

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Education Code Section 48216 and
Health and Safety Code Sections
120325, 120335, 120340, and 120375
as amended by Statutes 1978, Chapter
325; Statutes 1979, Chapter 435;
Statutes 1982, Chapter 472; Statutes
1991, Chapter 984; Statutes 1992,
Chapter 1300; Statutes 1994, Chapter
1172; Statutes 1995, Chapters 291 and
415; Statutes 1996, Chapter 1023; and
Statutes 1997, Chapters 855 and 882;

California Code of Regulations,
Title 17, Sections 6020, 6035, 6040,
6055, 6065, 6070, and 6075 (Register
90, No. 35; Register 80, Nos. 16, 34,
40; Register 86, No. 6; Register 96,
No. 13; Register 97, Nos. 21, 37, 39);

As Alleged to be Modified By:
Statutes 2010, Chapter 434 (AB 354);

Filed on June 29, 2015,

By the Department of Finance, Requester

Case No.: 14-MR-04

*Immunization Records – Hepatitis B
(98-TC-05)*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500, ET SEQ.; CALIFORNIA CODE
OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5,
ARTICLE 7.

(Adopted March 25, 2016)

(Served March 30, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on March 25, 2016. Rebecca Hamilton appeared for the Department of Finance.

Government Code section 17570 and section 1190 et seq. of the Commission’s regulations establish the mandate redetermination process. The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the proposed decision as its new test claim decision to supersede the previous test claim decision by a vote of 6 to 0 as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	Yes
John Chiang, State Treasurer, Vice Chairperson	Yes
Richard Chivaro, Representative of the State Controller	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

Summary of Findings

The Commission finds that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for proof of immunization against hepatitis B for students entering into the seventh grade under the *Immunization Records – Hepatitis B*, 98-TC-05 mandate has been modified based on a subsequent change in law, and that a new test claim decision must be adopted to supersede the previously adopted test claim decision. Specifically, Statutes 2010, chapter 434 amended Health and Safety Code section 120335(c) to eliminate the condition that pupils be fully immunized against hepatitis B before a school district can advance a pupil into the seventh grade.

Based on the analysis herein, the Commission concludes that the following activities do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and are no longer eligible for reimbursement beginning July 1, 2013:

- The activity identified in Section IV.B of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, to request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
- The following activities identified in Section IV. C through E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 as they relate to the hepatitis B immunization for pupils advancing into the seventh grade:
 - Conditionally admit any pupil who has not been fully immunized by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
 - Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)
 - Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school

days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)

- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)
- Record each pupil's immunization for, or exemption on an immunization record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Document additional vaccine doses on the pupil's immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
- Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

The Commission further finds that the following activities have not been modified by Statutes 2010, chapter 434, continue to impose costs mandated by the state, and remain reimbursable:

- The activity identified in Section IV.E.1 of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, to *maintain in each pupil's permanent record* a copy of the document verifying the immunization or exemption from the hepatitis B immunization formerly required by section 120335 for pupil's advancing into the seventh grade.
- The reimbursable activity identified in Section IV.A, and all reimbursable activities identified in Sections C through E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 as they relate to the immunizations requirements for mumps, rubella, and hepatitis B for pupils seeking admission into school for the first time.

COMMISSION FINDINGS

I. Chronology

08/24/2000 The Commission adopted the Test Claim Statement of Decision.¹

¹ Exhibit B, Test Claim Statement of Decision, *Immunization Records – Hepatitis B*, 98-TC-05.

