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May 4, 2011

VIA ELECTRONIC FILING

Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

*Re: Rebuttal to the State Controller's Office's Written Comments on the Draft Staff Analysis and Response to the County of Santa Clara's Incorrect Reduction Claim, Handicapped and Disabled Students, Fiscal Years 2003-2004, 2004-2005, 2005-2006*

To the Commission on State Mandates:

We write to respond to the written comments filed by the State Controller's Office ("Controller") in response to the Commission on State Mandate's ("Commission") Draft Staff Analysis (DSA), the Controller's response to the County of Santa Clara's ("County") Incorrect Reduction Claim (IRC), and the written comments filed by the Department of Mental Health (DMH).

The Draft Staff Analysis fully analyzed the issues addressed in both the IRC filed by the County and the Controller's Final Audit Report ("Report"), concluding that the Controller incorrectly reduced the County's claim for reimbursement. The Controller's written comments and response to the County's IRC do not raise any additional facts, arguments, or issues, but instead simply repeat the justifications for the disallowance included in the Report, which the Commission staff has already determined lack merit. The comments filed by DMH likewise simply repeat these already-rejected arguments. We therefore urge the Commission to adopt the staff's conclusion that the Controller's disallowance was erroneous.

**I. The Commission staff correctly concluded that the mental health rehabilitation services provided by the County are reimbursable under the AB 3632 mandate.**

Contrary to the assertions made in the Controller's and DMH's written comments, the mental health rehabilitation services provided by the County are reimbursable under each set of the Parameters and Guidelines for the AB 3632 program for the relevant fiscal years, as well as under the statutory and regulatory provisions from which the Parameters and Guidelines are derived.

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The Parameters and Guidelines relevant to the fiscal years covered by the Controller's audit authorize reimbursement for "psychotherapy and mental health services," as defined in section 60200 of the AB 3632 regulations.<sup>1</sup> The Commission staff concluded that the County's rehabilitation services "fall within the meaning of 'day care intensive services' and 'day care habilitative services,'" the service categories applicable to the 2003-2004 fiscal year, and "are included within the meaning of 'day rehabilitation' and 'intensive day treatment,'" the service categories applicable to fiscal years 2004-2005 and 2005-2006. (*Draft Staff Analysis on Incorrect Reduction Claim, Handicapped and Disabled Students, Fiscal Years 2003-2004, 2004-2005, 2005-2006, County of Santa Clara, Claimant* (DSA) at 8, 10.) The Commission staff based this conclusion in part on the findings of the County's expert, Dr. Margaret Rea, who reviewed and analyzed files describing the services at issue, as well as the declaration of Laura Champion, Executive Director of EMQ Families First. The Controller offers no evidence to controvert the description of the services set forth in Dr. Rea's report and Ms. Champion's declaration, nor Dr. Rea's conclusion that these services fall within the service definitions in the Parameters and Guidelines.

The Commission staff further based its conclusion on its reading of the Parameters and Guidelines in the context of the laws and regulations pursuant to which the Parameters and Guidelines were created. The Commission staff correctly concluded that the service categories identified in the Parameters and Guidelines must be read to encompass the County's mental health rehabilitation services because those services are mandated by both federal special education law and AB 3632 and its regulations. The federal Individuals with Disabilities Education Act (IDEA) requires that any state receiving federal education financing provide disabled children with such "special education" accommodations and "related services" as are necessary to enable them to benefit from a "free appropriate public education" (FAPE). (20 U.S.C. § 1412(a)(1).) California, through AB 3632, has delegated the responsibility for providing the mental health services mandated by the IDEA to county mental health agencies. (Gov. Code § 7576(a).) The mental health rehabilitation services at issue are explicitly included as among the "related services" that must be provided under the IDEA and AB 3632 directly incorporates the IDEA's definition of "related services" into state law. (*See* 20 U.S.C. § 1401(26)(A) and Gov. Code § 7570.)

In its response to the County's IRC, the Controller contests the relevance of the federal mandate to provide rehabilitation services to disabled children who need them in order to benefit from FAPE by asserting that "[o]ur objective was to determine whether the costs of county-filed claims are reimbursable under the [AB 3632] parameters and guidelines. . . We did not assess the appropriateness or need for services provided in light of federal regulations." (*Response by the State Controller's Office to the Incorrect Reduction Claim by Santa Clara County, Handicapped and Disabled Students Program* at 27.) This argument displays a fundamental misunderstanding of the relationship between AB 3632 and the IDEA. If a service is required to provide a student with FAPE under the IDEA, it is a required service under AB 3632 and its Parameters and

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<sup>1</sup> Although section 60200 was amended in 1998, and therefore a slightly different definition of "psychotherapy and mental health services" applies to the two sets of Parameters and Guidelines, both definitions include service categories describing the rehabilitation services provided by the County.

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Guidelines. Because California has certified its compliance with the IDEA by accepting federal education financing, but has delegated responsibility for IDEA-mandated mental health services to counties under AB 3632, the AB 3632 regulations and Parameters and Guidelines must encompass all services required by the IDEA, including rehabilitation services, or they are invalid. (*See Incorrect Reduction Claim by the County of Santa Clara (IRC)* at 27-31.) By ignoring the relevance of federal special education requirements, the Controller has erred.

**II. The mode and service function codes used in the Medi-Cal context to categorize service delivery units are not relevant to whether rehabilitation services are reimbursable under AB 3632.**

The Controller puts great emphasis, in both its response to the County's IRC and its written comments on the DSA, on the distinction between the Medi-Cal mode and service function codes for "day rehabilitation services" and "outpatient rehabilitation services," contending that because the County codes the rehabilitation services it provides to students under AB 3632 as "Mode 15 – Outpatient Mode of Service," they cannot fit within the definition of "day rehabilitation" in the AB 3632 regulations and Parameters and Guidelines. The Department of Mental Health also advances this argument.

