

**ITEM 14**  
**PROPOSED AMENDMENTS TO PARAMETERS AND**  
**GUIDELINES**

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);  
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations, Title 2, Sections 60000-60610 (Emergency Regulations  
filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1)  
and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))

Counties of Los Angeles and Stanislaus, Requestors

***Handicapped & Disabled Students (CSM 4282)***  
**00-PGA-03; 00-PGA-04**

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**EXECUTIVE SUMMARY**

**Procedural Background**

This is a request to amend the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282). The Counties of Los Angeles and Stanislaus filed separate requests to amend the parameters and guidelines for this program in 2001. The requests to amend the parameters and guidelines were scheduled on the Commission's March 2002 hearing calendar. At the request of the counties, however, the item was taken off calendar. In April 2003, after several pre-hearing conferences and requests to postpone this matter, the counties filed a consolidated draft of proposed amendments to the parameters and guidelines, and have requested that the Commission consider this 2003 submittal as their consolidated request.

While these requests were pending, the counties filed the *Handicapped and Disabled Students II* test claim (02-TC-40/02-TC-49). In 2003, the parties agreed to postpone the hearing on the request to amend the parameters and guidelines in CSM 4282 until after the Commission decided *Handicapped and Disabled Students II*. In addition, in 2004, the Legislature directed the Commission to reconsider the Statement of Decision in *Handicapped and Disabled Students* (CSM 4282). (Stats. 2004, ch. 493 (SB 1895).) The Commission adopted the Statement of Decision on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and the decision in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) on May 26, 2005.

Staff notes that the majority of written comments on this item were filed before the Commission adopted the 2005 decisions on the reconsideration of *Handicapped and Disabled Students* and *Handicapped and Disabled Students II*. As described in the analysis, the 2005 decisions impact the analysis of the requests to amend the original parameters and guidelines.

This item was again scheduled for the Commission's October 26, 2006 hearing.<sup>1</sup> The staff analysis recommended that the Commission approve only the requests to amend the indirect cost language and the request to specifically identify the offsetting revenue identified by the Commission in the decisions on reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). The staff analysis further concluded that the other requests to add to or amend the reimbursable activities were not consistent with the Statement of Decision in CSM 4282 and, thus, must be denied.

On October 25, 2006, the State Controller's Office requested a postponement of the hearing and an opportunity to file additional comments. The Controller's request stated in relevant part the following:

Item 14 clarified indirect costs and offsetting revenues, and allows claimants to file amended claims from July 1, 2000, through June 30, 2004. Based on recent comments we have received from counties as to the impact the changes have on prior claims, we believe that additional time is needed to fully evaluate the proposed changes.

The Controller's request was approved for good cause. On November 6, 2006, the Controller filed additional comments recommending that the Commission deny the counties' requests to amend the parameters and guidelines, including the language regarding the reimbursement of indirect costs and the proposed amendments to specifically identify offsetting revenue, on the ground that the staff analysis on the proposed amendments do not add any additional costs or activities eligible for reimbursement.<sup>2</sup>

### **Test Claim Statutes and Regulations**

Generally, the test claim statutes and regulations implement federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs. The mechanism for providing special education services under federal law is the individualized education program, or IEP. An IEP is a written statement developed after an evaluation of the pupil in all areas of suspected disability and may provide for related services including mental health and psychological services.

Before the enactment of the test claim statutes and regulations, the state adopted a plan to comply with federal law. The responsibility for supervising special education and related services was delegated to the Superintendent of Public Instruction. Local educational agencies (LEAs) were financially responsible for the provision of mental health services required by a pupil's IEP.

The test claim statutes and regulations, which became effective on July 1, 1986, shifted the responsibility and funding of mental health services required by a pupil's IEP to

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<sup>1</sup> See Exhibit O, Item 14, October 26, 2006 Commission Hearing.

<sup>2</sup> See Exhibit P.

county mental health departments. The Commission approved the test claim in 1990, with a reimbursement period beginning July 1, 1986.

Since the original decision was adopted, the Commission has adopted two subsequent decisions that impact the analysis of this request; namely, the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

### **The Counties' Request**

The counties request that the original parameters and guidelines for the Handicapped and Disabled Students program be amended, retroactively back to the original reimbursement period of July 1, 1986, as follows:

- delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services;
- add a cost provision to reimburse counties for residential board and care for in-state placement of pupils in residential facilities;
- amend the mental health services provided by counties to special education students in accordance with current law;
- amend the language regarding the reimbursement of indirect costs; and
- amend the offsetting revenue paragraph to include revenue received through Medi-cal, private pay insurance, state categorical funding (Item 4440-131-0001 of the State Budget Act), Healthy Families Program, and federal IDEA funding to be provided to backfill loss of state funding for the program.

### **Staff Analysis**

For the reasons provided in the analysis, staff finds that if the Commission approves any of the counties' requests on this matter, the reimbursement period for the new amended portions of the parameters and guidelines would be from July 1, 2000, through and including June 30, 2004 only.<sup>3</sup>

Staff recommends that the Commission approve only the request to amend the language regarding offsetting revenue. The language proposed for section VIII, Offsetting Revenues and Other Reimbursements, is consistent with the Commission's identification of offsetting revenue in the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and *Handicapped and Disabled II* (02-TC-40/02-TC-49), and corrects a legal error contained in the original parameters and guidelines (CSM 4282), that Medi-Cal and private insurance proceeds cannot be used as offsetting revenue. As determined by the Commission in the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10), federal law, under specified circumstances, allows agencies to use these proceeds to pay for this program. Thus, staff recommends that the Commission correct this section and specifically identify the offsetting revenue applicable to this program, consistent with its prior decisions.

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<sup>3</sup> California Code of Regulations, title 2, section 1183.2.

Staff further finds that the requests to add to or amend the reimbursable activities are not consistent with the Statement of Decision and, thus, must be denied. The analysis regarding the reimbursable activities has not changed since the October 2006 final staff analysis.

Staff further finds that the proposed indirect cost language does not identify any additional costs that could not have been previously claimed by counties and, thus, it is not necessary to amend section VI, Claim Preparation.

If the Commission approves the request to amend the parameters and guidelines in any manner, the State Controller's Office will be required to prepare and issue revised claiming instructions 60 days after receiving the amended parameters and guidelines. (Gov. Code, § 17558, subd. (c).)

#### **Conclusion and Staff Recommendation**

Staff recommends that the Commission adopt the staff analysis and the proposed parameters and guidelines, as modified by staff, which begins on page 33, to incorporate the language regarding offsetting revenue. The proposed amendments are effective for the reimbursement period beginning July 1, 2000, through and including June 30, 2004.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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## Requestors

Counties of Los Angeles and Stanislaus

### Chronology

- 07/30/87 County of Santa Clara files test claim on *Handicapped and Disabled Students* (CSM 4282)
- 04/26/90 Commission adopts Statement of Decision (CSM 4282)
- 06/25/90 County of Santa Clara files petition for writ of mandate challenging Commission decision; trial court denies the petition, sustaining the Commission's decision
- 08/22/91 Commission adopts parameters and guidelines
- 01/11/93 Sixth District Court of Appeal affirms the Commission decision
- 08/29/96 Commission adopts Amended parameters and guidelines
- 06/04/01 County of Los Angeles files request to amend parameters and guidelines
- 06/22/01 County of Stanislaus files request to amend parameters and guidelines
- 07/05/01 County of Los Angeles requests pre-hearing conference
- 07/17/01 County of Stanislaus requests that items be heard separately
- 07/20/01 County of Los Angeles requests that the items be heard separately
- 08/03/01 Legislative Analyst's Office submits comments
- 08/06/01 Department of Finance submits comments
- 10/04/01 County of Stanislaus files response to Department of Finance comments
- 10/05/01 County of Los Angeles files review of State Agency comments
- 10/05/01 Department of Finance resubmits comments of August 6, 2001
- 10/24/01 Department of Finance files comments on "board and care"
- 10/25/01 Pre-hearing conference held
- 11/07/01 State Controller's Office files comments
- 11/09/01 County of Los Angeles requests extension of time to file rebuttal comments
- 11/09/01 County of Stanislaus requests extension of time to file rebuttal comments
- 12/07/01 County of Stanislaus requests that the pre-hearing conference be rescheduled
- 12/13/01 County of Los Angeles files review of State Agency comments
- 12/13/01 County of Stanislaus files response to State Controller's Office comments
- 12/18/01 Counties of Los Angeles and Stanislaus request second pre-hearing conference
- 01/25/02 County of Stanislaus files supplemental filing