07/31/2003	The Commission adopted the Parameters and Guidelines. ²
07/01/2011	Statutes 2010, chapter 434 became operative and effective.
06/29/2015	The Department of Finance (Finance) filed the Request for Mandate Redetermination on <i>Immunization Records – Hepatitis B</i> , 98-TC-05. ³
08/04/2015	The State Controller’s Office (Controller) filed comments on the request for redetermination. ⁴
10/19/2015	Commission staff issued the Draft Proposed Decision, First Hearing. ⁵
10/29/2015	The Controller filed comments on the Draft Proposed Decision, First Hearing. ⁶
01/22/2016	The Commission adopted the Decision for the First Hearing, finding that Finance made an adequate showing that the state’s liability may be modified by a subsequent change in law, and directed staff to notice the second hearing. ⁷
01/26/2016	Commission staff issued the Draft Proposed Decision for the Second Hearing and the Draft Expedited Amendment to Parameters and Guidelines. ⁸
02/11/2016	The Controller filed comments on the Draft Proposed Decision for the Second Hearing and Draft Expedited Amendment to Parameters and Guidelines, recommending no changes. ⁹

II. Background

On August 24, 2000, the Commission adopted the Statement of Decision for the *Immunization Records: Hepatitis B*, 98-TC-05 test claim. The test claim involved various requirements imposed on school districts relating to the immunization requirements for mumps, rubella, and hepatitis B for pupils entering or advancing in school. On July 31, 2003, the Commission adopted parameters and guidelines, which specifically identify the activities mandated by the state that were eligible for reimbursement for all required immunizations. The Commission

² Exhibit C, Parameters and Guidelines, *Immunization Records – Hepatitis B*, 98-TC-05.

³ Exhibit A, Request for Mandate Redetermination.

⁴ Exhibit D, Controller’s Comments on Request for Mandate Redetermination.

⁵ Exhibit E, Draft Proposed Decision, First Hearing.

⁶ Exhibit F, Controller’s Comments on Draft Proposed Decision, First Hearing.

⁷ Exhibit G, Decision for the First Hearing, Draft Proposed Decision for the Second Hearing, and Draft Expedited Amendment to Parameters and Guidelines.

⁸ Exhibit G, Decision for the First Hearing, Draft Proposed Decision for the Second Hearing, and Draft Expedited Amendment to Parameters and Guidelines.

⁹ Exhibit H, Controller’s Comments on Draft Proposed Decision for the Second Hearing and Draft Expedited Amendment to Parameters and Guidelines.

found that Education Code section 48216 and Health and Safety Code sections 120325, 120335, 120340, and 120375, as amended by the test claim statutes, and California Code of Regulations, Title 17, sections 6020 through 6075 (Register 90, No. 35; Register 80, Nos. 16, 34, 40; Register 86, No. 6; Register 96, No. 13; and Register 97, Nos. 21, 37, 39), imposed a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

A. Proof of Immunizations for New Entrants: Kindergarteners and/or Out-of-State Transfers
(*Reimbursement period begins: July 1, 1997.*)

1. Request and review lawful exemption from, or proof of, immunization against mumps and rubella from each pupil seeking admission to school in the state for the first time. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
2. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil entering specified institutions in the state for the first time at the kindergarten level after August 1, 1997. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

B. Proof of Hepatitis B Immunizations for Students Entering Seventh Grade on or after July 1, 1999 (*Reimbursement Period begins: July 1, 1999.*)

1. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

C. Conditional Admission of Pupils and Parent Notification Requirements
(*Reimbursement Period begins: July 1, 1997.*)

1. Conditionally admit any pupil who has not been fully immunized for mumps, rubella, and hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
2. Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)

D. Mandatory Pupil Exclusion and Parent Notification Requirements
(*Reimbursement Period begins: July 1, 1998.*)

1. Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
2. Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)

3. Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)

E. Documentation and Reporting Requirements for Immunizations
(*Reimbursement Period begins: July 1, 1997.*)

1. Record each pupil's immunization for, or exemption from mumps, rubella, and hepatitis B on an immunization record and maintain the document in each pupil's permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
2. Document additional vaccine doses on the pupil's immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
3. Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
4. Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)¹⁰

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that the enactment of Statutes 2010, chapter 434, constitutes a subsequent change in law that modifies the state's liability for the *Immunization Records – Hepatitis B* program, 98-TC-05 as follows:

