks reimbursement for costs incurred by claimant as a result of procuring emergency medical services for law enforcement patients at hospitals that claimant does not contract with for such services. Penal Code section 4011.10 authorizes local law enforcement agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. The test claim statute, Penal Code section 4011.10, also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services for law enforcement patients at a rate equal to 110 percent of the hospital's actual costs.⁵

Prior law requires that law enforcement patients receive emergency medical care when necessary.⁶ However, prior to the enactment of the test claim statute, local agencies were not specifically authorized to contract for emergency health care services for law enforcement patients. As stated by the Legislative Counsel's Digest, section 4011.10 was enacted because:

⁵ Penal Code section 4011.10(b).

⁶ Penal Code section 4011.5.

“Existing law authorizes the Department of Corrections and Rehabilitation to contract with providers of emergency health care services. Existing law specifies that hospitals and ambulance or other nonemergency response services that do not contract with the department shall provide those services at the Medicare rate.

This bill would apply these provisions to county sheriffs, chiefs of police, and directors or administrators of local departments of correction, except that it specify that hospitals that do not contract with local law enforcement agencies shall provide their services at a rate equal to 110% of the hospital’s actual costs, as specified.”⁷

Section 4011.10 was also enacted to:

“...save taxpayers dollars by enabling county sheriffs and police chiefs reasonable control over medical costs for inmates, suspects and victims of crime. This bill would ensure that local law enforcement agencies will be limited to reasonable and allowable costs under Medicare billing practices. This bill is consistent with existing law with respect to state prisoner health care...

Under this bill, a county sheriff or police chief can continue to negotiate contracts with health care providers for emergency and non-emergency services for people under their jurisdiction...”⁸

The test claim statute was modeled after Penal Code section 5023.5. Section 5023.5, enacted by Statutes 2004, chapter 227 and effective August 16, 2004, allows the California Department of Corrections and Rehabilitation (CDCR) and the California Youth Authority (CYA) to contract with providers of emergency health care services. Hospitals that do not contract with the CDCR or the CYA for emergency health care services must provide these services to these departments at the rate established by Medicare. Neither CDCR nor CYA may reimburse a hospital that provides these services, and that the department has not contracted with, at a rate that exceeds the hospital's reasonable and allowable costs, regardless of whether the hospital is located within or outside of California. Penal Code section 4011.10 was added by Statutes 2005, chapter 481, to allow local public entities other than the CDCR and CYA to contract for emergency health care services.

⁷ Legislative Counsel’s Digest, Statutes of 2005, Chapter 481, S. B. No. 159. Section 4011.10 also states that the Legislature intended section 4011.10 to: (1) provide county sheriffs, chiefs of police, and directors or administrators of local detention facilities with an incentive not to engage in practices designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services; and (2) encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services.

⁸ Senate Rules Committee, Third Reading, Senate Bill 159, as amended May 3, 2005, p. 5.

As originally enacted, Penal Code section 4011.10 stated, in relevant part:

“(b) Notwithstanding any other provision of law, a county sheriff or police chief may contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital’s actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.” (Emphasis added.)

Section 4011.10 was amended by Statutes 2006, chapter 303, as urgency legislation to state, in relevant part:

(b) Notwithstanding any other provision of law, a county sheriff, police chief or other public agency that contracts for emergency health services, may contract with providers of emergency health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for emergency health care services shall provide emergency health care services to local law enforcement patients at a rate equal to 110 percent of the hospital’s actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

The 2006 amendment did not alter the purpose of section 4011.10 or the Legislature’s statement of intent contained in section 4011.10.⁹ Both Statutes 2005, chapter 481 and Statutes 2006, chapter 303 contained a January 1, 2009 sunset date for section 4011.10. However, later amendments to this section extended and then eliminated the sunset provision. Although section 4011.10 has been subsequently amended, claimant has not pled these amendments and the amendments are not relevant to the test claim.¹⁰

III. Position of Claimant and Interested Parties

A. Claimant’s Position

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program or higher level of service within an existing program. Claimant “is the department that pays claims for health care provided to persons in the custody of the Orange County Sheriff.” Claimant contracts for some of the care of its inmates, but there are instances when claimant uses the

⁹ Statutes 2006, chapter 303.

¹⁰ Statutes 2008, chapter 142 (extending provisions section 4011.10 until January 1, 2014); Statutes 2011, chapter 39 (recasting provisions of section 4011.1 to apply to health care services generally, instead of emergency health care services, and deleting the provision making section 4011.10 inoperative as of January 1, 2014).

services of hospitals that claimant does not contract with. Claimant requests reimbursement for complying with the Penal Code section 4011.10 rate structure for compensating hospitals when there is no contract, i.e., for having to pay 110 percent of the non-contracting hospital's actual costs for emergency services.