- 02/15/02 Interested person, Catherine Camp, Former Executive Director of California Association of Mental Health Directors, files comments
- 02/22/02 Second pre-hearing conference held
- 02/22/02 County of Santa Cruz files comments
- 03/06/02 State Controller's Office files additional comments
- 03/07/02 Department of Finance files comments responding to the comments from the County of Santa Cruz
- 03/20/02 Final staff analysis issued for the March 28, 2002 Commission Hearing
- 03/25/02 Counties of Los Angeles and Stanislaus request that hearing be postponed and request an extension of time to file comments on the staff analysis; Requests granted with a new hearing date scheduled for May 23, 2002
- 03/28/02 Lakeside Union School District files comments in support of the County of Stanislaus' request to amend the parameters and guidelines
- 04/02/02 County of Los Angeles requests that the hearing be postponed until June 27, 2002 and requests an extension of time to file comments on the staff analysis; Requests granted
- 05/13/02 County of Los Angeles files comments on staff analysis
- 05/20/02 County of Stanislaus files comments on staff analysis
- 06/18/02 Counties of Los Angeles and Stanislaus request that the hearing be postponed until October 24, 2002, after the State Budget is adopted; Request granted
- 09/30/02 Statutes 2002, chapter 1167 (AB 2781) enacted as urgency legislation; Counties of Los Angeles and Stanislaus request additional time to submit revised proposals in light of AB 2781; Requests granted
- 11/08/02 County of Stanislaus adds Statutes 2002, chapter 1167 (AB 2781) to the record
- 12/18/02 County of Los Angeles files proposed revisions to the parameters and guidelines
- 01/22/03 County of Stanislaus files proposed changes to the parameters and guidelines and requests a pre-hearing conference
- 02/26/03 Pre-hearing conference held; the requestors agreed to file a consolidated draft of proposed amendments to the parameters and guidelines
- 04/04/03, Counties of Los Angeles and Stanislaus file consolidated draft of proposed  
04/11/03 amendments to the parameters and guidelines
- 05/14/03 Department of Finance requests extension of time to file comments on consolidated draft of proposed amendments to the parameters and guidelines; Request granted for good cause
- 06/27/03, County of Stanislaus files test claim entitled *Handicapped and Disabled Students II*  
06/30/03 (02-TC-40); County of Los Angeles files test claim entitled *County Mental Health Services for Pupils with Disabilities* (02-TC-49); Test claims ultimately consolidated as *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)

- 06/30/03 Department of Finance files comments on consolidated draft of proposed amendments to the parameters and guidelines
- 07/30/03 County of Los Angeles files review of State Agency comments
- 09/24/03 Pre-hearing conference held
- 11/21/03 Parties agree to waive the procedural requirements pursuant to Government Code section 17554 and to postpone hearing until after *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) is decided
- 01/07/04 Commission receives signed agreements from parties to postpone hearing and mails final stipulation out to the parties
- 09/13/04 Statutes 2004, Chapter 493(SB 1895), is enacted and directs the Commission to reconsider *Handicapped and Disabled Students* (CSM 4282); File is designated 04-RL-4282-10
- 05/26/05 Commission adopts Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10)
- 05/26/05 Commission adopts Statement of Decision in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)
- 12/09/05 Commission adopts parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49). Reimbursement period begins July 1, 2001
- 01/26/06 Commission adopts parameters and guidelines for *Handicapped and Disabled Students* (04-RL-4282-10) and amends parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10)
- 05/03/06 Draft staff analysis issued
- 05/24/06 Pre-hearing conference held
- 07/21/06 Technical corrections made to parameters and guidelines for the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and *Handicapped and Disabled Students II* (02-TC-40/02-TC-49)
- 10/25/06 State Controller's Office requests that the item, set for the Commission's October 26, 2006 hearing, be postponed. Request granted for good cause.
- 11/06/06 State Controller's Office files comments recommending that the Commission deny the requests to amend the parameters and guidelines regarding indirect costs and offsetting revenue

**Background**

This is a request to amend the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282). The Counties of Los Angeles and Stanislaus filed separate requests to amend the parameters and guidelines for this program in 2001. The requests

to amend the parameters and guidelines were scheduled on the Commission's March 2002 hearing calendar. At the request of the counties, however, the item was postponed. In April 2003, after several pre-hearing conferences and requests to postpone this matter, the counties filed a consolidated draft of proposed amendments to the parameters and guidelines, and requested that the Commission consider this 2003 submittal as their consolidated request.

In November 2003, the parties agreed to waive the procedural requirements of the Government Code (Gov. Code, § 17554) and postpone the hearing on this item until after *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) was decided.

The counties request that the original parameters and guidelines for the Handicapped and Disabled Students program be amended, retroactively back to the original reimbursement period of July 1, 1986, as follows:

- delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services;
- add a cost provision to reimburse counties for residential board and care for in-state placement of pupils in residential facilities;
- amend the mental health services provided by counties to special education students in accordance with current law;
- amend the language regarding the reimbursement of indirect costs; and
- amend the offsetting revenue paragraph to include revenue received through Medi-cal, private pay insurance, state categorical funding (Item 4440-131-0001 of the State Budget Act), Healthy Families Program, and federal IDEA funding to be provided to backfill loss of state funding for the program.

For the reasons provided below, staff finds that if the Commission approves any of the counties' requests on this matter, the reimbursement period for the new amended portions of the parameters and guidelines would be from July 1, 2000, through and including June 30, 2004 only.<sup>4</sup> In addition, staff recommends that the Commission approve only the requests to amend the language regarding offsetting revenue. The other requests to add to or amend the reimbursable activities are not consistent with the Statement of Decision and, thus, must be denied.

#### Summary of the Mandate

The Commission adopted the Statement of Decision on the *Handicapped and Disabled Students* program in 1990 (CSM 4282). The test claim on *Handicapped and Disabled Students* (CSM 4282) was filed on Government Code section 7570 and following, as added and amended by Statutes 1984, chapter 1747, and Statutes 1985, chapter 1274, and on the initial emergency regulations adopted by the Departments of Mental Health and Education to implement this program (Cal. Code Regs., tit. 2, div. 9, §§ 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986

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<sup>4</sup> California Code of Regulations, title 2, section 1183.2.



(Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

Generally, the test claim legislation implements federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs.<sup>5</sup> The mechanism for providing special education services under federal law is the individualized education program, or IEP. An IEP is a written statement developed after an evaluation of the pupil in all areas of suspected disability and may provide for related services including mental health and psychological services.<sup>6</sup>

Before the enactment of the test claim legislation, the state adopted a plan to comply with federal law. The responsibility for supervising special education and related services was delegated to the Superintendent of Public Instruction. Local educational agencies (LEAs) were financially responsible for the provision of mental health services required by a pupil's IEP.<sup>7</sup>

The test claim legislation, which became effective on July 1, 1986, shifted the responsibility and funding of mental health services required by a pupil's IEP to county mental health departments.

