

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

County of Shasta

Claimant

No. CSM-4393

Government Code

Section 27491.41

Chapter 955, Statutes of 1989

Protocols Developed by the

Department of Health Services

Sudden Infant Death Syndrome

DECISION

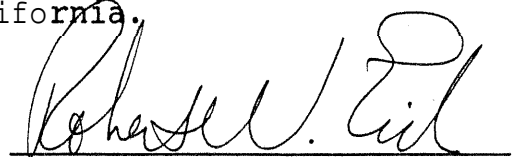
I, ROBERT W. EICH, declare:

I am the Executive Director of the Commission on State Mandates.

In my capacity as Executive Director, I am the custodian of the records of the Commission on State Mandates.

Attached is a true and correct copy of the Proposed Statement of Decision that was adopted by the Commission on State Mandates on August 22, 1991, as its Decision in the above-entitled matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 26, 1991, at Sacramento, California.



ROBERT W. EICH

WP2333A(11)



ISSUES

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3 Do the provisions of Government Code section 27491.41, as added  
4 by Chapter 955, Statutes of 1989, (Chapter 955/89), require  
5 counties to implement a new program or a higher level of  
6 service in an existing program within the meaning of Government  
7 Code section 17514 and section 6, article XIII B of the  
8 California Constitution?

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10 Do the provisions of standardized protocols, developed by the  
11 Department of Health Services for all coroners to follow when  
12 conducting the autopsies required pursuant to Government Code  
13 section 27491.41, as added by Chapter 955/89, constitute  
14 executive orders which impose a new program or a higher level  
15 of service in an existing program upon counties within the  
16 meaning of Government Code section 17514 and section 6,  
17 article XIIB of the California Constitution?

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19 If so, are counties entitled to reimbursement under the  
20 provisions of section 6 of article XIII B?

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FINDINGS OF FACT

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24 The test claim was filed with the Commission on January 28,  
25 1991, by the County of Shasta,

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1 **The elements** for filing a test claim, as specified in  
2 section 1183 of Title 2 of the California Code of Regulations,  
3 **were** satisfied.

4

5 **The** claimant alleged that Government Code section 27491.41, as  
6 **added** by Chapter 955/89, together with the provisions of the  
7 1990 Department of Health Services (DHS) Necropsy **Protocol**  
8 **impose** reimbursable state mandated requirements regarding  
9 autopsies for **"any** sudden and **unexpected"** infant deaths.

10

11 **The** Department of Finance (**DOF**) concluded that this claim does  
12 **constitute** a reimbursable state mandated program.

13

14 DHS agreed that the **SIDS** program specified in Government Code  
15 section 27491.41 of Chapter 955/89, together with the DHS  
16 /protocols, result in a reimbursable state mandated program.

17

18 **The** Commission read the provisions of Government Code  
19 **section** 27491.41, Chapter 955/89, and observed that  
20 **section** 27491.41 specifically directs the coroner to perform an  
21 **autopsy** in any case of sudden, unexpected infant death and  
22 **defines** procedures for that autopsy, including standards for  
23 the retention and availability of evidence.

24

25 The Commission found that prior to the enactment of Government  
26 **Code** section 27491.41, Government Code section 27491, as added  
27 by Chapter 2091, Statutes of 1961, set forth several

1 classifications of violent, sudden, or unusual deaths requiring  
2 inquiry and determination by the coroner. In addition, the  
3 Commission noted that in 1974, the Legislature amended  
4 section 27491 in Chapter 1259, Statutes of 1974, by adding  
5 "where the suspected cause of death is sudden infant death  
6 syndrome [SIDS]" to the list of classifications requiring such  
7 inquiry.

8  
9 Further, the Commission found that pursuant to Government Code  
10 section 27491.4, as amended by Chapter 453, Statutes of 1974  
11 (Chapter 453/74), the coroner had an affirmative duty to  
12 perform autopsies in cases unless the parents objected and the  
13 infant's physician certified the death as SIDS.

14  
15 The Commission observed that the language of Government Code  
16 section 27491.4, Chapter 453/74, was substantially retained in  
17 Government Code section 27491.4 of Chapter 766, Statutes  
18 of 1979, and that the two added paragraphs at the end of  
19 Government Code section 27491.4 were not integral to the test  
20 claim.