Claimant alleges that the test claim statute's rate structure for non-contracting hospitals has caused claimant to incur \$1,841,893.49 in additional emergency medical costs during the 2007-2008 fiscal year and will cause claimant to incur an amount similar to the \$1,841,893.49 in additional medical costs for each year going forward.¹¹ Prior to the enactment of Penal Code section 4011.10, claimant reimbursed emergency service providers at rates set by claimant's "Medical Services Initiate" (MSI) program, which is a federal, state, and county funded health care program that provides medical care for Orange County's low-income citizens.¹² The test claim appears to indicate that prior to the enactment of the test claim, all hospitals within Orange County billed claimant an indigent rate for treatment of law enforcement patients pursuant to Health and Safety Code section 17000 et seq.¹³ Although the test claim does not explain why treatment of all law enforcement patients was previously billed at indigent rates, the indigent rates appear to be much lower than the test claim statute's rate structure for non-contracting hospitals.

Claimant did not provide a statewide cost estimate because after contacting numerous agencies and state-wide associations, it could find no one else with any increased costs to report.¹⁴

¹¹ Test claim, dated June 30, 2008, section 6 ("Declarations"), pp. 3-4, "Declaration of Melissa Tober." Ms. Tober's declaration states that the test claim includes increased costs for both contracting and non-contracting hospitals and that 67% of the increased costs are associated with services provided by non-contracting hospitals. Ms. Tober's declaration does not indicate why the rate charged by Western Medical Center Anaheim, a contracting hospital, increased as a result of Penal Code section 4011.10.

¹² *Id.*; See also Orange County Health Care Agency Web site, Medical Services Initiate (MSI), <http://ochealthinfo.com/about/medical/msi> (accessed on March 4, 2013). Claimant's website further states, "The MSI program contracts with all of the County's key clinics and hospitals and provides integrated care through contractual relationships with surgery centers, skilled nursing facilities, urgent care facilities, "minute clinics" and a variety of diagnostic centers and programs. Financial eligibility is determined on a case-by-case basis however, only persons with annual incomes below 200% of the Federal Poverty Level are eligible. In applying for the program, proof of Orange County residency and U.S. citizenship or legal residency is required." Neither the test claim nor claimant's website indicate why all law enforcement patients qualified as indigents under its MSI program.

¹³ Test claim, dated June 30, 2008, Tober Decl., *supra*, pp. 3-4.

¹⁴ Test claim, dated June 30, 2008, section 5 ("Written Narrative"), p. 2; See also section 6 ("Declarations"), pp. 5-6, "Declaration of Allan P. Burdick."

B. Department of Finance's Position

Finance submitted written comments on August 22, 2008. Finance argues that the activities involved in the test claim are not reimbursable on the following grounds:

- The test claim may have been filed after the statute of limitations pursuant to Government Code section 17551(c). Finance notes that section 17551 requires that a test claim be filed not later than 12 months of the effective date of the statute or 12 months of first incurring costs, whichever is later. Finance notes that the test claim was filed on June 30, 2008, approximately 30 months after the effective date of the test claim statute and 21 months after the test claim statute was amended in 2006. Finance notes that the test claim states that claimant first implemented the test claim statute on July 1, 2007. Finance admits that it does not have evidence indicating whether claimant first incurred costs prior to July 1, 2007.¹⁵
- The test claim statute does not impose a new program or higher level of service on local agencies.
- The relevant provisions of the test claim statute are optional and do not require that public agencies to contract with emergency health care and medical response providers.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that

¹⁵ Exhibit B, Department of Finance Comments, pp. 1-2.

articles XIII A and XIII B impose.”¹⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁷

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁸
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.²⁰
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²¹

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²² The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²³ In making its decisions, the Commission must strictly construe article XIII B,

¹⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁸ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

¹⁹ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

²⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²² *County of San Diego, supra*, 15 Cal.4th 68, 109.

²³ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁴

A. Evidence In The Record Supports The Finding That The Test Claim Was Filed Within The Statute Of Limitations

Although Finance suggests that that Government Code section 17551(c) may bar this test claim because the claim may not have been filed within 12 months of first incurring costs, evidence in the record supports the finding that the test claim was timely filed.

Statutes 2005, chapter 481 became effective on January 1, 2006, and Statutes 2006, chapter 303 became effective on September 18, 2006. The test claim was filed on June 30, 2008, approximately 30 months after the effective date of the test claim statute and 21 months after the test claim statute was amended in 2006.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

The test claim was not filed within 12 months following the effective date of the statutes. However, the test claim indicates that claimant “implemented” the test claim statute on July 1, 2007, which resulted in a cost increase of \$1,841,893.49 in the 2007-2008 fiscal year.²⁵ This statement is supported by the Declaration of Melissa Tober, which states that prior to July 1, 2007, claimant paid for emergency health care services for law enforcement patients “at rates equal to reimbursement rates for services provided through Orange County’s Medical Services for Indigents Program mandated by Welfare & Institutions Code 17000”

Based on the foregoing, the Commission finds that claimant first incurred additional costs beginning on July 1, 2007 - the date claimant first began to pay non-contracting hospitals as required by the test claim statute. The Commission further finds that there is no evidence in the record to support the finding that claimant incurred increased costs prior to July 1, 2007. Accordingly, the Commission finds that the test claim was filed within the statute of limitations provided in Government Code section 17551(c).