The Commission approved the test claim and found that the activities of providing mental health assessments, participation in the IEP process, psychotherapy, and other mental health services were reimbursable under article XIII B, section 6 of the California Constitution. Activities related to assessments and IEP responsibilities were found to be 100% reimbursable. Psychotherapy and other mental health treatment services were found to be 10% reimbursable due to the funding methodology in existence under the Short-Doyle Act for local mental health services.

The parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282) were adopted in August 1991, and amended in 1996, and have a reimbursement period beginning July 1, 1986 and ending June 30, 2004.<sup>8</sup> The parameters and guidelines authorize reimbursement for the following activities:

- A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:
  1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing

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<sup>5</sup> See federal Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

<sup>6</sup> Title 20 United States Code sections 1400 et seq.

<sup>7</sup> Education Code sections 56000 et seq.

<sup>8</sup> On January 26, 2006, the Commission amended the parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by ending the period of reimbursement on June 30, 2004. Beginning July 1, 2004, claims shall be filed pursuant to the parameters and guidelines and claiming instructions for the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10).

Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, § 7572, subd. (d)(1)):
  - a. Whenever an LEA refers an individual suspected of being an “individual with exceptional needs” to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
    - i. interview with the child and family,
    - ii. collateral interviews, as necessary,
    - iii. review of the records,
    - iv. observation of the child at school, and
    - v. psychological testing and/or psychiatric assessment, as necessary.
  - b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Gov. Code, § 7572, subd. (d)(1).)
  - c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Gov. Code, § 7572, subd. (d)(1).)
  - d. Review by claimant’s mental health professional of any independent assessment(s) submitted by the IEP team. (Gov. Code, § 7572, subd. (d)(2).)
  - e. When the written mental health assessment report provided by the local mental health program determines that an “individual with special needs” is “seriously emotionally disturbed,” and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant’s mental health professional on that individual’s expanded IEP team.
  - f. When the IEP prescribes residential placement for an “individual with exceptional needs” who is “seriously emotionally disturbed,” claimant’s mental health personnel’s identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Gov. Code, § 7572.5.)
  - g. Required participation in due process hearings, including but not limited to due process hearings.

3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.
- B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act:
1. The scope of the mandate is ten (10) percent reimbursement.
  2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Gov. Code, § 7576):
    - a. individual therapy,
    - b. collateral therapy and contacts,
    - c. group therapy,
    - d. day treatment, and
    - e. mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
  3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. Commission on State Mandates*, issued an unpublished decision that upheld the Commission's decision, including the percentage of reimbursements, on the *Handicapped and Disabled Students* program.<sup>9</sup>

#### Subsequent Commission Decisions

Since the filing of the requests to amend the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282), the Commission has adopted two Statements of Decision and parameters and guidelines that impact the analysis of these requests.

In 2004, the Legislature, in Statutes 2004, chapter 493 (Sen. Bill No. 1895), directed the Commission to reconsider *Handicapped and Disabled Students* (CSM 4282). In May 2005, the Commission adopted a Statement of Decision, as directed by the Legislature that reconsiders *Handicapped and Disabled Students*, CSM 4282. (04-RL-4282-10.) The Commission determined that the original Statement of Decision correctly concluded that the test claim statutes and regulations imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6. However, the Commission concluded that the 1990 Statement of Decision did not fully identify all of the activities mandated by the state or the offsetting revenue applicable to the program. Thus, the Commission modified the Statement of Decision in *Handicapped and Disabled*

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<sup>9</sup> *County of Santa Clara v. Commission on State Mandates*, Sixth District Court of Appeal Case No. H009520, filed January 11, 1993 (p. 1415.)

*Students* (CSM 4282), for reimbursement claims filed for the 2004-2005 fiscal year and thereafter, by identifying the activities expressly required by the test claim statutes and regulations and the offsetting revenue applicable to the program.

Parameters and guidelines for the reconsidered *Handicapped and Disabled Students* program (04-RL-4282-10) were adopted by the Commission in January 2006 and corrected in July 2006, and have a reimbursement period beginning July 1, 2004. In addition, the Commission amended the original parameters and guidelines for CSM 4282 by ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission’s decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission also adopted a Statement of Decision in May 2005 on *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), a test claim addressing the amendments, enacted between the years 1986 and 2002, to the initial statutes and regulations. The reimbursement period for the activities approved by the Commission in *Handicapped and Disabled Students II* begins July 1, 2001. In December 2005, the Commission adopted parameters and guidelines for *Handicapped and Disabled Students II*. A technical correction was made to the parameters and guidelines in July 2006.

The relevant periods of reimbursement for these decisions are in Table 1 below.

**Table 1**

<u>Claims</u>	<u>Periods of Reimbursement</u>
<i>Handicapped and Disabled Students</i> (CSM 4282)	July 1, 1986, through June 30, 2004
Counties’ request to amend <i>Handicapped and Disabled Students</i> (CSM 4282)	July 1, 2000 (Potential)
<i>Handicapped and Disabled Students II</i> (02-TC-40/02-TC-49)	July 1, 2001
<i>Reconsideration of Handicapped and Disabled Students</i> (04-RL-4282-10)	July 1, 2004

Consolidated parameters and guidelines covering all the activities are proposed for costs incurred beginning in fiscal year 2006-2007. The proposed consolidated parameters and guidelines are in Item 13 for the October 26, 2006 hearing.

**Position of the Requestors**

The counties request that the parameters and guidelines be amended, retroactively back to the original reimbursement period of July 1, 1986, as follows:

- Delete all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health services. The counties contend that the Short-Doyle Act was repealed on July 1, 1991, and, thus, counties are entitled to 100 percent reimbursement for providing psychotherapy or other mental health

treatment services. The counties also rely on Statutes 2002, chapter 1167 (AB 2781), which directed the State Controller's Office to not dispute reimbursement claims, filed in fiscal years up to and including the 2000-2001 fiscal year, with respect to the percentage of reimbursement the county claimed for allowable mental health treatment services.

- Add a cost provision to reimburse counties for 60 percent of the residential board and care costs for in-state placement of pupils in residential facilities. The counties contend that the joint regulations adopted by the Departments of Mental Health and Education require counties to provide assessment, treatment, case management and residential care services, including room, board, care and supervision.
- Amend the mental health services provided by counties to special education students in accordance with current law. The counties request the addition of the following language, which includes activities for medication monitoring, to the parameters and guidelines:

For each eligible claimant, the following cost items, for the provision of services when required by a child's individualized education program in accordance with Section 7572(d) of the Government Code: psychotherapy (including outpatient crisis-intervention psychotherapy provided in the normal course of IEP services when a pupil exhibits acute psychiatric symptoms, which, if untreated, presents an imminent threat to the pupil) as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management are reimbursable (Government Code 7576).

"Medication monitoring" includes medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.<sup>10</sup>

- Amend the language regarding the reimbursement of indirect costs to comply with previously adopted boilerplate language.
- Amend the offsetting revenue paragraph to include revenue received through Medi-cal, private pay insurance, state categorical funding (Item 4440-131-0001 of the State Budget Act), Healthy Families Program, and federal IDEA funding to provided to backfill loss of state funding for the program.

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<sup>10</sup> Exhibit A, consolidated request to amend Parameters and Guidelines, page 111.

## State Agency Comments

### Department of Finance

On June 30, 2003, the Department of Finance filed comments on the consolidated request to amend the parameters and guidelines as follows:

Finance continues to hold the position that the original Statement of Decision and existing Parameters and Guidelines are correct based upon the statutes that were the basis of the test claim. The Parameters and Guidelines state that any mental health treatment required by an Individual Education Plan for special education pupils is subject to the original Short-Doyle cost sharing formula and only the county's Short-Doyle share (i.e. 10 percent) of the mental health treatment costs is reimbursable as a cost mandated by the state. The proposed amendments to the Parameters and Guidelines to eliminate references to the Short-Doyle Act and modify the cost-sharing ratio for mental health treatment services are inconsistent with the existing Statement of Decision (please reference the Finance response to comments submitted by the Counties of Los Angeles and Stanislaus dated June 7, 2002). Finance is aware that the Legislature modified statute relating to this mandate in Chapter 1167, Statutes 2002 (AB 2781, Oropeza). Finance defers to the Commission staff on the issue of whether the Parameters and Guidelines can be amended based on the new statute absent findings by the Commission or a new test claim should be filed in order to consider the effects of these changes. There is clearly new legislative direction on this issue, and it is not clear what authority the Commission staff has to expand the scope of reimbursement and increase expenditures without findings by the Commission on the new statute.

