

1 together with the 1991 model needs assessment protocol provided by
2 the State Health and Welfare Agency require local agencies to
3 implement a new program or a higher level of service in an existing
4 program within the meaning of Government Code section 17514 and
5, section 6, article XIII B of the California Constitution?

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8 BACKGROUND AND FINDINGS OF FACT

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10 The test claim was filed with the Commission on July 15, 1991, by
11 County of Santa Clara, which became a co-claimant with County of
12 Fresno on December 2, 1991.

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14 The elements for filing a test claim, as specified in section 1983
15 of Title 2 of the California Code of Regulations, were satisfied.

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17 The claimant alleged that the addition of Wealth and Safety Code
18 sections 10900, 10901, and 10902, and of Penal Code
19 section 11165.13 and the amendment of Penal Code section 11166 by
20 Chapter 1603/90, together with the 1991 model needs assessment
21 protocol provided by the State Health and Welfare Agency, impose
22 state requirements regarding establishment of protocols and
23 application of assessment procedures for maternal substance abuse
24 and for intervention activities on behalf of a substance exposed
25 infant which result in a reimbursable state mandated program upon
26 local agencies.

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1 | The Department of Finance (DOF) determined that **Chapter** 1603/90
2 | requires every county to establish specified protocols between
3 | county health departments, welfare departments, and all public and
4 | private hospitals in the county, regarding assessment of the needs
5 | of and referral for a substance-exposed infant to a county welfare
6 | department.

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8 | The Department of Social Services (DSS) asserted that the program
9 | activities of Health and Safety Code section 10901, subsection (a),
10 | meet the standards of Government Code section 17514, but
11 | recommended **denial** of other portions of the test claim. DSS
12 | concluded that **responsibility** for screening and referral. procedures
13 | have always existed and continue to exist, and are reflected in
14 | hospital procedures to provide child welfare services and to avoid
15 | medical liability against child abuse suits,

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17 | The Commission found that no statewide standard for perinatal
18 | substance abuse assessment and referral existed before enactment of
19 | Chapter 1603/90.

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21 | The Commission found that the language of Health and Safety Code
22 | section 10900 directs the State Health and Welfare Agency, and not
23 | local agencies, to develop and disseminate a model needs assessment
24 | protocol. The Commission further noted that the State Health and
25 | Welfare Agency's model needs assessment protocol was created in
26 | response to section 10900. The Commission also noted that the

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1 protocol was made available to local agencies, thereby providing
2 them with a standard for their use in completing the activities
3 required of them under Health and Safety Code section 10901.

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5 Regarding Health and Safety Code section 10901, subdivision (a),
6 the Commission found that this language instructs county
7 departments and hospitals to establish protocols between public and
8 private care providers for the application and use of a needs
9 assessment and referral of a substance exposed infant,

10
11 In addition, the Commission found that establishing such protocols
12 would result in one-time-only costs.

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14 The Commission found that the statutory language of Health and
15 Safety Code section 10901, subdivision (b), clearly obligates
16 specified medical practitioners to perform a needs assessment in a
17 specified time frame and in conformance with the standards set by
18 the county and hospital under Health and Safety Code section 10901,
19 subdivision (a). Further, the Commission found that the needs
20 assessment must be performed on women entering the hospital for
21 delivery or postpartum, that the needs assessment must be assigned
22 to one of a number of practitioners, and must be completed before
23 release of a substance exposed infant from the hospital.

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1 The Commission found that the provisions of Health and **safety** Code
2 section 10901, subdivision (c), direct that the needs assessment
3 include identification of needed services, determination of risks,
4 and, as appropriate, referrals for protection, and information
5 gathering.

6
7 The Commission found the language of Health and Safety Code
8 section 10902 merely states the Legislature% intent that the
9 funding for this legislation be provided in the annual Budget Act.

10
11 Regarding Penal Code section 11165.13, the Commission observed that
12 this language provides that a positive toxicology screen is no
13 longer sufficient as a sole **indicator** to prompt a report of child
14 abuse to law enforcement and notes exemptions to reporting
15 requirements. Instead, a positive toxicology screen would prompt
16 a needs assessment, pursuant to Health and Safety Code
17 **section 10901.**

18
19 With respect to Penal Code section 11166, the Commission found that
20 this section simply clarifies procedural responsibilities. This is
21 done by specifically exempting reports made pursuant to Penal Code
22 section 11165.13 from certain reporting requirements. That is,
23 section 11166 defines cases for referral to the county welfare
24 department or to law enforcement, and notes exemptions to those
25 reporting requirements.

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1 The Commission noted that under prior law the duty to report
2 resulted in cross filing of child abuse reports [excluding general
3 neglect] between county welfare departments and law enforcement
4 agencies.

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6 The Commission found that Penal Code sections 11165.13 and 11166
7 have little or no effect on local agency staffing or activity
8 levels because reports once filed with two agencies may now be
9 filed only with one. Also, the Commission found that the Penal
10 Code is being revised to provide conforming language for the
11 activities set forth in Health and Safety Code section 10901.

12
13 APPLICABLE LAW RELEVANT TO THE DETERMINATION
14 OF A REIMBURSABLE STATE MANDATED PROGRAM

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16 Government Code section 17500 and following, and section 6,
17 article XIIIIB of the California Constitution and related case law.

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19 CONCLUSION

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21 The Commission determines that it has the authority to decide this
22 claim under the provisions of Government Code sections 17500 and
23 17551, subdivision (a).

24
25 The Commission concludes that the provisions of Health and Safety
26 Code sections 10900 and 10902, and Penal Code sections 11165.13 and
27 11166, as added or amended by Chapter 1603/90, together with the
28 1991 model needs assessment protocol provided by the State Health

1 and Welfare Agency do not impose a new program or a higher level of
2 service in an existing program upon local agencies.

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4 The Commission further concludes that the provisions of Health and
5 Safety Code section 10901, subdivisions (a), (b) , and (c) , do
6 impose upon local agencies requirements regarding establishment of
7 protocols and application of assessment procedures for maternal
8 substance abuse and for intervention activities on behalf of a
9 substance exposed infant within the meaning of Government Code
10 section 1753.4 and section 6, article XIII B of the California
11 Constitution.

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13 Therefore, the claimant is directed to submit parameters and
14 guidelines, pursuant to Government Code section 17557 and Title 2,
15 California Code of Regulations, section 1183.1, to the Commission
16 for its consideration.

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18 The foregoing determination pertaining to Health and Safety Code
19 section 10901, subdivisions (a), (b), and (c), is subject to the
20 following conditions:

21
22 The determination of a reimbursable state mandated
23 program does not mean that all increased costs claimed
24 will be reimbursed. Reimbursement, if any, is subject to
25 Commission approval of parameters and guidelines for
26 reimbursement of the mandated program; approval of a
27 statewide cost estimate; a specific legislative
28 appropriation for such purpose; a timely-filed claim for

1 reimbursement; and subsequent review of the claim by the
2 State Controller's Office.

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4 If the statewide cost estimate for this mandate does not
5 exceed one million dollars (\$1,000,000) during the first
6 twelve (12) month period following the operative date of
7 the mandate, the Commission shall certify such estimated
8 amount to the State Controller's Office, and the State
9 Controller shall receive, review, and pay claims from the
10 State Mandates Claims Fund as claims are received,
11 (Government Code section 17610)

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