B. Penal Code Section 4011.10, As Added and Amended in 2006, Does Not Impose any State-Mandated Activities on Local Agencies

In 2005, the test claim statute added section 4011.10 to the Penal Code to state the following:

²⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

²⁵ Test claim, dated June 30, 2008, Tober Decl., *supra*, pp. 3-4.

“(b) Notwithstanding any other provision of law, a county sheriff or police chief may contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital’s actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.” (Emphasis added.)

Section 4011.10 was amended by Statutes 2006, chapter 303 as urgency legislation to state, in relevant part:

(b) Notwithstanding any other provision of law, a county sheriff, police chief or other public agency that contracts for emergency health services, may contract with providers of emergency health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for emergency health care services shall provide emergency health care services to local law enforcement patients at a rate equal to 110 percent of the hospital’s actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio. (Emphasis added.)

Although the test claim does not explicitly state what new activities the test claim statute requires local agencies to perform, the test claim seeks reimbursement for the increased costs incurred as a result of section 4011.10. The claimant contends that Penal Code section 4011.10 requires local agencies to pay 110 percent of hospitals’ actual costs for providing emergency health care services to law enforcement patients.

The plain language of section 4011.10, however, does not require local agencies to do anything. Moreover, subdivision (e) specifies:

Nothing in this section shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for health services for those departments, has with his or her health care providers.

A statute that simply results in increased costs, without mandating local agencies to perform new activities, does not require reimbursement under the Constitution.²⁶

²⁶ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874 (stating that “..simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting ‘service to the public’ under Section 6 of Article XIII B of the California Constitution and Section 17514 of the Government Code.

As noted in legislative history, section 4011.10 was designed to save local agencies money by capping the amount that non-contracting hospitals charge for emergency medical services. Prior to the enactment of section 4011.10, Penal Code section 4011.5 authorized law enforcement agencies to procure emergency medical care when necessary.²⁷ Section 4011.10 allows local agencies to contract for this emergency medical care and caps the amount that non-contracting hospitals may charge. Section 4011.10 allows local agencies to decide whether or not to contract for emergency health care services for law enforcement patients.

Pursuant to section 4011.10, claimant has the option of contracting for medical services or using non-contracting hospitals for these services. In this case, the claimant has made the decision to contract with one hospital for emergency services for inmates, Western Medical Center Anaheim, but in most cases uses non-contracting hospitals for emergency services. In fiscal year 2007-2008, claimant chose to use the emergency services of 21 non-contracting hospitals. These decisions are based on local discretion, and are not mandated by the state. The test claim statute does not require the claimant to contract, or to use non-contracting hospitals. However, if a non-contracting hospital is used, the statute was designed to save local agencies' money by capping the amount that non-contracting hospitals may charge. As the test claim statute provides local agencies with the option to either contract for emergency services or to use non-contracting hospitals whose ability to charge is capped, the test claim statute does not mandate claimant to perform any activities.

Based on the foregoing, Penal Code section 4011.10, as added in 2005 and amended in 2006, does not impose a state-mandated program on local agencies.

V. Conclusion

Based on the foregoing, the Commission concludes that Penal Code section 4011.10, as added by Statutes 2005, chapter 481 and amended by Statutes 2006, chapter 303, does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

²⁷ Penal Code section 4011.5.



Received
May 20, 2013
Commission on
State Mandates

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Exhibit D

May 20, 2013

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

Dear Ms. Halsey:

The Department of Finance has reviewed the Commission on State Mandates' (Commission) draft staff analysis of the General Health Care Services for Inmates (07-TC-12). We concur with the staff analysis's recommendation to deny the test claim because the plain language of the Penal Code section 4011.10 does not impose a new program or higher level of service on the local agencies within the meaning of Article XIII B, section 6 of the California Constitution.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Randall Ward, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

TOM DYER
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. 07-TC-12

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

5-24-13

at Sacramento, CA


Carla Shelton



COUNTY OF ORANGE HEALTH CARE AGENCY

OFFICE OF THE DIRECTOR

MARK A. REFOWITZ
DIRECTOR

MAILING ADDRESS:
405 W. 5th STREET, 7th FLOOR
SANTA ANA, CA 92701

TELEPHONE: (714) 834-6021
FAX: (714) 834-5506
E-MAIL: mrefowitz@ochca.com

Received
May 28, 2013
Commission on
State Mandates

May 28, 2013

Heather Halsey
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
www.csm.ca.gov/dropbox.shtml

RE: Response to Draft Staff Analysis Report
General Health Care Services for Inmates, 07-TC-12
Penal Code Section 4011.10
Orange County Health Care Agency, Claimant

The Orange County Health Care Agency has reviewed the draft proposed statement of decision issued March 20, 2013 for the General Health Care Services for Inmates Test Claim, 07-TC-12. The following written comments are being filed in response to further support our arguments.

Claimant Orange County Health Care Agency

Penal Code section 4011.10 imposes new and unique mandated activity on Claimant Orange County Health Care Agency ("HCA") to provide medical services to county inmates at an increased cost. The Commission on State Mandates ("Commission") has issued a Staff Analysis and Proposed Statement of Decision ("Proposed Decision") that mistakenly concludes the requirement that HCA provide medical services to inmates at a new increased cost is not a state mandate. Because the Proposed Decision, in part, reaches legally erroneous conclusions, HCA respectfully submits the following reply clarifying for the Commission the state mandate imposed by section 4011.10.