Finance believes that Section 41 of Chapter 1167, Statutes 2002, affected the Handicapped and Disabled Students mandate retroactively, and forgave audit exceptions identified by the State Controller's Office (SCO). The language specified that claims submitted to the SCO for reimbursement are not subject to dispute by the SCO regarding the percentage of reimbursement claimed. In 2001, the SCO identified audit exceptions where counties claimed reimbursement in excess of amounts allowed pursuant to the existing Parameters and Guidelines issued by the Commission. Counties are currently allowed to claim reimbursement of 10 percent of the cost to provide mental health treatment services to children consistent with the needs identified in the Individual Education Plan. The audits conducted by the SCO revealed that some counties claimed 100 percent of the allowable costs. These audit exceptions in part lead to the proposed amendments [to] the Parameters and Guidelines coming before the Commission. The SCO did not complete the statewide audit of the Handicapped and Disabled Students mandate claims pending resolution of the issue by the Commission.

Furthermore, Section 38 of Chapter 1167, Statutes 2002, affected the Handicapped and Disabled Students mandate prospectively, and allows all

counties to claim 100 percent of allowable costs for services delivered in 2001-02 and subsequent years. The language changed existing statute, which is the basis of the existing Statement of Decision, to increase the percentage of reimbursement for mental health treatment from 10 percent to 100 percent, but because the audit was not completed, it is unclear how many counties were already claiming 100 percent.

Finance also concluded that the proposed amendments to the Parameters and Guidelines continue to appear to be an effort to circumvent the established rate setting methodology that authorizes the California Department of Social Services (DSS) to set reasonable board and care rates for in-state placement facilities based on specified criteria (please reference the Finance response to the proposed amendments to the Parameters and Guidelines dated October 24, 2001). Counties should remain responsible for their share of costs for in-state out-of-home placement of special education pupils. Furthermore, the proposed amendments are too broad in that they specify that reimbursement is allowable for residential services costs "in excess of the DSS 40 percent share of the DSS allowable room and board payments." Such language would allow 60 percent of the costs in excess of the DSS allowable room and board payments to be reimbursed in addition to the 60 percent local share of cost of the DSS allowable room and board payments. Finance recommends specifying that only the 60 percent local share of DSS allowable room and board payments is reimbursable....<sup>11</sup>

#### Legislative Analyst's Office

The Legislative Analyst's Office (LAO) submitted comments on August 6, 2001 that stated in relevant part the following:

...the intent of the 1991 program realignment was to replace state funding under the Short-Doyle program with a comparable amount of funding from new tax revenues. Elimination of the Short-Doyle funding program, therefore, should not be construed as ending state support for local mental health programs for pupils. Instead, state support for this program has been transferred from the Short-Doyle program to state realignment funds.<sup>12</sup>

In addition, the LAO recommends that two additional funding sources should be identified in the parameters and guidelines as offsets to reimbursement claims. These funding sources include: 1) Budget Act funds allocated under item 4440-131-0001 which provides categorical funding for assessment, treatment and case management under AB 3632; and, 2) Healthy Families Program funds which provide mental health services to children with serious emotional disturbances.

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<sup>11</sup> Exhibit B, Department of Finance June 30, 2003 comments.

<sup>12</sup> Exhibit G, Legislative Analyst's Office August 6, 2001 comments.

State Controller's Office

**2006 Comments.** On October 25, 2006, the State Controller's Office requested a postponement of the hearing and an opportunity to file additional comments. The Controller's request stated in relevant part the following:

Item 14 [of the October 26, 2006 hearing calendar] clarified indirect costs and offsetting revenues, and allows claimants to file amended claims from July 1, 2000, through June 30, 2004. Based on recent comments we have received from counties as to the impact the changes have on prior claims, we believe that additional time is needed to fully evaluate the proposed changes.

The Controller's request was approved for good cause. On November 6, 2006, the Controller filed additional comments recommending that the Commission deny the counties' requests to amend the parameters and guidelines, including the language regarding the reimbursement of indirect costs and the proposed amendments specifically identifying offsetting revenue, on the ground that the staff analysis on the proposed amendments do not add any additional costs or activities eligible for reimbursement.

**Prior Comments.** The SCO submitted comments and proposed language to the Parameters and Guidelines on November 7, 2001. The SCO proposed changes to Sections I, II, V, and VI to update and clarify the Parameters and Guidelines related to the repeal of the Short-Doyle Act. While the SCO's proposed language updates the Parameters and Guidelines relative to the repeal of the Short-Doyle Act, it does not change the cost-sharing formula or the 10% reimbursement limitation for certain activities. In addition, the SCO proposes new language for Section VIII regarding offsetting savings. The SCO's comments stated in part the following:

[t]he SCO believes that changes in statutory provisions continue to require the State to fund 90% of the net mental health treatment services rendered under the Short-Doyle Act (as replaced by the Bronzan-McCorquodale Act of 1991), even though the state has not appropriated sufficient moneys to fund the required 90% in the past years. Therefore, the SCO believes that only 10% of the net mental health treatment services rendered under the Bronzan-McCorquodale Act when required by a child's IEP is reimbursable under this mandate.

Until a new Statement of Decision is adopted, the reimbursable portion of net costs related to mental health treatment services rendered under the Short-Doyle Act (as replaced by the Bronzan-McCorquodale Act) when required by a child's IEP appears to be limited to 10%.<sup>13</sup>

On March 6, 2002, the SCO submitted final comments on the proposed amendments. Their comments stated in part the following: "It has been our position that the changes that the amendments attempt to make are contrary to the language of the Statement of Decision, and thus impermissible. Ultimately we believe that this case more properly

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<sup>13</sup> Exhibit L, SCO November 7, 2001 comments.



involves an increased cost, and thus must be pursued via a test claim. Thus, these requests to amend should be denied.”<sup>14</sup>

### **Interested Party and Interested Person Comments**

#### Interested Party, County of Santa Cruz

A supplemental filing was submitted by Glenn Kulm, Director of Administration for the Health Services Agency for the County of Santa Cruz on February 22, 2002. In his declaration, Mr. Kulm states:

It is only the SEP [special education pupils] children who have an entitlement to services under AB 3632, which is the subject of this claim.

Prior to the enactment of realignment...[b]oth local assistance funds and the SEP categorical funds contained a provision for a 10% match.

After realignment, funds appropriated by the Department of Mental Health for SEP students contain a 10% match requirement under Welfare and Institutions Code Section 5712.

We believe that if the Legislature had intended local assistance funds to be used for funding services to SEP children, there [sic]would not have created a separate and distinct funding category for these services.<sup>15</sup>

#### Interested Person, Catherine Camp

On February 15, 2002, a supplemental filing was submitted by Catherine Camp, former Executive Director of the California Mental Health Directors’ Association. In her declaration, Ms. Camp states:

To have included AB 3632 in the drafting of realignment would have required the legislature to make a decision as to whether it agreed with the state or counties on whether the program was a reimbursable mandate; to preclude the legislature having to side with either the state or local government, AB 3632 was excluded from realignment.<sup>16</sup>

### **STAFF ANALYSIS**

#### **Issue 1: What is the scope of jurisdiction and period of reimbursement for this request?**

Government Code section 17557, subdivision (d), authorizes the Commission to amend the parameters and guidelines on request by a local agency. That section provides in relevant part the following:

A local agency, school district, or the state may file a written request with the commission to amend, modify, or supplement the parameters and guidelines. The commission may, after public notice and hearing, amend,

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<sup>14</sup> Final Comments filed by SCO, attached in exhibit M.

