

COMMISSION ON STATE MANDATES

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June 14, 2013

Mr. Leonard Kaye
County of Los Angeles,
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012-2766

And Affected State Agencies and Interested Parties (See Mailing List)

RE: Commission Request for Comments on New Substantive Issue, Schedule for Comments and Notice of Postponement and Rescheduling of Hearing
Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22
Penal Code Sections 11165. 9 et al.
County of Los Angeles, Claimant

Dear Mr. Kaye:

Commission staff issued a draft proposed statement of decision and parameters and guidelines for *Interagency Child Abuse and Neglect Investigation Reports (ICAN) 00-TC-22*, on March 12, 2013. On June 7, 2013, DOF submitted comments raising a new substantive issue regarding "capping," or ending, reimbursement for county welfare departments for the ICAN program, pursuant to Proposition 30 and the 2011 Realignment. DOF suggests that Proposition 30 might end reimbursement for county welfare departments for activities approved by the Commission under the ICAN test claim statutes:

[I]n regards to county welfare departments, to the extent that 2011 Realignment funds them for conducting the ICAN activities, under Article XIII, section 36 of the California Constitution, if the Commission outlines reimbursable activities that cause these departments to incur costs that are in excess of what 2011 Realignment funds, the departments are required to conduct the activities only insofar as funding is provided by 2011 Realignment. Activities that result in costs in excess of what 2011 Realignment provides are not reimbursable mandates and the county welfare departments may conduct those additional activities if they have resources to do so.¹

Background and Statement of Issue

This is an issue of first impression for the Commission, and one that will likely arise again, given the broad scope of the 2011 Realignment and Proposition 30 (2012). The relevant legal issue is as follows:

¹ DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

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Between March and October of 2011, a series of budget trailer bills were enacted, which the LAO would later refer to as the 2011 Realignment.² One of those budget trailer bills, AB 118, provided for the creation of a number of new accounts and subaccounts, including the Child Abuse Prevention Subaccount, the purpose of which was “to fund the costs of child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation.”³ The 2011 Realignment included over \$6 billion to local government for “public safety services,” as defined, and over \$1.5 billion to foster care and child welfare services, which was not delineated more specifically.⁴

After the 2011 Realignment Legislation was enacted, the LAO issued a report identifying several “pressing implementation issues,” including a risk that the programs shifted to the local level could trigger new mandate reimbursement requirements.⁵ The following year, the voters approved Proposition 30, on November 6, 2012. In addition to providing new revenue for a period of years, Proposition 30 added article XIII, section 36 to the California Constitution:

(3) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, *a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section.*

(4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs *already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase.* Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.

(B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs *already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase.* Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.⁶

² LAO Analysis of 2011 Realignment, available at http://www.lao.ca.gov/reports/2011/stadm/realignment/realignment_081911.pdf.

³ Government Code section 30025(f)(7)(E) (Stats. 2011, ch. 40 (AB 118)).

⁴ LAO Analysis of 2011 Realignment, at p. 7.

⁵ LAO Analysis of 2011 Realignment, at pp. 11; 19.

⁶ California Constitution, article XIII, section 36(c) (adopted November 6, 2012) [emphasis added].

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Whether Proposition 30 ends or offsets mandate reimbursement for an existing program that may fall within the broad definition of “public safety services” is an issue of first impression for the Commission.

Written Comments

The Commission seeks input from parties and interested parties and persons with respect to mandates that may be affected by Proposition 30, in conjunction with the funding provided by the 2011 Realignment. Specifically, the Commission requests comments, with thorough analysis and appropriate legal citation, on the following questions:

1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 11166, 11166.2, 11166.9,⁷ 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of “child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation,” for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?
2. Does the shift of complete or partial funding responsibility from the state to local governments of existing approved mandated activities result in a mandate “imposed by the 2011 Realignment Legislation” within the meaning of paragraph (3)?
3. Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?

Schedule for Comments

We invite all parties, interested parties, and interested persons to submit comments on these questions by **Friday July 12, 2013**.

Notice of Postponement and Rescheduling of Hearing

Pursuant to section 1183.01(c)(3), of the Commission’s regulations, the July 26, 2013 hearing of this matter is postponed. This matter is now set for hearing on **September 27, 2013**, at 10:00 a.m. in the State Capitol, Sacramento, California. The final staff analysis will be issued on or about September 13, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2), of the Commission’s regulations.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey
Executive Director

⁷ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).