HCA is an agency of the County of Orange, a donor county which receives the smallest share of tax revenue in the State.¹ As the Commission recognizes, the California Constitution provides the State must reimburse counties where it imposes a higher level of service on the local government in order to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities" because of the taxing limitations on them. (Proposed Decision, at 10-11.) The Proposed Decision summarizes the constitution's requirement to reimburse counties for state mandates as follows:

¹ "County governments, for example, receive as little as 11 percent (Orange) and as much as 64 percent (Alpine) of the ad valorem property tax revenue collected within their county. . . Orange County receives about \$175 per resident, while four counties receive more than \$1,000 per resident." (Legislative Analyst's Office, "Understanding California's Property Taxes" November 29, 1012, <http://www.lao.ca.gov/reports/2012/tax/property-tax-primer-112912.aspx>.)

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.

Section 4011.10 meets the definition of a state mandate because it is a new requirement that HCA provide medical services to inmates at a necessarily increased cost. As the Proposed Decision recognizes, the county must provide medical care to inmates. (*City of Revere v. Massachusetts General Hospital* (1983) 463 U.S. 239 (1983).) For Orange County, the costs of medical care for indigent inmates are required under state law to be paid by the County General Fund (Penal Code § 4011, subd. (c).) Section 4011.10 increases those mandated costs by **mandating** that the County pay a fixed amount *above the medical provider’s actual costs*:

(b) Notwithstanding any other provision of law, a county sheriff, police chief or other public agency that contracts for health care services, may contract with providers of health care services for care to local law enforcement patients. Hospitals that do not contract with the county sheriff, police chief, or other public agency that contracts for health care services shall provide health care services to local law enforcement patients at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.

Under section 4011.10, HCA must pay those who provide medical care to the County’s inmates 110% of the provider’s actual costs. The Proposed Decision says this is not a mandate because section 4011.10 allows HCA to contract with hospital providers. The choice to contract with providers is illusory, thanks to section 4011.10.

Before section 4011.10 was enacted, HCA had the ability to negotiate reimbursement rates with providers. Accordingly, HCA provided medical care to inmates under contracts with hospitals through its Medical Services for Indigents (“MSI”) program. (Welf. & Inst. Code § 17000, et seq.) Under those contracts, providers agreed that if an inmate was a regular patient, he or she would be deemed to be an indigent and medical care for the inmate would be paid at the MSI rates. Whether every inmate could or should have been considered truly indigent for MSI

purposes is irrelevant: HCA and the hospitals *negotiated and agreed* that medical services for inmates would be paid at the MSI rates. As the Proposed Decision recognizes, those rates are “much lower than the test claim statute’s rate structure for non-contracting hospitals.” (Proposed Decision, at 9.) The State eviscerated the favorable relationship between HCA and the providers. In its place, the State mandated Orange County taxpayers—already burdened as donors to the State—pay a higher rate for inmate medical care than the previous rates providers consensually received. Since HCA has no authority to pay less than that amount to non-contracted facilities, those facilities have no reason to enter contracts with HCA.

Section 4011.10 provides a financial disincentive for the non-contracted facilities to enter contracts with HCA for the provision of medical services to County inmates. As an agency that shares the County’s obligation to safeguard the public fisc, HCA will not pay more than a provider’s reasonable and necessary costs for medical care of County inmates. In particular, it will not pay more than the provider actually spent in providing the care. The State, though, gives a 10% bonus to providers under section 4011.10. Content with this windfall, providers would be financially penalized by entering into a contract with HCA because they would necessarily receive a lower reimbursement rate for providing the same medical care to County inmates. Contracts necessarily require the participation of more than one party. While HCA is willing to enter contracts for medical services for inmates at rates lower than 110% of actual provider costs, HCA has no option to enter such contracts because section 4011.10 guarantees no medical provider will enter such contracts.

The burden section 4011.10 places on Orange County’s taxpayers to pay higher rates applies not only to those providers to whom HCA can no longer have a contractual relationship, it applies to HCA’s remaining contracted provider as well. The Proposed Decision states, “Ms. Tober’s declaration does not indicate why the rate charged by Western Medical Center Anaheim, a contracting hospital, increased as a result of Penal Code section 4011.10.” (Proposed Decision, at 9, n. 11.) The State mandate under section 4011.10 increases the rate charged by Western Medical Center in Anaheim because the contract with the provider is for a capped rate at the provider’s locked unit. If HCA has more patients (or patient classifications) that cannot be served on that unit, Western Medical Center Anaheim charges the section 4011.10 rate. Before that provision was enacted, HCA would pay at the MSI rate for inmates not treated in the locked unit. But, with the enactment of section 4011.10, Western Medical Center Anaheim has no reason to return to that arrangement.

