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Amended: 10/26/95
Amended: 7/27/00
Amended: 1/29/10

Amendment to Parameters and Guidelines

Penal Code Sections 1026 and 1026.5

Statutes 1979, Chapter 1114

Statutes 1982, Chapter 650

Not Guilty by Reason of Insanity

05-PGA-35 (2753)

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

I. Summary of the Source of the Mandates

Penal Code section 1026 was amended and section 1026.5 was added by Statutes 1979, chapter 1114, to require the District Attorney to bring petitions in a court of competent jurisdiction in the name of the State of California to effect extensions of commitments in State hospitals for individuals who have been found not guilty by reason of insanity (NGI) and committed to said State institutions.

Section 1026.5 was further amended by Statutes 1982, chapter 650, to require the District Attorney to review all NGI cases prior to the expiration of the defendant's maximum term of commitment, for a determination as to whether or not the petition for extended commitment should be filed. (Prior to this 1982 amendment, the District Attorney was only required to review those matters in which the State hospital was requesting extended term commitment proceedings.)

II. Commission on State Mandates' Decision (then Board of Control)

At its July 16, 1980, meeting, the Board of Control (Board) determined that no reimbursable mandate existed in Statutes 1979, chapter 1114. The Board reasoned that the Legislature in enacting Chapter 1114, placed in statute the existing law as declared by the court in, In re Moye, 22 Cal. 3d 457, 1978.

The claimant contended that absent enactment of Chapter 1114/79 or a similar statutory procedure, a person with a mental disorder could only continue to be confined by instituting civil commitment proceedings under the Lanterman-Petris-Short Act. Per the claimant, NGI extended commitment proceedings under Penal Code section 1026.5 were new. In addition the claimant viewed that the required mandatory review of all such defendants as they became eligible for release imposed a higher level of service upon local government.

The Board therefore concluded that since the District Attorney already had, by statute, the duty to bring those proceedings, the costs incurred by the County pursuant to the District Attorney being the petitioner in continuation proceedings are costs mandated by the Courts and not reimbursable

under the Revenue and Taxation Code.

Following the Board's adoption of a brief written statement concerning its decision on September 17, 1980, the County of Los Angeles appealed the Board's decision. The Superior Court, County of Los Angeles, upheld the Board's decision; however, the claimant appealed the court's decision and ultimately succeeded in obtaining a reversal of the lower court's ruling by the Second Appellate District Court of Appeal. Subsequently, the Superior Court issued the Judgment and Writ directing the Board to vacate its earlier decision and approve the claim.

The Superior Court issued the Judgment and Writ (Superior Court No. C-342, 764) directing the Board to vacate its decision and to approve the above entitled claim. In response, at its December 2, 1982 meeting, the Board vacated the previous decision and followed the direction of the court.

On September 27, 1984, (Chapter 1436 of 1984) the Legislature deleted mandate claims bill funding for Statutes 1979, chapter 1114, and directed the Board to revise the parameters and guidelines because they failed to account for costs that would have been incurred by the counties as a result of the Supreme Court's 1978 In re Moye decision. Further the Legislature wanted assurance that only increased costs under Statutes 1979, chapter 1114, would be reimbursed.

The claimant filed a complaint for Declaratory Relief and Petition for Writ of Mandate on January 1, 1985, and subsequently allowed exhaustion of the statute of limitations for litigation. On August 17, 1993, the claimant requested amendment of the 1983 parameters and guidelines. The Commission, in pursuing these parameters and guidelines is following the guidelines to reflect both the Second Appellate District Court of Appeal and the 1984 Legislative Counsel directives. This is due in part to the Second Appellate District Court of Appeal decision that In re Moye did not impact the changes included by Statutes 1979, chapter 1114, and are therefore excluded from

1 “ . . . In re Moye did no more than to declare unconstitutional the provisions of the law which required a person committed under section 1026 of the Penal Code bear the burden of proof in a proceeding for his release to be an unconstitutional deprivation of equal protection. The opinion recommended, but did not require, the procedure provided in section 1026.5. It suggested that resort to the provisions of the Lanterman-Petris Act might afford equal protection. Had the Legislature been content to rely on that suggestion, an arguable case could have been made that costs of following the Lanterman-Petris procedure would not have increased the county's otherwise costs. (1-A proposition which we regard a fallacious, since section 1026.5 does involve the county, through its district attorney, in dealing with a group of persons not normally subject to Lanterman-Petris procedure.) But the Legislature was unwilling to rely on that judicial suggestion. The Lanterman-Petris procedure, at the most, could result in a 90-day commitment based on conduct after those proceedings had begun. It did not provide either for a commitment extending for the term prescribed for a crime, nor did it provide for a potentially indefinite series of two-year commitments. (1) In short, section 1026.5 sets forth an entirely new program for dealing with violent persons found not guilty by reason of insanity; it did not parallel the Lanterman-Petris program. What it did was to parallel the MDSO program, not theretofore available for the criminally insane. . . .” [County of Los Angeles v State of California (1982)132 Cal.App.3d 761; 183 Cal.Rptr. 5]

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the subject parameters and guidelines.

III. Eligible Claimants

Counties.

IV. Period of Reimbursement

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

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. Statutes 1979, chapter 1114, became operative on September 28, 1979, as an act of urgency, and the initial test claim for Chapter 1114/79 was filed February 20, 1980. Therefore, costs incurred on or after September 28, 1979, are reimbursable.

In addition, Statutes 1982, chapter 650, became operative on August 27, 1982, as an act of urgency. Consequently, costs incurred under this chapter on or after August 27, 1982, are reimbursable. Subsequent claims shall be filed on a fiscal year basis.