<sup>15</sup> Supplemental Filing by County of Santa Cruz, attached in Exhibit M.

<sup>16</sup> Supplemental Filing by Catherine Camp, attached in Exhibit M.

modify, or supplement the parameters and guidelines.... A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year.<sup>17</sup>

The requests to amend the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282) were filed in June 2001. Thus, pursuant to Government Code section 17557, the period of reimbursement for any amendments adopted by the Commission pursuant to these requests would begin on July 1, 2000.

In addition, an amendment to the parameters and guidelines must be consistent with the Statement of Decision adopted by the Commission. Government Code section 17557, subdivision (a), states that if the Commission determines there are costs mandated by the state following a hearing on a test claim, it shall determine the amount to be subvended. In so doing, the Commission shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order approved by the Commission in the test claim. The Commission's regulations require that the parameters and guidelines describe "the most reasonable methods of complying with the mandate." The phrase, "the most reasonable methods of complying with the mandate," is defined as "those methods not specified in statute or executive order that are necessary to carry out the mandated program."<sup>18</sup> Thus, while the parameters and guidelines may define activities not spelled out in the Statement of Decision, those activities must be reasonably necessary to comply with the mandate and must relate to a finding by the Commission in the Statement of Decision on *Handicapped and Disabled Students* (CSM 4282).

Moreover, the Commission does not have jurisdiction, for purposes of the counties' request to amend the parameters and guidelines, to modify any findings made by the Commission in the original Statement of Decision on *Handicapped and Disabled Students* (CSM 4282). It is a well-settled issue of law that an administrative agency may not change a determination once its decision has become final absent express statutory authority or a court order.<sup>19</sup> Although the Legislature expressly directed the Commission to reconsider the Statement of Decision in *Handicapped and Disabled Students* (Stats. 2004, ch. 493 (SB1895)), the Commission's findings on reconsideration are prospective and have a reimbursement period beginning July 1, 2004.<sup>20</sup> Thus, the Commission's findings on reconsideration that the original Statement of Decision did not

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<sup>17</sup> Government Code section 17557 was amended in 2004 to add this language. (Stats. 2004, ch. 313 (A.B. 2224); Stats. 2004, ch. 890 (A.B. 2856), eff. Jan. 1, 2005.) However, at the time these requests were filed in June 2001, section 1183.2 of the Commission's regulations contained the same language.

<sup>18</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4), as amended September 6, 2005.

<sup>19</sup> *Olive Proration etc. Com. v. Agri. Etc. Com.* (1941) 17 Cal.2d 204, 209; *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 150.

<sup>20</sup> See Statement of Decision on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10). (Exhibit H.)

fully identify all of the activities mandated by the test claim legislation apply only to reimbursement claims filed for the 2004-2005 fiscal year.

Finally, the Commission's findings in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), which approved as a reimbursable state-mandated program some of the amendments to the Handicapped and Disabled Students program from 1986 to 2002, cannot be applied retroactively to the original parameters and guidelines. Based on Government Code section 17557, subdivision (e), the reimbursement period for the activities approved by the Commission in *Handicapped and Disabled II* begins July 1, 2001.

Given these general principles, the counties' proposed amendments are analyzed below with respect to the relevant period of reimbursement (July 1, 2000, through June 30, 2004).

**Issue 2: Should all references to the Short-Doyle Act and the 90/10 cost-sharing formula be deleted from the parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282)?**

The counties request that all references to the Short-Doyle cost-sharing mechanism for providing psychotherapy or other mental health treatment services be deleted from the parameters and guidelines. The counties contend that the Short-Doyle Act was repealed on July 1, 1991, and, thus, counties are entitled to 100 percent reimbursement for providing psychotherapy or other mental health treatment services. The counties also rely on Statutes 2002, chapter 1167 (AB 2781), which directed the State Controller's Office to not dispute reimbursement claims, filed in fiscal years up to and including the 2000-2001 fiscal year, with respect to the percentage of reimbursement the county claimed for allowable mental health treatment services.

For the reasons below, staff finds that the proposed amendment to delete all references to the Short-Doyle cost sharing mechanism is inconsistent with, and not supported by the Commission's Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).

The Commission's Statement of Decision in *Handicapped and Disabled Students* (CSM 4282) contains a finding that the costs incurred for providing psychotherapy or other mental health treatment services were subject to the Short-Doyle Act. Under the Short-Doyle Act, the state paid 90 percent of the total costs of mental health treatment services and the counties paid the remaining 10 percent. Thus, the Commission concluded that counties incurred increased costs mandated by the state in an amount that equaled 10 percent of the total psychotherapy or other mental health treatment costs.

The Commission's original finding regarding the Short-Doyle Act was supported by the law in effect at the time the Statement of Decision was adopted in 1990. The test claim legislation (Stats. 1985, ch. 1274) amended Welfare and Institutions Code section 5651 to require that the annual Short-Doyle plan for each county include a description of the services required by Government Code sections 7571 and 7576 (psychotherapy or other mental health treatment services), including the cost of the services. Section 60200 of the joint regulations adopted by the Departments of Mental Health and Education required the county to be financially responsible for the provision of mental health treatment

services. The regulations further stated that reimbursement to the provider of the services shall be based on a negotiated net amount or rate approved by the Director of Mental Health as provided in Welfare and Institutions Code section 5705.2, or the provider's reasonable actual cost. Welfare and Institutions Code section 5705.2 imposed a cost-sharing ratio for mental health treatment services between the state and the counties, with the state paying 90 percent and the counties paying 10 percent of the total costs.

In 1993, the Sixth District Court of Appeal, in *County of Santa Clara v. Commission on State Mandates*, upheld the Commission's finding that psychotherapy or other mental health treatment services were to be funded as part of the Short-Doyle Act and, thus, only 10 percent of the total costs for treatment were reimbursable under article XIII B, section 6. The court interpreted the test claim legislation as follows:

County entered into an NNA [negotiated net amount] contract with the state in lieu of the Short-Doyle plan and budget. (Welf. & Inst. Code, § 5705.2.) The NNA contract covers mental health services in the contracting county. The amount of money the state provides is the same whether the county signs a NNA contract or adopts a Short-Doyle plan.... By adding subdivision (g) to Welfare and Institutions Code section 5651, the legislature designated that the mental health services provided pursuant to Government Code section 7570 et seq. were to be funded as part of the Short-Doyle program. County's NNA contract was consistent with this intent. Accordingly, the fact that County entered into an NNA contract rather than a Short-Doyle plan and budget is not relevant.<sup>21</sup>

Based on these findings, the court concluded that only 10 percent of the costs were "costs mandated by the state" and, thus, reimbursable under article XIII B, section 6. The court held as follows:

By placing these services within Short-Doyle, however, the legislature limited the extent of its mandate for these services to the funds provided through the Short-Doyle program. A Short-Doyle agreement or NNA contract sets the maximum obligation incurred by a county for providing the services listed in the agreement or contract. "Counties may elect to appropriate more than their 10 per cent share, but in no event can they be required to do so." (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 450.) Since the services were subject to the Short-Doyle formula under which the state provided 90 per cent of the funds and the county 10 per cent, that 10 per cent was reimbursable under section 6, article XIII B of the California Constitution. (Emphasis in original.)<sup>22</sup>

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<sup>21</sup> Exhibit E, page 173.

<sup>22</sup> Exhibit E, page 173.

Thus, the Statement of Decision in *Handicapped and Disabled Students* (CSM 4282), which was affirmed by the Court of Appeal, is a final decision and cannot be changed without an express statutory provision or court order.