The Proposed Decision identified another illusory choice in claiming section 4011.10 does not constitute a state mandate because HCA could simply have all of its medical care for County inmates at the HCA-contracted facility, rather than non-contracted facilities. As previously established, section 4011.10 locked HCA into only having one contracted provider of medical services for inmates. Despite the Proposed Decision’s claim, HCA does not have the choice sending inmates requiring medical care only to its contracted facility. HCA must send those needing medical care to the most suitable provider to treat the inmate’s condition. The County has five adult custodial facilities located throughout the County. If, for instance, an inmate at the Theo Lacy jail in Orange needs medical treatment, the University of California, Irvine Medical Center in Orange is typically the medically-indicated facility in which to have the inmate treated. In those cases, it often would not be in the inmates’ best medical interests to have him transported to Western Medical Center in Anaheim. Thus, despite the Proposed Decision’s

claims, HCA does not have the option of sending inmates requiring medical care to a contracted facility. Rather, HCA must have inmates receive medical services where it is medically indicated, irrespective of whether HCA has an existing contract with the provider.

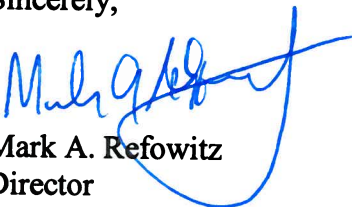
In detailing the purported rationale for the enactment of section 4011.10, the Proposed Decision discusses the State's responsibilities to provide medical care for inmates under Penal Code section 5023.5. (Proposed Decision, at 7.) This discussion highlights the disparity in service requirements for HCA under section 4011.10. Under section 5023.5, the State, "may only reimburse a noncontract provider of hospital or physician services at a rate equal to or less than the amount payable under the Medicare Fee Schedule, regardless of whether the hospital is located within or outside of California." (Pen. Code, § 5023.5, subd. (a).) Under section 5023.5, the State provides an incentive to noncontract providers to enter contracts with the State. Without a contract, those providers are left with the State having discretion to reimburse anything up to the amount payable under the Medicare Fee Schedule. Those providers have an incentive to negotiate with the State to a contracted reimbursement rate that is as high as possible, perhaps exceeding the Medicare rate. Moreover, the State need not pay at a rate that exceeds the provider's actual costs.

In contrast, the State has forced HCA under into a level of service where it must pay its providers above-cost rates with no genuine opportunity to negotiate a different rate. As established previously, any suggestion that HCA can negotiate with its noncontract providers is a sham given the mandated 110% actual cost reimbursement rate required under section 4011.10. While the State provides itself flexibility in meeting its obligation to provide health care for inmates, it provides no such options for HCA. The State gives incentives for its providers to negotiate rates. For HCA's providers, the State gives them section 4011.10: a fixed reimbursement rate that strips incentives for providers to negotiate or reduce costs. The State's mandate under section 4011.10 forces the County to incur these additional costs of its noncontracted providers. The California Constitution requires the State to reimburse the County for these mandated costs.

In accordance with section 1181.2 subdivision (c)(1)(E) of the California Code of Regulations, comments electronically filed with the Commission satisfy the proof of service to other interested parties.

If you have any questions or require further information, please contact our Accounting Manager, Kim Engelby, at (714) 834-5264 or via email at kengelby@ochca.com.

Sincerely,



Mark A. Refowitz
Director

MAR.ke/jh

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|SENATE RULES COMMITTEE | SB 159|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 445-6614 Fax: (916) |
|327-4478 |
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UNFINISHED BUSINESS

Bill No: SB 159
 Author: Runner (R)
 Amended: 8/31/05
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 5-1, 4/12/05
 AYES: Alquist, Poochigian, Margett, Migden, Romero
 NOES: Cedillo
 NO VOTE RECORDED: Perata

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 37-0, 5/31/05
 AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn,
 Battin, Bowen, Campbell, Cedillo, Cox, Denham, Ducheny,
 Dunn, Dutton, Figueroa, Florez, Kehoe, Kuehl, Lowenthal,
 Machado, Maldonado, Margett, McClintock, Migden, Morrow,
 Murray, Ortiz, Perata, Poochigian, Romero, Runner, Scott,
 Simitian, Soto, Speier, Torlakson, Vincent
 NO VOTE RECORDED: Chesbro, Escutia, Hollingsworth

ASSEMBLY FLOOR : 79-0, 9/7/05 - See last page for vote

SUBJECT : Local persons in custody and jail inmates:
 reimbursement
 to providers of local emergency services

SOURCE : California State Sheriffs Association

DIGEST : This bill enacts, until January 1, 2009, a new
 CONTINUED

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section in law for sheriffs and police chiefs, similar to that in Section 5023.5 of the Penal Code concerning the Department of Corrections and the Department of the Youth Authority, setting statutory limits on payments for emergency health care services to non-contract emergency providers for persons in custody, victims of crimes, and jail inmates, as specified. This bill specifically authorizes sheriffs and police chiefs to contract for emergency services.

Assembly Amendments (1) add legislative intent language, and (2) prohibit local sheriffs or police from releasing inmates from custody for the purpose of seeking medical care, as specified.

ANALYSIS :

Existing law requires that:

1. Emergency services and care shall be provided to any person requesting the services or care, or for whom services or care is requested, for any condition in which the person is in danger of loss of life, or serious injury or illness, at any health facility licensed under this chapter that maintains and operates an emergency department to provide emergency services to the public when the health facility has appropriate facilities and qualified personnel available to provide

the services or care.