21  
22 The Commission noted that its findings regarding the duties of  
23 a coroner under prior law are consistent with Attorney  
24 General's Opinion No. CV 75-9. In that opinion the Attorney  
25 General concluded that pursuant to Government Code

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1 section 27491.4, Chapter 453/74, the coroner had an affirmative  
2 duty to perform autopsies in SIDS cases, unless the parents  
3 objected and the infant's physician certified the death as  
4 SIDS. (58 Ops.Atty.Gen. 563 (1975))  
5

6 The Commission found that new Government Code section 27491.41,  
7 of Chapter 955/89, increases the coroner's duties by requiring,  
8 within 24 hours, or as soon thereafter as feasible, the  
9 **performance** of an autopsy "in any case where an infant [under  
10 age one] has died suddenly and unexpectedly."  
11

12 Regarding the provisions of the 1990 DHS Necropsy Protocol the  
13 Commission found that this Protocol **was** issued pursuant to  
14 Government Code section 27491.41 which authorizes DHS to  
15 establish standardized protocols for performing autopsies.  
16

17 Moreover, although the claimant specified the 1990 DHS Necropsy  
18 Protocol in its test claim, the Commission noted that the  
19 language of subdivisions (d), (e), and (f) of Government Code  
20 section 27491.41 is general in nature and pertains to any  
21 autopsy protocol established by DHS.  
22

23 The Commission further found that such protocols are an  
24 executive order as defined in Government Code section 17516.  
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1 **The** Commission noted that the 1990 DHS Necropsy Protocol is to  
2 be used in all cases where an infant has died suddenly and  
3 unexpectedly, whether SIDS is apparent or not.

4  
5 Further, the Commission found that the protocol standardizes  
6 the conduct of autopsies including: requirements for specific  
7 data, criteria for ascertaining cause of death based on the  
8 autopsy, examinations and their recording and retention, tissue  
9 sampling, specifications for microscopic sections, toxicology  
10 specimens, microbiology specimens, scene investigations,  
11 photographs, radiographs, and trace evidence, and reference to  
12 guidelines for suspected sexual abuse cases.

13  
14 The Commission found that prior to enactment of Government Code  
15 section 27491.41, Chapter **955/89**, there were no written uniform  
16 standards for autopsies where the suspected cause of death was  
17 **SIDS**; instead coroners each followed the standards of practice  
18 in their county. The Commission acknowledged that the degree  
19 of examination for an autopsy was discretionary and neither the  
20 nature, nor the extent of the examination was statutorily **or**  
21 administratively defined.

22  
23 The Commission observed that there can be no exact statement of  
24 the components and procedures of an autopsy for an infant in  
25 California prior to implementation of Government Code  
26 section 27491.41, Chapter **955/89**, and thus found that the prior  
27 level of service mandated upon county coroners was undefined.

1                    APPLICABLE LAW RELEVANT TO THE DETERMINATION  
2                    OF A REIMBURSABLE STATE MANDATED PROGRAM

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5 Government Code section 17500 states, in pertinent part:

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" . . . . The Legislature finds and declares  
**that the** failure of the existing process to  
adequately and consistently resolve the  
complex legal questions involved in the  
determination of state-mandated costs has  
led to an increasing reliance by local  
agencies and school districts on the  
judiciary and, therefore, in order to  
relieve unnecessary congestion of the  
judicial system, it is necessary to create a  
mechanism which is capable of rendering  
sound quasi-judicial decisions and providing  
an effective means of resolving disputes  
over the existence of state-mandated local  
programs.

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**"It** is the intent of the Legislature in  
enacting this part to provide for the  
implementation of Section 6 of Article  
**XIII B** of the California Constitution and to  
consolidate the procedures for reimbursement  
of statutes specified in the Revenue and  
Taxation Code with those identified in the  
Constitution. Further, the Legislature  
intends that the Commission on State  
Mandates, as a quasi-judicial body, will act  
in a deliberative manner in accordance with  
the requirements of Section 6 of Article  
**XIII B** of the California **Constitution.**"

22 **Government** Code section 17514 provides:

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**"'Costs** mandated by the state' means any  
increased costs which a local agency or  
school district is required to incur after  
July 1, 1980, as a result of any statute  
enacted on or after January 1, 1975, or any  
executive order implementing any statute  
enacted on or after January 1, 1975, which  
mandates a new program or higher level of



1 service of an existing program within the  
2 meaning of Section 6 of Article XIII B of  
the California Constitution.@"

3 Government Code section 17515 provides:

4 "'County' means any chartered or general law  
5 county. 'County' includes a city and  
county?"