Effective July 1, 2011, Chapter 434, Statutes 2010 (AB 354) (as attached), amended Health and Safety Code section 120335 by eliminating the condition that schools could not admit or advance a student to the seventh grade unless the student had been fully immunized against hepatitis B. Since the statute has been amended, no reimbursement for the specified activity is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514 as of July 1, 2013.¹¹

B. State Controller

The Controller states that it “concur[s] with the Department of Finance's request to adopt a new test claim decision and to amend the parameters and guidelines for the *Immunization Records: Hepatitis B* program.”¹² On February 11, 2016, the Controller filed comments on the draft

¹⁰ Exhibits B and C, Test Claim Statement of Decision and Parameters and Guidelines, *Immunization Records – Hepatitis B*, 98-TC-05.

¹¹ Exhibit A, Request for Mandate Redetermination, page 1.

¹² Exhibit D, Controller's Comments on Request for Mandate Redetermination, page 1.

proposed decision for the second hearing and draft expedited amendment to parameters and guidelines, recommending no changes.¹³

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state's liability. Government Code section 17570 provides for a two hearing process. At the first hearing, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution."¹⁴

California Code of Regulations, title 2, section 1190.5(b)(1) provides that "[i]f the Commission proceeds to the second hearing, it shall consider whether the state's liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision."¹⁵

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability.

A. Statutes 2010, Chapter 434 Constitutes a Subsequent Change in Law Within the Meaning of Government Code Section 17570 That Modifies the State's Liability for the *Immunization Records – Hepatitis B* program, Resulting in No Costs Mandated by the State for Many Activities Relating to the Hepatitis B Immunization for Pupils Advancing to the Seventh Grade.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has modified the state's liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) is another change in mandates law.

The subsequent change in law alleged here is Statutes 2010, chapter 434. The statute amended Health and Safety Code section 120335(c) to eliminate the condition that pupils be fully immunized against hepatitis B before a school district can advance a pupil into the seventh grade. As described below, the Commission finds that Statutes 2010, chapter 434 constitutes a subsequent change in law within the meaning of Government Code section 17570 that modifies the state's liability for the *Immunization Records – Hepatitis B* program, resulting in no costs mandated by the state within the meaning of article XIII B, section 6 of the California

¹³ Exhibit G, Controller's Comments on Draft Proposed Decision for the Second Hearing and Draft Expedited Amendment to Parameters and Guidelines.

¹⁴ California Code of Regulations, title 2, section 1190.5(a)(1).

¹⁵ Register 2014, No. 21.

Constitution and Government Code section 17514 for many activities formerly mandated for the hepatitis B immunization for pupils advancing to the seventh grade.

1. Statutes 2010, chapter 434 constitutes a subsequent change in the law that modifies the state's liability with respect to the hepatitis B immunization for pupils advancing to the seventh grade, requiring the adoption of a new test claim decision to supersede the previously adopted test claim decision.

Before the enactment of Statutes 2010, chapter 434, Health and Safety Code section 120335(c), as last amended by Statutes 1997, chapter 882, provided that:

On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the seventh grade level, nor unconditionally advance any pupil to the seventh grade level, of any of the institutions listed in subdivision (b) unless the pupil has been fully immunized against hepatitis B.