The parties are correct that there have been *subsequent changes* in the law, which are described below, that affect the reimbursement of costs for providing psychotherapy or other mental health treatment services. The Commission addressed these subsequent changes in the reconsideration of the original decision that was directed by the Legislature in *Handicapped and Disabled Students* (04-RL-4282-10) and in the subsequent test claim filed by the parties in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

In 1991, the Legislature enacted realignment legislation that repealed the Short-Doyle Act and replaced the sections with the Bronzan-McCorquodale Act. (Stats. 1991, ch. 89, §§ 63 and 173.) The realignment legislation became effective on June 30, 1991. The parties have disputed whether the Bronzan-McCorquodale Act keeps the cost-sharing ratio, with the state paying 90 percent and the counties paying 10 percent, for the cost of psychotherapy or other mental health treatment services for special education pupils.

In 2002, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781). Section 41 of the bill directs the State Controller's Office to not dispute reimbursement claims, filed in fiscal years up to and including the 2000-2001 fiscal year, with respect to the percentage of reimbursement the county claimed for allowable mental health treatment services. This direction applies only to reimbursement claims filed by counties claiming 100 percent of their total costs for allowable mental health treatment services to special education pupils. The bill does not allow counties that claimed reimbursement for less than 100 percent to amend their claims. Section 41 of Statutes 2002, chapter 1167, states the following:

Notwithstanding any other provision of law, with respect to the handicapped and disabled students state-mandated program, county reimbursement claims submitted to the Controller for reimbursement for services associated with providing, pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, allowable mental health treatment services required by an individualized education program in fiscal years up to and including 2000-01 fiscal year are not subject to dispute by the Controller's office regarding the percentage of reimbursement claimed by any county. A county that previously submitted a reimbursement claim for services delivered in the 2000-01 fiscal year or prior for less than 100 percent of the allowable mental health treatment services to special education pupils may not amend its claim for 100 percent or other percentage of those same allowable costs. This paragraph does not abridge the right of the Controller to otherwise dispute claims on the basis of allowable costs. With the exception of those costs claimed in excess of what is allowable, claims shall be fully paid at the percentage originally submitted.

Section 38 of Assembly Bill 2781 (Stats. 2002, ch. 1167) further provides that counties are not required to provide any share of costs from realignment funds for psychotherapy

or other mental health treatment services delivered under this program in fiscal year 2001-2002 and thereafter to special education pupils. Section 38 states in relevant part the following:

For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund [i.e. realignment funds].

Finally, in 2004, the Legislature enacted Senate Bill 1895 (Stats. 2004, chapter 496, § 6) to provide that realignment funds under the Bronzan-McCorquodale Act that are used by a county for the *Handicapped and Disabled Students* program are not required to be deducted from the costs claimed for the program. Section 6 of Senate Bill 1895 adds, as part of the Bronzan-McCorquodale Act, section 5701.6 to the Welfare and Institutions Code, which states in relevant part the following:

Counties may utilize money received from the Local Revenue Fund [realignment] ...to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. *If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations [IDEA] and required by Chapter 26.5 ... of the Government Code. (Emphasis added.)*

Welfare and Institutions Code section 5701.6, subdivision (b), further states that “[t]his section is declaratory of existing law.”

In both the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) and *Handicapped and Disabled II* (02-TC-40/02-TC-49), the Commission concluded, pursuant to Statutes 2002, chapter 1167 (AB 2781) and Statutes 2004, chapter 493 (SB 1895), that beginning July 1, 2001, the 90 percent-10-percent cost sharing ratio for the costs incurred for psychotherapy and other mental health treatment services no longer applies.<sup>23</sup> The Commission further concluded, pursuant to Statutes 2004, chapter 493 (SB 1895), that realignment funds are not required to be identified as an offset and deducted from the costs claimed for fiscal years 2001-2002 and thereafter.<sup>24</sup> These decisions have a reimbursement period beginning July 1, 2004 and July 1, 2001, respectively.

But the Commission’s findings on the subsequent legislative changes in the law cannot be applied retroactively to the original parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282), as requested by the counties. Neither Government Code section 17557, nor any other provision in the Government Code, grants the authority,

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<sup>23</sup> Exhibit H, Statement of Decision, 04-RL-4282-10; Exhibit J, Statement of Decision, 02-TC-40/02-tC-49.

<sup>24</sup> *Ibid.*

when determining a request to amend the parameters and guidelines, to change the findings made by the Commission in the Statement of Decision to reflect subsequent changes in the law.

Therefore, the proposed amendment to delete all references to the Short-Doyle cost sharing mechanism is inconsistent with, and not supported by the Commission's Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).

**Issue 3: Should the Commission add a provision to the parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) to reimburse counties for 60 percent of the residential board and care costs for in-state placement of seriously emotionally disturbed pupils in residential facilities?**

The counties request that the Commission amend the parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) by adding a provision to reimburse counties for 60 percent of the residential board and care costs for in-state placement of pupils in residential facilities. The counties contend that the joint regulations adopted by the Departments of Mental Health and Education require counties to provide assessment, treatment, case management and residential care services, including room, board, care and supervision. The counties request that the following language be added to the parameters and guidelines:

For each eligible claimant, residential services are reimbursable, when delineated in an IEP, in accordance with California Administrative Code, Title 2, Section 60100, including the "board and care" or "care and supervision" portion of residential services, in excess of the Department of Social Services (DSS) forty (40) percent share of DSS allowable room and board payments. As noted in California Administrative Code, Title 2, Section 60025, entitled "Social Services Definitions," subsection (a) states: "'Care and supervision' as defined in Welfare and Institutions Code Section 11460, includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.'"

The Statement of Decision in *Handicapped and Disabled Students* (CSM 4282) contains a finding that "Government Code section 7572.5, subdivision (c), designates, for the first time that the local mental health program shall act as the lead case manager when the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed.'"<sup>25</sup> Although the Statement of Decision authorizes reimbursement for the activities of the lead case manager for pupils that are placed in residential care, there is no finding in the Statement of Decision authorizing reimbursement for the costs of residential placement, or board and care of the pupil.

When the Commission reconsidered *Handicapped and Disabled Students* (04-RL-4282-10), the Commission concluded that counties were required to issue

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<sup>25</sup> Exhibit M, Statement of Decision, CSM 4282, page 423.

payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils, and were entitled to reimbursement for 60 percent of the costs. The Commission's Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) approved the following activity for reimbursement:

Issue payments to providers of out-of-home residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))

- Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to [sic] reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.<sup>26</sup>

However, the reimbursement period for the Statement of Decision on reconsideration begins July 1, 2004, and cannot be retroactively applied here. The Commission does not have jurisdiction, for purposes of the counties' request to amend the parameters and guidelines, to add to the findings made by the Commission in the original Statement of Decision on *Handicapped and Disabled Students* (CSM 4282). It is a well-settled issue of law that an administrative agency may not change a determination once its decision has become final absent express statutory authority or a court order.<sup>27</sup> Although the Legislature expressly directed the Commission to reconsider the Statement of Decision in *Handicapped and Disabled Students* (Stats. 2004, ch. 493 (SB1895)), the Commission's findings on reconsideration are prospective and have a reimbursement period beginning July 1, 2004.<sup>28</sup>

Therefore, the proposed amendment to add a cost provision to reimburse counties for 60 percent of the residential board and care costs for in-state placement of pupils in residential facilities is inconsistent with, and not supported by the Commission's Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).

**Issue 4: Should the Commission amend the provision authorizing reimbursement for mental health services in accordance with current law to include reimbursement for medication monitoring and crisis intervention?**

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<sup>26</sup> Exhibit H, Statement of Decision on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10).