2. In no event shall the provision of emergency services and care be based upon, or affected by, the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental handicap is medically significant to the provision of appropriate medical care to the patient. [Section 1317(a) and (b) of the Health and Safety Code]

Existing law, Section 5023.5 of the Penal Code, effective August 16, 2004, provides that:

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1. Notwithstanding any other provision of law, the Department of Corrections (DOC) and the Department of the Youth Authority (DYA) may contract with providers of emergency health care services. Hospitals that do not contract with the DOC or the DYA for emergency health care services shall provide these services to these departments on the same basis as they are required to provide these services pursuant to Section 489.24 of Title 42 of the Code of Federal Regulations. Neither DOC nor DYA shall reimburse a hospital that provides these services, and that the department has not contracted with, at a rate that exceeds the hospital's reasonable and allowable costs, regardless of whether the hospital is located within or outside of California.
2. An entity that provides ambulance or any other emergency or nonemergency response service to DOC and DYA, and that does not contract with the departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither DOC nor DYA shall reimburse a provider of any of these services that the department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.
3. DOC and DYA shall work with the Department of Health Services (DHS) in obtaining hospital cost information in order to establish the costs specified in this section. DHS may provide DOC and DYA with the hospital cost information that DHS obtains pursuant to Sections 14170 and 14171 of the Welfare and Institutions Code.
4. For the purposes of this section, "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

This bill adds a new section in law for sheriffs and police chiefs, similar to that in Section 5023.5 of the Penal Code, pertaining to DOC and DYA, as follows:

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1. Specifically authorizes, notwithstanding any other provision of law, a county sheriff or police chief to contract with providers of emergency health care services.
2. Provides that hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the

hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.

3. Provides that a county sheriff or police chief shall not request the release of an inmate from custody for the purpose of allowing the inmate to seek medical care at a hospital, and then immediately rearrest the same individual upon discharge from the hospital, unless the hospital determines this action would enable it to bill and collect from a third-party payment source.
4. Requires the California Hospital Association, the University of California, the California State Sheriffs' Association and the California Police Chiefs' Association shall, immediately upon enactment of this section, convene the Inmate Health Care and Medical Provider Fair Pricing Working Group. The working group shall consist of at least six members from the California Hospital Association and the University of California, and six members from the California State Sheriffs' Association and the California Police Chiefs' Association. Each organization should give great weight and consideration to appointing members of the working group with diverse geographic and demographic interests. The working group shall meet at least three times annually to identify and resolve industry issues that create fiscal barriers to timely and affordable emergency inmate health care. In addition, the working group shall address issues including, but not limited to, inmates being admitted for care and later rearrested and any other fiscal barriers to hospitals being able to enter into fair market contracts with public agencies. No reimbursement is required under this provision.

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5. Provides that nothing in this bill shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for health services for those departments, has with his/her health care providers allowable under this bill and that the department may provide hospital cost information, as specified.
6. Provides that "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and Federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.
7. Provides that in those counties in which the sheriff does not administer a jail facility, a director or administrator of a local department of corrections, as specified is the person who may contract for services provided to jail inmates in the facility he/she administers in those counties.
8. Provides that the bill's provisions sunset on January 1, 2009.
9. Provides that it is the intent of the Legislature in enacting this section to provide county sheriffs, chiefs of police, and directors or administrators of local detention facilities with an incentive to not engage in practices designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services. Further, it is the intent of the Legislature to encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services. The Legislature has set a date of January 1, 2009, for this section to be repealed, and does not intend to delete or extend that date if county sheriffs, chiefs of police, and directors or administrators have not complied with the intent of the Legislature.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 5/17/05) (Unable to reverify)

California State Sheriff's Association (source)
Association for Los Angeles Deputy Sheriffs
California Peace Officers' Association
California Police Chiefs Association
Sheriffs of the following counties: El Dorado, Humboldt,
Kern, Los Angeles, Marin, Plumas, Riverside, Sacramento,
San Benito, San Bernardino, San Joaquin, San Diego, Santa
Barbara, Sutter, Tuolumne, Yuba

OPPOSITION : (Verified 5/17/05) (Unable to reverify)

California Hospital Association

ARGUMENTS IN SUPPORT : According to the author's office, the goal of this bill is to save taxpayers dollars by enabling county sheriffs and police chiefs reasonable control over medical costs for inmates, suspects and victims of crime. This bill ensures that local law enforcement agencies will be limited to reasonable and allowable costs under Medicare billing practices. This bill is consistent with existing law with respect to state prisoner health care.

Last year's budget bill, SB 1102, enacted provisions allowing DOC and DYA to control their inmate population health care costs. The bill stated that if contracts for reasonable rates could not be negotiated, then DOC or DYA would not pay greater than standard Medicare rates for inmate health care costs. SB 159 simply extends this same protection to sheriffs and county jails.

Under this bill, a county sheriff or police chief can continue to negotiate contracts with health care providers for emergency and non-emergency services for people under their jurisdiction.