The Commission determined in *Immunization Records – Hepatitis B*, 98-TC-05, that Health and Safety Code section 120335(c), as amended by the 1997 statute, generally required “school districts to perform immunization record reviews for all incoming seventh graders for hepatitis B, including all students whose immunization records were checked upon entry to school, [which] increases the paperwork and staff time beyond what was required under prior immunization record requirements and thus constitute[s] a reimbursable state mandate.” The Commission further determined that Health and Safety Code section 120375 refers back to the list of immunizations in section 120335, requiring school districts to perform the following activities for each immunization required, including the hepatitis B immunization for incoming seventh graders:

- Maintain documentary proof of pupil’s immunization status in the student’s permanent record information, including adding subsequent immunizations to the file;
- File reports on state forms regarding the immunization status of entering students; and
- Prohibit further school attendance of conditionally admitted students who either fail to get their immunizations completed or fail to receive an appropriate exemption from immunizations for health or religious reasons.¹⁶

The Commission found that Education Code section 48216 requires school districts to perform the following activities for each immunization required:

- Excluding a pupil whose immunizations are not up to date;
- Notifying the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized or qualifies for an exemption; and
- Referring the parents to a source of medical care to obtain the immunizations.¹⁷

¹⁶ Exhibit B, Test Claim Statement of Decision, *Immunization Records – Hepatitis B*, 98-TC-05, page 4.

¹⁷ Exhibit B, Test Claim Statement of Decision, *Immunization Records – Hepatitis B*, 98-TC-05, page 5.

The Commission also approved for reimbursement, the regulations in California Code of Regulations, title 17, sections 6020 et seq., which required school districts to perform activities relating to record keeping, reporting, conditionally admitting pupils who have not completed their immunizations, and excluding pupils if the immunization requirements had not been met.¹⁸

Consistent with the decision on the test claim, the parameters and guidelines adopted by the Commission authorize reimbursement for the following activities as they relate to the hepatitis B booster required for pupils advancing to the seventh grade:

B. Proof of Hepatitis B Immunizations for Students Entering Seventh Grade on or after July 1, 1999 (*Reimbursement Period begins: July 1, 1999.*)

1. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

C. Conditional Admission of Pupils and Parent Notification Requirements (*Reimbursement Period begins: July 1, 1997.*)

1. Conditionally admit any pupil who has not been fully immunized for mumps, rubella, and hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
2. Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)

D. Mandatory Pupil Exclusion and Parent Notification Requirements (*Reimbursement Period begins: July 1, 1998.*)

1. Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
2. Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
3. Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)

¹⁸ Exhibit B, Test Claim Statement of Decision, *Immunization Records – Hepatitis B*, 98-TC-05, page 6.

E. Documentation and Reporting Requirements for Immunizations
(*Reimbursement Period begins: July 1, 1997.*)

1. Record each pupil's immunization for, or exemption from mumps, rubella, and hepatitis B on an immunization record and maintain the document in each pupil's permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
2. Document additional vaccine doses on the pupil's immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
3. Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
4. Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

Operative July 1, 2011, Statutes 2010, chapter 434 amended Health and Safety Code section 120335(c), to provide that the full immunization against hepatitis B shall *not* be a condition by which a school district shall admit or advance any pupil to the seventh grade. Statutes 2010, chapter 434, therefore eliminates or removes the condition that pupils be fully immunized against hepatitis B before a school district can admit or advance a pupil into the seventh grade.

Although Statutes 2010, chapter 434, does not expressly amend the other statutes and regulations approved by the Commission in *Immunization Records – Hepatitis B*, 98-TC-05 that actually mandate the requirements to implement the program with respect to all required immunizations, including the former required hepatitis B booster, these statutes and regulations are affected by this subsequent statute and must be read consistent with the 2010 change in law. Under the rules of statutory construction, Health and Safety Code section 120335, as amended by Statutes 2010, chapter 434, must be construed in context, keeping in mind the nature and obvious purpose of the statute so as to make sense of the entire statutory and regulatory scheme.¹⁹

As construed in context and analyzed more specifically below, the Commission finds that the 2010 statute constitutes a subsequent change in law that modifies the state's liability for this program, requiring the Commission to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability for this program. As a result of the 2010 statute, school districts no longer incur increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform most of the activities identified in sections IV. B through E of the parameters and guidelines, as they relate to the hepatitis B immunization for pupils advancing to the seventh grade.