<sup>27</sup> *Olive Proration etc. Com. v. Agri. Etc. Com.* (1941) 17 Cal.2d 204, 209; *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 150.

<sup>28</sup> Exhibit H, Statement of Decision on the Reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10).



The counties request that the Commission amend the provision in the parameters and guidelines for mental health services to include the current regulatory definition of “mental health services,” medication monitoring, and crisis intervention. The counties request the following language be added to the parameters and guidelines:

For each eligible claimant, the following cost items, for the provision of services when required by a child’s individualized education program in accordance with Section 7572(d) of the Government Code: psychotherapy (including outpatient crisis-intervention psychotherapy provided in the normal course of IEP services when a pupil exhibits acute psychiatric symptoms, which, if untreated, presents an imminent threat to the pupil) as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management are reimbursable (Government Code 7576). “Medication monitoring” includes medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.<sup>29</sup>

The counties’ proposed language, however, is based on regulations amended by the Departments of Mental Health and Education effective July 1, 1998. (Cal. Code Regs., tit. 2, § 60020, subds. (i) and (f).) The 1998 regulations were considered by the Commission in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and approved for the following activities beginning July 1, 2001:

- Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil’s IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
- Provide medication monitoring services when required by the pupil’s IEP. “Medication monitoring” includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

The Commission’s findings in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), approving reimbursement for medication monitoring and psychotherapy services as currently defined in the regulations were not included in the original test claim (CSM 4282) and, thus, cannot be applied retroactively to the original parameters and guidelines. Based on Government Code section 17557, subdivision (e),

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<sup>29</sup> Exhibit A, consolidated request to amend Parameters and Guidelines, page 111.

the reimbursement period for the activities approved by the Commission in *Handicapped and Disabled II* begins July 1, 2001.

Therefore, the proposed amendment to add language based on the current definition of “mental health services,” including medication monitoring, is inconsistent with, and not supported by the Commission’s original 1990 Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).

Finally, the request to add crisis intervention as a reimbursable state-mandated activity must be denied since crisis intervention was deleted from the definition of mental health services before the potential reimbursement period for this request to amend the parameters and guidelines (July 1, 2000). The activity of crisis intervention was deleted from the regulations, effective July 1, 1998. (Cal. Code Regs., tit. 2, § 60020.) Thus, crisis intervention is not a state-mandated activity for the time period relevant to this request.

**Issue 5: Should the Commission amend Section VI of the parameters and guidelines on Claim Preparation to add a paragraph regarding the reimbursement of indirect costs to comply with previously adopted boilerplate language?**

The counties request that section VI of the parameters and guidelines, Claim Preparation, be amended to add the following paragraph regarding indirect costs for both the actual cost method and the cost report method (based on annual cost reports filed with the Department of Mental Health):

Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

On October 25, 2006, the State Controller’s Office requested an opportunity to file additional comments. The Controller’s request stated in relevant part the following:

Item 14 [of the October 26, 2006 hearing calendar] clarified indirect costs and offsetting revenues, and allows claimants to file amended claims from July 1, 2000, through June 30, 2004. Based on recent comments we have received from counties as to the impact the changes have on prior claims, we believe that additional time is needed to fully evaluate the proposed changes.

The Controller's request was approved for good cause. On November 6, 2006, the Controller filed additional comments recommending that the Commission deny the counties' requests to amend the language regarding the reimbursement of indirect costs. The Controller states in relevant part the following:

The proposed amendment, effective for the reimbursement period of July 1, 2000 through June 30, 2004, includes the OMB Circular A-87 boilerplate language for indirect costs. The amendment does not add a new claiming activity nor expand indirect costs that are eligible for reimbursement. Furthermore, the proposed amendment does not identify any additional costs that could not have been claimed previously.

Staff recommends that the Commission deny the counties' request to amend section VI of the parameters and guidelines. Although the language proposed by the counties is consistent with boilerplate language adopted by the Commission in other parameters and guidelines, staff agrees that the language does not identify any additional costs that could not have been previously claimed by counties. Thus, it is not necessary to amend section VI, Claim Preparation.

**Issue 6: Should the Commission amend the offset paragraph to include revenue received through Medi-cal, private pay insurance, state categorical funding (Item 4440-131-0001 of the State Budget Act), Healthy Families Program, and federal IDEA funding to be provided to backfill loss of state funding for the program?**

Section VIII of the parameters and guidelines (Offsetting Savings and Other Reimbursements) currently states the following:

- A. Any offsetting savings the claimant experiences as direct result of this statute must be deducted from the costs claimed.
- B. The following reimbursements for this mandate shall be deducted from the claim:
  1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and
  2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g., federal, state, etc.

The counties request that the offset paragraph of the parameters and guidelines be amended to specifically identify revenue received through Medi-cal, private pay insurance, state categorical funding (Item 4440-131-0001 of the State Budget Act), Healthy Families Program, and federal IDEA funding as offsets.

The State Controller's Office recommends that the counties' request to amend section VIII be denied as follows:

The proposed amendment, effective for the reimbursement period of July 1, 2000 through June 30, 2004, replaces the Offsetting Savings and Other Reimbursements language with current boilerplate language and

clarifies offsetting revenue and other reimbursements. The proposed amendment does not increase reimbursable costs.

When the Commission reconsidered the original test claim, the Commission found that the offset language in the parameters and guidelines did not properly identify the offsetting revenue that must be deducted from the costs claimed. The Commission made the following findings on reconsideration:

The Commission agrees with the identification of any direct payments or categorical funds appropriated by the Legislature specifically for this program as an offset to be deducted from the costs claimed. In the past, categorical funding has been provided by the state for this program in the amount of \$12.3 million.<sup>30</sup> The categorical funding was eliminated, however, in the Budget Acts of 2002 through 2004.

If, however, funds are appropriated in the Budget Act for this program, such as the \$69 million appropriation in the 2004-05 Budget Act, such funds are required to be identified as an offset.

The Commission disagrees with the language in the existing parameters and guidelines that excludes private insurance payments as offsetting revenue. Federal law authorizes public agencies to access private insurance proceeds for services provided under the IDEA if the parent consents.<sup>31</sup> Thus, to the extent counties obtain private insurance proceeds with the consent of a parent for purposes of this program, such proceeds must be identified as an offset and deducted from the costs claimed. This finding is consistent with the California Supreme Court's decision in *County of Fresno v. State of California*. In the *County of Fresno* case, the court clarified that article XIII B, section 6 requires reimbursement by the state only for those expenses that are recoverable from tax revenues. Reimbursable costs under article XIII B, section 6, do not include reimbursement received from other non-tax sources.<sup>32</sup>

The Commission further disagrees with the language in the existing parameters and guidelines that excludes Medi-Cal payments as offsetting revenue. Federal law authorizes public agencies, with certain limitations, to use public insurance benefits, such as Medi-Cal, to provide or pay for services required under the IDEA.<sup>33</sup> Federal law limits this authority as follows:

- (2) With regard to services required to provide FAPE [free appropriate public education] to an eligible child under this part, the public agency-

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<sup>30</sup> Budget Acts of 1994-2001, Item 4440-131-0001.

<sup>31</sup> 34 Code of Federal Regulations section 300.142, subdivision (f).

<sup>32</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>33</sup> 34 Code of Federal Regulations section 300.142, subdivision (e).

- (i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
- (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent would be required to pay;
- (iii) May not use a child's benefits under a public insurance program if that use would
  - (A) Decrease available lifetime coverage or any other insured benefit;
  - (B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
  - (C) Increase premiums or lead to the discrimination of insurance; or
  - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.<sup>34</sup>

According to the 2004 report published by Stanford Law School, 51.8 percent of the students receiving services under the test claim legislation are Medi-Cal eligible.<sup>35</sup> Thus, the Commission finds to the extent counties obtain proceeds under the Medi-Cal program from either the state or federal government for purposes of this mandated program, such proceeds must be identified as an offset and deducted from the costs claimed.