The support letter from the Sacramento County Sheriff indicates that:

CONTINUED

"The Sacramento County Sheriff's Department spends approximately five (5) million dollars a year on inmate health care. We have contracts with three local hospitals and the San Joaquin General Hospital in Stockton. The reason we use the hospital in Stockton is it only charges the County \$2060.00 for inpatient care and \$350.00 a day for outpatient care. Included in this charge is security for the inmate. The contract with Sutter General hospital is \$4300.00 a day for inpatient and \$600.00 for out patient visits. The University of California Davis Hospital contract charges \$6001.00 a day for inpatients and \$829.00 for outpatient visits. The Mercy General Hospital contract gives us a 15% break on its daily rate. It charges \$2200.00 for emergency room visits. At all of the local hospitals the Sheriff's Department provides security for the inmate.

"As you can see the rates hospitals charge the County vary widely. The successful passage of SB 159 would help eliminate this problem."

ARGUMENTS IN OPPOSITION : The California Hospital Association (CHA) letter includes:

"? on behalf of our 500 member hospitals and health systems, [CHA] must respectfully oppose SB 159 unless the bill is amended. This bill would reduce hospital reimbursement by the county sheriffs and local police for hospital services provided to individuals in their custody. The reimbursement would be set at hospital 'allowable costs' based on Medicare and Medi-Cal cost reports.

"Treating sheriffs' inmates is significantly different for hospitals than treating other populations. These differences come with increased costs including providing custodial specifications, and increased staffing to ensure the safety of both the inmates and other patients.

"The allowable costs for Medi-Cal determined by a Medi-Cal cost report are under-reported even for the

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Medi-Cal population. Since these reports are generally not used to determine actual hospital reimbursement, there are limits and other components that made sense many years ago, but are now out of date and therefore, not a reflection of actual costs.

"Setting a rate in statute would act as a disincentive for contracting between hospitals and county sheriffs and local police. Rather than coming to the table to negotiate rates and other contract provisions, this bill would provide the mechanism for county sheriffs to adopt a 'take it or leave it' negotiating stance. There would not be a reason for county sheriffs to reimburse hospitals at more than the rate provided in SB 159."

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Vacancy

RJG:mel 9/8/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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|SENATE RULES COMMITTEE | SB 159|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 445-6614 Fax: (916) |
|327-4478 |
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THIRD READING

Bill No: SB 159
 Author: Runner (R)
 Amended: 5/3/05
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 5-1, 4/12/05
 AYES: Alquist, Poochigian, Margett, Migden, Romero
 NOES: Cedillo
 NO VOTE RECORDED: Perata

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Local persons in custody and jail inmates:
 reimbursement
 to providers of local emergency services

SOURCE : California State Sheriffs Association

DIGEST : This bill enacts, until January 1, 2009, a new section in law for sheriffs and police chiefs, similar to that in Section 5023.5 of the Penal Code concerning the Department of Corrections and the Department of the Youth Authority, setting statutory limits on payments for emergency health care services to non-contract emergency providers for persons in custody, victims of crimes, and jail inmates, as specified. This bill specifically authorizes sheriffs and police chiefs to contract for emergency services.

ANALYSIS :

CONTINUED

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Existing law requires that:

1. Emergency services and care shall be provided to any person requesting the services or care, or for whom services or care is requested, for any condition in which the person is in danger of loss of life, or serious injury or illness, at any health facility licensed under this chapter that maintains and operates an emergency department to provide emergency services to the public when the health facility has appropriate facilities and qualified personnel available to provide the services or care.
2. In no event shall the provision of emergency services and care be based upon, or affected by, the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental handicap is medically significant to the provision of appropriate medical care to the patient. (Section 1317(a) and (b) of the Health and Safety Code)

Existing law, Section 5023.5 of the Penal Code, effective August 16, 2004, provides that:

1. Notwithstanding any other provision of law, the Department of Corrections (DOC) and the Department of the Youth Authority (DYA) may contract with providers of emergency health care services. Hospitals that do not contract with the DOC or the DYA for emergency health care services shall provide these services to these departments on the same basis as they are required to provide these services pursuant to Section 489.24 of Title 42 of the Code of Federal Regulations. Neither DOC nor DYA shall reimburse a hospital that provides these services, and that the department has not contracted with, at a rate that exceeds the hospital's reasonable and allowable costs, regardless of whether the hospital is located within or outside of California.

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2. An entity that provides ambulance or any other emergency or nonemergency response service to DOC and DYA, and that does not contract with the departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither DOC nor DYA shall reimburse a provider of any of these services that the department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.
3. DOC and DYA shall work with the Department of Health Services (DHS) in obtaining hospital cost information in order to establish the costs specified in this section. DHS may provide DOC and DYA with the hospital cost information that DHS obtains pursuant to Sections 14170 and 14171 of the Welfare and Institutions Code.
4. For the purposes of this section, "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

This bill adds a new section in law for sheriffs and police chiefs, similar to that in Section 5023.5 of the Penal Code, pertaining to DOC and DYA, as follows:

1. Specifically authorizes, notwithstanding any other provision of law, a county sheriff or police chief may contract with providers of emergency health care services.
2. Provides that hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments on the same basis as they are required to provide these services pursuant to Federal Medicare law.
3. Sets reimbursement rates for any non-contract entity that provides ambulance or any other emergency or nonemergency response service to a sheriff or police chief at the rate established by Medicare.