2. With the 2010 subsequent change in law, there are no costs mandated by the state to perform the mandated activities identified in Section IV. B, C, and D of the parameters

¹⁹ *Molenda v. Department of Motor Vehicles* (2009) 172 Cal.App.4th 974, 992.

and guidelines as they relate to the hepatitis B immunization for pupils advancing to the seventh grade.

Health and Safety Code section 120335 and section 6020 of the Title 17 regulations list the all the required immunizations for admission and attendance at school, which govern the scope of the mandated program and trigger the remaining requirements in the statutory and regulatory scheme that are imposed on school districts.

Health and Safety Code section 120325 contains the Legislature’s statement of intent regarding Health and Safety Code sections 120325 through 120375 for all required immunizations for admission and attendance at school. Section 120325 states that these statutes were enacted to provide “[a] means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases: [diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis (whooping cough), poliomyelitis, rubella, tetanus, and varicella (chickenpox)].” The Legislature also intended the law to provide that:

- Persons required to be immunized be allowed to obtain immunization from whatever medical source they desire, subject only to the condition that the immunization be performed in accordance with the regulations of the Department of Public Health (DPH) and that a record of the immunization is made in accordance with the regulations;
- Exemptions from immunization be available for medical reasons or because of personal beliefs; and that
- Adequate records of immunization be kept so that health departments, schools, and other institutions, parents and guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools.²⁰

The Legislature enacted Health and Safety Code section 120330 to direct DPH in consultation with the California Department of Education (CDE) to adopt and enforce regulations necessary to carry out the statutory scheme on immunizations. Section 6065(a) of the Title 17 regulations provides that there shall be a written record given to the pupil immunized or to his or her parent or guardian by the physician or agency performing the immunization. Section 6065(b) further requires the parent or guardian to show the written record to the school “at the time of the pupil’s admission and at subsequent times when required by the governing authority to determine the pupil’s immunization status.”

Since former Health and Safety Code section 120335(c), required proof of *full* hepatitis B immunization (i.e. three shots) as a condition for advancing into the seventh grade, the Commission determined that school districts are mandated by these statutes and regulations to “request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999.”²¹ This activity is included in Section IV. B of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05.

²⁰ Health and Safety Code section 120325(b)(c)(d).

²¹ Exhibit C, Parameters and Guidelines, *Immunization Records – Hepatitis B*, 98-TC-05.

Operative July 1, 2011, Statutes 2010, chapter 434 amended Health and Safety Code section 120335(c) to eliminate the condition that pupils be fully immunized against hepatitis B before a school district can admit or advance a pupil into the seventh grade. To implement this change, DPH adopted emergency regulations to amend section 6020 of the regulations, which also removes hepatitis B for pupils advancing to the seventh grade from the table of required immunizations.²² Although Finance did not plead the changes in regulation which were adopted as emergency regulations, those regulations may be properly considered as DPH's interpretation of what is required by section 120335(c) as that statute was amended in 2010. An agency's interpretation of the meaning and legal effect of a statute it is required to implement is entitled to consideration and respect by the courts.²³

With this subsequent change in law, the requirement to "request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999," school districts no longer incur costs mandated by the state for this activity.

The same analysis applies to the reimbursable activities identified in Section IV. C of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, which authorize reimbursement for the following activities that govern the conditional admission of a pupil who has not been fully immunized, and the related parent notification requirements of the date by which a pupil must complete all required immunizations:

- Conditionally admit any pupil who has not been fully immunized for mumps, rubella, and hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
- Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)