In addition, Government Code section 7576.5 describes offsetting revenue to counties transferred from local educational agencies for this program as follows:

If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used exclusively for programs operated under this

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<sup>34</sup> 34 Code of Federal Regulations section 300.142, subdivision (e)(2).

<sup>35</sup> "Challenge and Opportunity – An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," Youth and Education Law Clinic, Stanford Law School, May 2004, page 20.

chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

Government Code section 7576.5 was added by the Legislature in 2003 (Stats. 2003, ch. 227) and became operative and effective on August 11, 2003. Thus, the Commission finds money received by counties pursuant to Government Code section 7576.5 shall be identified as an offset and deducted from the costs claimed.<sup>36</sup>

Staff finds that the offsetting revenue described above also applies to reimbursement claims filed for the period of July 1, 2000, through and including June 30, 2004, and, thus, should be identified as offsets pursuant to this request.

In addition, when the Commission adopted the parameters and guidelines on reconsideration, the Commission identified a \$69 million appropriation made to counties for this program by Statutes 2003, chapter 157, item 6110-161-0890, provision 17.<sup>37</sup> This appropriation also applies to the claims filed for the period of July 1, 2000, through and including June 30, 2004, and should be identified as an offset.

Thus, staff recommends that the offset paragraph of the parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282) be amended, consistent with its past findings, to state the following:

Any offsetting revenues and reimbursements the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5 (operative and effective on August 11, 2003).
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Acts of 2000 and 2001, which appropriated funds to counties in the amount of \$12,334,000 (Stats. 2000, ch. 52, item 4440-131-0001; Stats. 2001, ch. 106, item 4440-131-0001), and the \$69 million appropriation in 2003 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17).
3. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
4. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil

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<sup>36</sup> Exhibit H, Statement of Decision, Reconsideration of Handicapped and Disabled Students (04-RL-4282-10).

<sup>37</sup> Exhibit I, Parameters and guidelines, *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10).

under the Handicapped and Disabled Students program in accordance with federal law.

5. Any other reimbursement received from the federal or state government, or other non-local source.<sup>38</sup>

In addition, staff recommends that the title of Section VIII, currently identified as “Offsetting Savings and Other Reimbursements,” be changed to “Offsetting Revenues and Reimbursements.” This change is recommended to conform to the language of section 1183.1, subdivision (a)(7), of the Commission’s regulations, as amended on September 6, 2005.

### CONCLUSION

Staff recommends that the Commission adopt the staff analysis and the proposed parameters and guidelines, as modified by staff, which begins on page 33, to incorporate the language regarding offsetting revenue. The proposed amendments are effective for the reimbursement period beginning July 1, 2000, through and including June 30, 2004.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>38</sup> Section 1183.1, subdivision (a)(7), requires the identification of offsetting revenues and reimbursements in the parameters and guidelines.

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Adopted: August 22, 1991  
Amended: August 29, 1996  
Amended: January 26, 2006  
Proposed Amendment:  
<j:mandates/2000statutes/PGA/PGA-03/04/DSA Dec2006>

## **PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES**

### **As Modified By Staff**

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);  
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations, Title 2, Sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and refiled June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))

### ***Handicapped and Disabled Students (CSM 4282)*** **July 1, 2000 – June 30, 2004**

#### **I. SUMMARY OF MANDATE**

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for “individuals with exceptional needs,” such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded “Individualized Education Program” (IEP) team and case management services for “individuals with exceptional needs” who are designated as “seriously emotionally disturbed,” pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIII B of the California Constitution.

The provisions of Welfare and Institutions Code section 5651, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health

services, pursuant to Gov. Code sections 7571 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to “individuals with exceptional needs,” including those designated as “seriously emotionally disturbed,” and required in such individual’s IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIII B of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 7571 and 7576 and their implementing regulations, and described in the county’s Short-Doyle annual plan pursuant to Welfare and Institutions Code section 5651, subdivision (g).

## **II. COMMISSION ON STATE MANDATES’ DECISIONS**

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county’s Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state.

Statutes 2004, chapter 493 (Sen. Bill No. 1895) directed the Commission to reconsider the 1990 Statement of Decision and parameters and guidelines for this program. On May 26, 2005, the Commission adopted a Statement of Decision on reconsideration of Handicapped and Disabled Students (04-RL-4282-10). The Commission found that the 1990 Statement of Decision correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. The Commission’s Statement of Decision on reconsideration has a period of reimbursement beginning July 1, 2004.

## **III. ELIGIBLE CLAIMANTS**

All counties

## **IV. PERIOD OF REIMBURSEMENT**

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987; all costs incurred on or after July 1, 1986, through and including June 30, 2004, are reimbursable.

This amended set of parameters and guidelines is operative for reimbursement claims filed for the period from July 1, 2000, through and including June 30, 2004.

Costs incurred beginning July 1, 2004, shall be claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-R1-4282-10).

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

If the total costs for a given fiscal year do not exceed \$200<sup>39</sup>, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

## **V. REIMBURSABLE COSTS**

- A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:
1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.
  2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, section 7572, subd. (d)(1)):
    - a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
      - i. interview with the child and family,
      - ii. collateral interviews, as necessary,
      - iii. review of the records,
      - iv. observation of the child at school, and
      - v. psychological testing and/or psychiatric assessment, as necessary.
    - b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(1)).

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<sup>39</sup> Beginning September 30, 2002, claims must exceed \$1000. (Stats. 2002, ch. 1124.)

- c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Government Code section 7572, subd. (d)(1)).
  - d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 7572, subd. (d)(2)).
  - e. When the written mental health assessment report provided by the local mental health program determines that an 'individual with special needs' is 'seriously emotionally disturbed', and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of the claimant's mental health professional on that individual's expanded IEP team.
  - f. When the IEP prescribes residential placement for an 'individual with exceptional needs' who is 'seriously emotionally disturbed,' claimant's mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572.5).
  - g. Required participation in due process procedures, including but not limited to due process hearings.
3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.
- B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act:
- 1. The scope of the mandate is ten (10) percent reimbursement.
  - 2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):
    - a. Individual therapy,
    - b. Collateral therapy and contacts,
    - c. Group therapy,
    - d. Day treatment, and
  - e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.
3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

## VI. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

- A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense

categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.
  2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.
  3. Direct Administrative Costs:
    - a. One hundred (100) percent of any direct administrative costs related to IEP Participation, Assessment, and Case Management.
    - b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.
  4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:
    - a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

OR if an indirect cost rate greater than ten (10) percent is being claimed,
    - b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).
- B. Cost Report Method**. Under this claiming method the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with the claiming instructions. A complete copy of the annual cost report including all supporting schedules attached to the cost report as filed with DMH must also be filed with the claim forms submitted to the State Controller.
1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

- a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

OR if an indirect cost rate greater than ten (10) percent is being claimed,

- b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

## VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

## VIII. ~~OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS~~ REVENUES AND OTHER REIMBURSEMENTS

~~A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.~~

~~B. The following reimbursements for this mandate shall be deducted from the claim:~~

- ~~1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and~~
- ~~2. Any other reimbursement for this mandate (excluding Short Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.~~

Any offsets and reimbursements the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5 (operative and effective on August 11, 2003).

Deleted: ting revenues

2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program. This includes the appropriation made by the Legislature in the Budget Acts of 2000 and 2001, which appropriated funds to counties in the amount of \$12,334,000 (Stats. 2000, ch. 52, item 4440-131-0001; Stats. 2001, ch. 106, item 4440-131-0001), and the \$69 million appropriation in 2003 (Stats. 2003, ch. 157, item 6110-161-0890, provision 17).
3. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
4. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
5. Any other reimbursement received from the federal or state government, or other non-local source.

## **IX. REQUIRED CERTIFICATION**

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An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.