6 **Government Code section 17516** states, in pertinent part:

7 "'Executive order' means any order, plan,  
8 requirement, rule, or regulation issued by  
any of the following:

- 9 "(a) The Governor.  
10 "(b) Any officer or official serving at the  
pleasure of the Governor.  
11 "(c) Any agency, department, board, or  
commission of state government.

12 "'Executive order' does not include any  
13 order, plan, requirement, rule, or  
14 regulation issued by the State Water  
Resources Control Board or by any regional  
15 water quality control board pursuant to  
Division 7 (commencing with Section 13000)  
of the Water Code. . . ."

16 **Government Code section 17518** provides:

17 "'Local agency' means any city, county, special  
18 district, authority, or other political subdivision of  
the state."

19 **Government Code section 17551**, subdivision (a), provides:

20 "The commission, pursuant to the provisions  
21 of this chapter, shall hear and decide upon  
a claim by a local agency or school district  
22 that the local agency or school district is  
entitled to be reimbursed by the state for  
23 costs mandated by the state as required by  
Section 6 of Article XIII B of the  
California Constitution.@"

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25 Government Code section 17552 reads:

26 "This chapter shall provide the sole and  
exclusive procedure by which a local agency

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1 or school district may claim reimbursement  
2 for costs mandated by the state as required  
3 by Section 6 of Article XIII B of the  
4 California Constitution."

5 Government Code section 17557 provides, in pertinent part:

6 "If the commission determines there are  
7 costs mandated by the state pursuant to  
8 Section 17555, it shall determine the amount  
9 to be subvened to local agencies and school  
10 districts for reimbursement. In so doing it  
11 shall adopt parameters and guidelines for  
12 reimbursement of any claims relating to the  
13 statute **or** executive order. . . ."

14 Government Code section 3.7561, subdivision (a), provides:

15 "The state shall reimburse each local agency  
16 and school district for all 'costs mandated  
17 by the state,' as defined in Section 17514."

18 Section 6, article XIII B of the California Constitution reads:

19 Whenever the Legislature or any state  
20 agency mandates a new program or higher  
21 level of service on any local government,  
22 the state shall provide a subvention of  
23 funds to reimburse such local government for  
24 the costs of such program or increased level  
25 of service, except that the Legislature may,  
26 but need not, **provide** such subvention of  
27 funds for the following mandates:

"(a) Legislative mandates requested by the  
local agency affected;

"(b) Legislation defining a new crime or  
changing an existing definition of a  
crime; or

"(c) Legislative mandates enacted prior to  
January 1, 1975, or executive orders  
or regulations initially implementing  
legislation enacted prior to  
January 1, 1975."

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CONCLUSION

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

The Commission concludes that the provisions of Government Code section 27491.41, as added by Chapter 955/89, and the 1990 DHS Necropsy Protocol, as an executive order, do impose a new program or higher level of service upon counties within the meaning of Government Code section 17514 and section 6, article XIII B of the California Constitution.

The Commission further concludes that with respect to any future DHS standardized protocols pursuant to Government Code section 27491.41, Chapter 955/89, that such protocols should be included within the aforementioned reimbursable state mandated program, provided however, that such protocols would be reflected in proposed amendments to the parameters and guidelines subject to Commission approval.

Accordingly, such costs related to Government Code section 27491.41, Chapter 955/89, and the 1990 DHS Necropsy Protocol, are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIII B of

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1 the California Constitution. Therefore, the claimant is  
2 directed to submit parameters and guidelines, pursuant to  
3 Government Code section 17557 and Title 2, **California Code of**  
4 Regulations, section 1183.1, to the Commission for its  
5 consideration.

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7 The foregoing determination pertaining to the performance of  
8 autopsies is subject to the following conditions:

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10 The determination of a reimbursable state  
11 mandated program does not mean that all increased  
12 costs claimed will be reimbursed. Reimbursement,  
13 if any, is subject to Commission approval of  
14 parameters and guidelines for reimbursement of  
15 the mandated program; approval of a statewide  
16 cost estimate; a specific legislative  
17 appropriation for such purpose; a timely-filed  
18 claim for reimbursement; and subsequent review of  
19 the claim by the State Controller's Office.

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21 If the statewide cost estimate for this mandate  
22 does not exceed one million dollars (**\$1,000,000**)  
23 during the first twelve (12) month period  
24 following the operative date of the mandate, the  
25 Commission shall certify such estimated amount to  
26 the State Controller's Office, and the State

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1 Controller shall receive, review, and pay claims  
2 from the State Mandates Claims Fund as claims are  
3 received. (Government Code section 17610.)

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