The Commission determined that these activities were mandated by Health and Safety Code section 120340 for all required immunizations, which provides that "a person who has not been fully immunized against one or more of the diseases listed in Section 120335 may be admitted by the governing authority on condition that within time periods designated by regulation of the department he or she presents evidence that he or she has been fully immunized against all of these diseases. Section 6035 of the regulations then addresses the conditional admission of a pupil. That section states in relevant part that "any pupil seeking admission to a given public . . . elementary or secondary school, . . . who lacks documentation of having received all the required vaccine doses . . . as specified in Table 1, Section 6020, and has not obtained a permanent medical exemption or a personal beliefs exemption to immunization in accordance with Section 6051, may be admitted conditionally" under specified circumstances. Section 6035 further requires the school to notify "the pupil's parent or guardian . . . of the date by which the pupil must complete all the required immunizations." Health and Safety Code section 120375(a) and section 6070(e) of the regulations then require the school to review the immunization record of

²² Register 2011, No. 26, effective June 30, 2011.

²³ *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7; *Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 368-369.

each pupil admitted conditionally every thirty days until that pupil has received all the immunizations required by Health and Safety Code section 120355. With the 2010 subsequent change in law amending Health and Safety Code section 120355(c) to remove the condition that pupils advancing into seventh grade provide proof of full immunization against hepatitis B (i.e. all three shots), school districts will no longer incur costs mandated by the state for the activities required by sections 120340 and 120375 of the Health and Safety Code and sections 6035 and 6070(e) of the regulations with regard to Hepatitis B for pupils advancing to seventh grade.

Similarly, Section IV. D of the parameters and guidelines *Immunization Records – Hepatitis B*, 98-TC-05 lists the following mandated activities relating to mandatory pupil exclusions and parent notification requirements:

- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)

Education Code section 48216, cited in the bulleted activities above, governs the process to exclude pupils from school who have not been fully immunized and, as determined by the Commission, mandates school districts to perform the following activities for all required immunizations:

- (a) The county office of education or the governing board of the school district of attendance shall exclude any pupil who has not been immunized properly pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code.
- (b) The governing board of the district shall notify the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 120365 or 120370 of the Health and Safety Code.
- (c) The governing board of the district, in the notice, shall refer the parent or guardian of the pupil to the pupil's usual source of medical care to obtain the immunization, or if no usual source exists, either refer the parent or guardian to the county health department, or notify the parent or guardian that the immunizations will be administered at a school of the district.

Health and Safety Code section 120375(b) and sections 6040 and 6055 of the regulations also require a school district to prohibit from further attendance any pupil admitted conditionally who fails to timely obtain the required immunizations required by section 120335. Section 6065(c) then states that “when such written records [of immunization] are not available, the pupil shall not be admitted and the parent or guardian shall be referred to a physician or nurse for review of his or her immunization history and provision of immunizations as needed.”

With the 2010 subsequent change in law amending Health and Safety Code section 120355(c) to remove the condition that pupils advancing into seventh grade be immunized with a hepatitis B booster, school districts will no longer incur costs mandated by the state for the activities required by Education Code section 48216, Health and Safety Code section 120375, and sections 6040, 6055, and 6065 of the regulations for this particular immunization as a condition of advancement to the seventh grade.

Accordingly, the Commission finds that with the 2010 subsequent change in law, there are no costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the mandated activities identified in Section IV. B, C, and D of the parameters and guidelines as they relate to the hepatitis B immunization *for pupils advancing to the seventh grade only*.

3. With the 2010 subsequent change in law, there are no costs mandated by the state to perform the activities required to document and report each pupil’s immunization identified in Section IV. E of the parameters and guidelines as they relate to the hepatitis B immunization for pupils advancing to the seventh grade. However, costs incurred to maintain records, which have already been received, of the hepatitis B immunization for pupils advancing into seventh grade in each pupil’s permanent file continue to be mandated by the state and have not been modified by the 2010 statute.

Section IV. E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 identifies the following mandated activities for all required immunizations:

- Record each pupil’s immunization for, or exemption from mumps, rubella, and hepatitis B on an immunization record and maintain the document in each pupil’s permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Document additional vaccine doses on the pupil’s immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
- Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

These bulleted activities are mandated by Health and Safety Code sections 120325(d) and 120375(a), which requires school districts to record all immunizations required by section

120335 for each pupil in the pupil's permanent enrollment and scholarship record. Section 120375(c) and section 6075 of the regulations further require school districts to file written reports to DPH on the immunization status of pupils on an annual basis or as needed during an epidemic.