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4. Provides that no sheriff or police chief shall reimburse a non-contract hospital or emergency response entity that provides these services at a rate that exceeds the hospital's or emergency response provider's reasonable and allowable costs, regardless of whether the hospital or entity is located within or outside of California.
5. Requires that each sheriff or police chief shall work with DHS in obtaining hospital cost information in order

to establish the costs allowable under this section and that the department may provide hospital cost information, as specified.

6. Provides that "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and Federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.
7. Provides that in those counties in which the sheriff does not administer a jail facility, a director or administrator of a local department of corrections, as specified is the person who may contract for services provided to jail inmates in the facility he/she administers in those counties.
8. Provides that the bill's provisions sunset on January 1, 2009.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 5/17/05)

California State Sheriff's Association (source)
Association for Los Angeles Deputy Sheriffs
California Peace Officers' Association
California Police Chiefs Association
Sheriffs of the following counties: El Dorado, Humboldt, Kern, Los Angeles, Marin, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, San Diego, Santa Barbara, Sutter, Tuolumne, Yuba

OPPOSITION : (Verified 5/17/05)

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California Hospital Association

ARGUMENTS IN SUPPORT : According to the author's office, the goal of this bill is to save taxpayers dollars by enabling county sheriffs and police chiefs reasonable control over medical costs for inmates, suspects and victims of crime. This bill ensures that local law enforcement agencies will be limited to reasonable and allowable costs under Medicare billing practices. This bill is consistent with existing law with respect to state prisoner health care.

Last year's budget bill, SB 1102, enacted provisions allowing DOC and DYA to control their inmate population health care costs. The bill stated that if contracts for reasonable rates could not be negotiated, then DOC or DYA would not pay greater than standard Medicare rates for inmate health care costs. SB 159 simply extends this same protection to sheriffs and county jails.

Under this bill, a county sheriff or police chief can continue to negotiate contracts with health care providers for emergency and non-emergency services for people under their jurisdiction.

The support letter from the Sacramento County Sheriff indicates that:

"The Sacramento County Sheriff's Department spends approximately five (5) million dollars a year on inmate health care. We have contracts with three local hospitals and the San Joaquin General Hospital in Stockton. The reason we use the hospital in Stockton is it only charges the County \$2060.00 for inpatient care and \$350.00 a day for outpatient care. Included in this charge is security for the inmate. The contract with Sutter General hospital is \$4300.00 a day for inpatient and \$600.00 for out patient visits. The University of California Davis Hospital contract charges \$6001.00 a day for inpatients and \$829.00 for outpatient visits. The Mercy General Hospital contract gives us a 15% break on its daily rate. It charges \$2200.00 for emergency-room-visits. At all of the

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local hospitals the Sheriff's Department provides security for the inmate.

"As you can see the rates hospitals charge the County vary widely. The successful passage of SB 159 would help eliminate this problem."

ARGUMENTS IN OPPOSITION : The California Hospital Association (CHA) letter includes:

"? on behalf of our 500 member hospitals and health systems, [CHA] must respectfully oppose SB 159 unless the bill is amended. This bill would reduce hospital reimbursement by the county sheriffs and local police for hospital services provided to individuals in their custody. The reimbursement would be set at hospital 'allowable costs' based on Medicare and Medi-Cal cost reports.

"Treating sheriffs' inmates is significantly different for hospitals than treating other populations. These differences come with increased costs including providing custodial specifications, and increased staffing to ensure the safety of both the inmates and other patients.

"The allowable costs for Medi-Cal determined by a Medi-Cal cost report are under-reported even for the Medi-Cal population. Since these reports are generally not used to determine actual hospital reimbursement, there are limits and other components that made sense many years ago, but are now out of date and therefore, not a reflection of actual costs.

"Setting a rate in statute would act as a disincentive for contracting between hospitals and county sheriffs and local police. Rather than coming to the table to negotiate rates and other contract provisions, this bill would provide the mechanism for county sheriffs to adopt a 'take it or leave it' negotiating stance. There would not be a reason for county sheriffs to reimburse hospitals at more than the rate provided in SB 159."

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RJG:mel 5/17/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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For MSI Patients



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For MSI Providers



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MULTISTATE OUTBREAK OF HEPATITIS A

About MSI

MSI is a Federal, State and County funded healthcare program that provides medical care for Orange County's low-income citizens. It provides a full range of medical services for County residents 19 through 64 years of age. All program participants are assigned to a "medical home" that coordinates all aspects of their care and assures the appropriate referral to other providers as needed.

The MSI program contracts with all of the County's key clinics and hospitals and provides integrated care through contractual relationships with surgery centers, skilled nursing facilities, urgent care facilities, "minute clinics" and a variety of diagnostic centers and programs. Financial eligibility is determined on a case-by-case basis however, only persons with annual incomes below 200% of the Federal Poverty Level are eligible. In applying for the program, proof of Orange County residency and U.S. citizenship or legal residency is required.

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