Statutes 1986, chapter 1020, added Penal Code section 1026.5 activities under Welfare and Institutions Code section 4117 as activities to be reimbursed from funds specifically appropriated by the Legislature for that purpose. This section became operative on July 1, 1987. Therefore, reimbursable mandate costs for Penal Code section 1026.5 are those incurred prior to July 1, 1987. Costs incurred after that date are reimbursable under Welfare and Institutions Code section 4117. To the extent Welfare and Institutions Code section 4117 funding as appropriated by the Legislature, or as approved as a deficiency by the Director of Finance, is exhausted, reimbursement claims may subsequently be filed through the State Controller pursuant to Government Code section 17500 et seq.

Beginning with claims for costs incurred in fiscal year 1997-98, claimants shall submit reimbursement claims for mental health treatment costs to the Department of Mental Health and reimbursement claims for nontreatment costs to the State Controller as provided in Welfare and Institutions Code section 4117.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d) (3), all claims for reimbursement of costs shall be submitted within 120 days following the issuance of claiming instructions by the State Controller.

If total costs claimed for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise provided in Government Code section 17564.

V. Reimbursable Costs

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event

or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

A. Scope of Mandate

Counties shall be reimbursed for the costs incurred for the District Attorney to bring petitions in a court of competent jurisdiction in the name of the State of California to effect extensions of commitments in State hospitals for individuals who have been found not guilty by reason of insanity (NGI) and committed to said State institutions pursuant to Penal Code sections 1026.5 and 1026, as added and amended by Statutes 1979, chapter 1114, and as annotated in the 1984 claims bill (Statutes 1984, chapter 1436).

Counties will further be reimbursed for the District Attorney to review all NGI cases prior to the expiration of the defendant's maximum term of commitment, for a determination as to whether or not the petition for extended commitment should be filed pursuant to Penal Code section 1026, as amended by Statutes 1982, chapter 650.

B. Reimbursable Activities

Counties will be reimbursed costs of extended commitment proceedings under Sections 1026 and 1026.5 of the Penal Code, Chapters 1114/79 and 650/82. Reimbursement will be limited to the following program activities:

- (1) Those District Attorney costs related to obtaining and reviewing necessary material on defendant's criminal and hospital case, including original court file and original, non-privileged District Attorney records on defendant's criminal case, in order to select appropriate cases for filing court requests for extended commitment proceedings.
- (2) Those costs related to necessary District Attorney travel to and from a State hospital.
- (3) Costs of transporting defendant for extended commitment proceedings.
- (4) Costs related to care and custody of defendant for extended commitment proceedings not reimbursed by other State funds.
- (5) District Attorney and indigent defense counsel review, preparation, and trial costs, including but not limited to judicial officer, clerk, court reporter, bailiffs, expert

witnesses, special investigators, juror fees, etc., that are not reimbursed by other State funds.

- (6) Court-appointed expert witness (psychiatric, psychological, other mental health professional) services and special investigator costs, except as noted in section VIII herein.

VI. Claim Preparation and Submission

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section V.B. of this document. In addition, claims must provide State patient information, and a copy of the statement, prepared by the county clerk of the county in which the hearing or trial was held and properly certified by a judge of the superior court of that county or an officer of the court for counties without a superior court judge, of all

non-treatment costs incurred by the county, as required under Welfare and Institutions Code section 4117.

A. Direct Costs

(1) Employee Salaries and Benefits

Identify the employee(s) and/or the classification of the employee(s) involved. Describe the mandated functions performed and specify the time devoted to each reimbursable activity by each employee, productive hourly rate, and related fringe benefits.

The average number of hours devoted to each reimbursable activity in this document may be claimed if supported by a documented time study.

Reimbursement for personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

(2) Services, Equipment and Supplies

Only expenditures that can be identified as a direct cost of the mandate may be claimed. List the cost of the materials or equipment consumed specifically for the purpose of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, specifically applied.

3) Contract Services

Provide the name(s) of the contractor(s) who performed the service(s), including any fixed

contracts for services. Describe the activity(ies) performed by each named contractor, and give the number of actual hours spent on the activities, if applicable, show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.

(4) Capital Assets

List the purchase price paid for equipment and other capital assets acquired for this mandate. Purchase price includes taxes, delivery costs, and installation costs. If the equipment or other fixed asset is used for purposes other than for this mandate, only the pro rata portion of the purchase price may be claimed.

(5) Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the names(s) of the traveler(s), purpose of travel, inclusive of dates and times of travel, destination points, and travel costs.

(6) Training

The cost of training an employee to perform mandated activities specified in this document is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the dates attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.

(7) Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate, and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan. Counties have the option of using 10 percent of direct labor as indirect costs or of preparing a departmental Indirect Cost Rate Proposal. If the county elects to prepare an Indirect Cost Rate Proposal, the proposal must be prepared in accordance with Office of Management and Budget Circular A-87 (OMB A-87).

VII. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an

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

audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings that the claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including, but not limited to service fees collected, federal funds, other state funds shall be identified and deducted from the claim.

Further, counties submitting claims for reimbursement on or after July 1, 1987 for claims for fiscal years 1987-88 through 1996-97, must first claim reimbursement from the Department of Mental Health under section 4117 of the Welfare and Institutions code. To the extent claimants cannot be reimbursed through the Department of Mental Health because the appropriation is exhausted and no deficiency is authorized pursuant to Budget Act or other statutory provisions, the unpaid balance may be claimed through the State Controller. New claims must be filed timely when filed with the Department of Mental Health.

Beginning with claims for costs incurred in fiscal year 1997-98, claimants shall submit reimbursement claims for nontreatment costs to the State Controller as provided in Welfare and Institutions Code section 4117.

IX. Required Certification

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

X. Parameters and Guidelines Amendments

Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.