With the 2010 subsequent change in law amending Health and Safety Code section 120355(c) to remove the condition that pupils advancing into seventh grade be immunized with a hepatitis B booster, school districts will no longer incur costs mandated by the state to record and file reports on this immunization.

However, the activity identified in Section IV.E.1 of the parameters and guidelines, to *maintain in each pupil's permanent record* a copy of the document verifying the immunization or exemption for the hepatitis B immunization formerly required by section 120335 for pupil's advancing into the seventh grade, is still mandated by the state and has not been changed by the 2010 subsequent change in law. Section 437(b) of CDE's Title 5 regulations defines "mandatory permanent pupil records" as those records required to be "preserved in perpetuity by all California schools." Thus, the costs incurred to maintain the records already received under former Health and Safety Code section 120335 are still mandated by the state and eligible for reimbursement.

4. All reimbursable activities identified in the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 as they relate to the required immunizations for mumps, rubella, and hepatitis B for pupils seeking admission into school for the first time have *not* been modified by Statutes 2010, chapter 434, and, thus, remain eligible for reimbursement.

The 2010 statute did not modify the immunization requirements for mumps, rubella, and hepatitis B for pupils seeking admission into school for the first time and these immunizations continue to be listed in the table of required immunizations in section 6020 of the Title 17 regulations. Thus, all reimbursable activities identified in Section IV.A, C through E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, as they relate to the immunization requirements for mumps, rubella, and hepatitis B for pupils seeking admission into school for the first time, continue to impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and, thus, remain eligible for reimbursement.

B. The Period of Reimbursement for the Loss of Reimbursement Begins July 1, 2013.

According to Government Code section 17570, a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year." This redetermination request was filed on June 29, 2015, establishing the loss of reimbursement as described above beginning July 1, 2013.

V. Conclusion

Based on the foregoing, the Commission partially approves the request for redetermination and concludes that the following activities do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and are no longer eligible for reimbursement beginning July 1, 2013:

- The activity identified in Section IV.B of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, to request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
- The following activities identified in Section IV. C through E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 as they relate to the hepatitis B immunization for pupils advancing into the seventh grade:
 - Conditionally admit any pupil who has not been fully immunized by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
 - Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)
 - Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
 - Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
 - Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)
 - Record each pupil’s immunization for, or exemption on an immunization record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
 - Document additional vaccine doses on the pupil’s immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
 - Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)
 - Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

The Commission further finds that the following activities have not been modified by Statutes 2010, chapter 434, continue to impose costs mandated by the state, and remain reimbursable:

- The activity identified in Section IV.E.1 of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, to *maintain in each pupil’s permanent record* a copy of the document verifying the immunization or exemption for the hepatitis B immunization formerly required by section 120335 for pupil’s advancing into the seventh grade.
- The reimbursable activity identified in Section IV.A, and all reimbursable activities identified in Sections C through E of the parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05 as they relate to the immunizations requirements for mumps, rubella, and hepatitis B for pupils seeking admission into school for the first time.

COMMISSION ON STATE MANDATES

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RE: **Decision**

Mandate Redetermination Request, 14-MR-04

Second Hearing: New Test Claim Decision

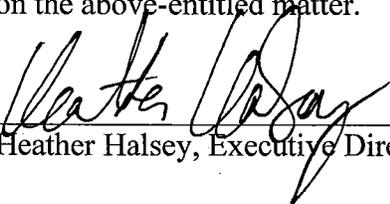
Immunization Records: Hepatitis B (98-TC-05)

Education Code Section 48216 et al.

As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

On March 25, 2016, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: March 30, 2016