

ITEM 19

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING INCORRECT REDUCTION CLAIMS PROCESS

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 5. INCORRECT REDUCTION CLAIMS, COMMENCING WITH SECTION 1185

EXECUTIVE SUMMARY

Section 1189.2 of the Commission's regulations requires the adoption of a Commission order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission's incorrect reduction claims process. It adds Government Code sections 17558.7 and 17558.8, which establish processes for either claimant-initiated or Commission-directed consolidation of incorrect reduction claims, if all of the following apply:

- The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.
- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.
- The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

Proposed Order Number 06-2 (Exhibit A)

The proposed rulemaking includes the following proposed amendments:

Article 5. Incorrect Reduction Claims

Section 1185. Incorrect Reduction Claim Filing

Proposes to shorten the statute of limitations for filing an incorrect reduction claim from three years to one year following the date of the Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007. Proposes to eliminate the requirement, when filing an incorrect reduction claim with the Commission, to submit a copy of a letter sent by the claimant or the claimant's representative to the Controller explaining why the reduced area(s) of cost in dispute should be restored.

Section 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.

Proposes a process for the consolidation of claims initiated by an individual claimant as described in Government Code section 17558.7.

Section 1185.3. Opting Out of a Consolidated Incorrect Reduction Claim.

Proposes a process for opting out of a consolidated incorrect reduction claim.

Section 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.

Proposes a process for the executive director to consolidate incorrect reduction claims as described in Government Code section 17558.8.

Minor, Non-Substantive, Clarifying, and Technical Amendments

Proposes minor, non-substantive, or clarifying technical amendments in sections 1185.1, 1185.5, 1185.6, and 1185.7.

Text of Proposed Amendments (Exhibit B)

Staff's draft of the proposed text is attached as Exhibit B.

Timetable

If the order is adopted, staff will proceed pursuant to the following timetable:

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|-------------------|--|
| November 7, 2006 | Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication. |
| November 17, 2006 | Notice of Proposed Regulatory Action will be issued and published. |
| January 5, 2007 | End of public comment period. |
| January 24, 2007 | Public hearing will be held if requested. |
| March 29, 2007 | Regulations will be proposed for adoption by the Commission. |
| April 6, 2007 | Adopted Regulations will be filed with the Office of Administrative Law. |

Staff Recommendation

Staff recommends the Commission adopt Proposed Order 06-2.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of:

Amendments to California Code of
Regulations, Title 2, Division 2, Chapter 2.5,
Article 5

No. 06-2

ORDER TO INITIATE
RULEMAKING PROCEEDINGS

Incorrect Reduction Claims Process

Pursuant to California Code of Regulations, title 2, section 1189.2, the Commission on State Mandates (“Commission”) hereby adopts this order to institute rulemaking proceedings in accordance with the procedures of Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

PROPOSED REGULATORY ACTION. The Commission proposes to amend and renumber sections 1185, 1185.01, 1185.02, 1185.03, and 1185.1; and to add sections 1185.2, 1185.3, and 1185.4 of the California Code of Regulations, title 2, chapter 2.5, division 2.

AUTHORITY AND REFERENCE. Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to implement AB 2652 (Stats. 2006, ch. 168), which reforms the Commission’s incorrect reduction claims process.

WRITTEN COMMENT PERIOD. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The Commission will only consider written comments received at the Commission’s office by 5:00 p.m. on January 5, 2007. Submit comments to:

Cathy Cruz Jefferson, Senior Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Phone: (916) 323-3562 FAX: (916) 445-0278
Email: cathy.cruz@csm.ca.gov

PUBLIC HEARING. The Commission will hold a hearing on January 24, 2007, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than January 5, 2007.

Date: _____ By: _____
Paula Higashi, Executive Director

PROPOSED AMENDMENTS TO:

CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 2.5. COMMISSION ON STATE MANDATES

Article 5. Incorrect Reduction Claims

§ 1185. Incorrect Reduction Claim Filing

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than:

(1) ~~Three~~ (3) years following the date of the Office of State Controller's **final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated before July 1, 2007.**

(2) **One (1) year following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction, if the notice is dated on or after July 1, 2007.**

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations

under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of ~~the any~~ final state audit report, ~~or~~ letter, ~~or the~~ remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

~~(5) A copy of a letter sent by the claimant or the claimant's representative to the Office of State Controller explaining why the reduced area(s) of cost in dispute should be restored.~~

(6) A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

(7) An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the ~~test~~ incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(8) The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs, and include a table of contents.

(9) The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections ~~(d)~~ through ~~(f)~~ of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Section 17527(g) ~~and (h)~~, Government Code. Reference: Sections 17551(~~b~~d) and 17553(d), Government Code.

§ 1185.011. Review of Incorrect Reduction Claims.

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim

shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(bd) and 17553(d), Government Code.

§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint-claimant authorizing the original claimant to act as its representative in the consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint-claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single-sided, without tabs.

(5) The joint-claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two-sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint-claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint-claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint-claimant, the commission shall deem the filing to be withdrawn.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

§ 1185.3 Opting Out of a Consolidated Incorrect Reduction Claim.

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

Note: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

(b) At least ten (10) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.

(c) Any party may opt out of a consolidated incorrect reduction claim as described in section 1185.1(c).

Note: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554, and 17558.8, Government Code.

§ 1185.025. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.

~~(a) The executive director may combine analyses of incorrect reduction claims from different claimants if the claims contain similar issues.~~

(~~b~~a) Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.

(~~b~~) At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.

(~~c~~) The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~b~~d), Government Code.

§ 1185.036. Withdrawal of Incorrect Reduction Claims.

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

Note: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(~~b~~d), Government Code.

| § 1185.17. Reinstatement of Costs.

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

| Note: Authority cited: Section 17527(g) ~~and (h)~~, Government Code. Reference: Section 17551(~~b~~d), Government Code.