This contention is without merit. As the Controller admits, the mode and service function codes are derived from the Medi-Cal reimbursement system. The Medi-Cal codes differentiate services based on billable units, not on service type, and therefore cannot be used to assess whether a particular service fits within a programmatic or clinical definition. It is therefore immaterial whether the County codes its mental health rehabilitation services as Outpatient Services or Day Services for Medi-Cal billing purposes; the only question is whether the actual services the County provides fit within the set of mental health services that are reimbursable under the AB 3632 Parameters and Guidelines. Because the County's mental health rehabilitation services are clearly encompassed within the set of services included in the AB 3632 regulations, they must be reimbursed under Article XIII B of the California Constitution.

**III. The footnote in the Commission's statement of decision on reconsideration of the *Handicapped and Disabled Students* program has no bearing on whether the County's rehabilitation services are included within the program.**

In its 2005 statement of decision on reconsideration of the *Handicapped and Disabled Students* program, the Commission concluded, in a footnote, that section 1810.243 of the Department of Mental Health's Title 9 regulations, which defines "rehabilitation" for the purposes of the Medi-Cal Specialty Mental Health Services program, should not be used to define "rehabilitation" for the purposes of AB 3632. The Controller misconstrues this footnote, arguing that the Commission's rejection of the Medi-Cal definition of rehabilitation means that *no* rehabilitation services fall within the AB 3632 mandate.

The Commission staff correctly rejected this argument, concluding that the footnote is "not relevant" to the County's IRC and has "nothing to do with the program at issue here." (DSA at 12.) As the Commission staff recognizes, section 1810.243 was not adopted to

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implement AB 3632, and therefore is not relevant to whether the County's mental health rehabilitation services are reimbursable. (DSA at 12.) Instead, the decisive factor is whether the services provided by the County are included among the list of mental health services required by law, as reflected in the AB 3632 Parameters and Guidelines. As explained in detail in the County's IRC, because the rehabilitation services disallowed by the Controller are covered by the mental health treatment services definition in the regulations implementing AB 3632, the County is entitled to reimbursement. (IRC at 14-17.) The Controller's continued reliance on the footnote in the Commission's statement of decision on reconsideration is misplaced.

**IV. The fact that the County's mental health rehabilitation services may give rise to some ancillary socialization and vocational benefits does not render them ineligible for reimbursement under AB 3632.**

The Controller continues to assert that because the mental health rehabilitation services provided by the County may provide some socialization or vocational benefits to children, they cannot be reimbursable under the AB 3632 regulations, which no longer mandate provision of socialization and vocational services. As the Commission staff recognized, however, the services at issue are not socialization and vocational services simply because they may "develop a child's socialization or vocational skills," because it is clear that "the primary goal of the interventions was. . .to equip the children in the least restrictive environment with the skills necessary to function independently in an educational environment." (DSA at 11.) As the County's IRC makes undeniably clear, the mental health rehabilitation services at issue are designed to advance the mental health goals set forth in children's IEPs, and any socialization or vocational benefits that may accrue to the children the County serves are simply ancillary to the core educational objective of the IEP goals. (IRC at 18-22.)

Furthermore, the Controller's continued reliance on the County's Manual for Outpatient Mental Health Services as evidence that the services disallowed include improper socialization and vocational services is erroneous. As the Commission staff has recognized, the Manual is simply "not relevant" to the County's claim. (DSA at 11.) It is not specific to the AB 3632 program, and in no way represents the scope of services provided to children under AB 3632 or any other program. (See IRC at 18.)

**V. The County was not required to apply SB 163 Wraparound funding to offset its claim for the services at issue.**

The Commission staff has clearly stated that it is inappropriate to consider the Controller's argument regarding a potential offset of the County's claim based on its receipt of Wraparound program funding because "the Controller's reductions were not based on these issues." (DSA at 5 n.2.) Nevertheless, the Controller continues to insist that the Commission should consider the argument when deciding the County's IRC. However, this issue is not properly before the Commission; while the Controller did make an oblique reference to the Wraparound program in its Report, it did not base its disallowance on the County's alleged failure to offset Wraparound funding against its AB 3632 reimbursement claims. Nor are there sufficient facts in the record for the Commission to analyze whether the Wraparound funding



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received by the County's Social Services Agency (SSA) is relevant to the mental health services disallowed in the Controller's audit. Therefore, the Commission should not consider the Controller's Wraparound argument in its hearing and decision on the County's IRC.

In any case, the Controller's argument that Wraparound funding should be applied to offset mental health rehabilitation costs is without merit. SB 163, the legislation authorizing counties to create Wraparound programs, allows counties to use non-federal Aid to Families with Dependent Children Foster Care (AFDC-FC) funding that would otherwise be used to pay for residential placement, to instead provide comprehensive in-home services to keep children at home. (Cal. Welf. & Inst. Code § 18254.) The services provided as part of the County's Wraparound program are therefore designed as an alternative to residential placement, and are equivalent to the non-mental health room and board component of a residential placement.

Although the County does provide mental health rehabilitation services to some students who are also enrolled in the Wraparound program, the rehabilitation services do not serve as a substitute for the room and board component of residential placement, but as a supplement to it. The County's mental health rehabilitation services are not services that the AFDC-FC funding the County receives through SB 163 was intended to cover. Therefore, there is no merit to the Controller's contention that this funding should be applied to offset the State's reimbursement obligations under AB 3632.

## VI. Conclusion

For the foregoing reasons, the County urges the Commission to adopt the well-reasoned analysis in the March 25, 2011 DSA. The Controller has not raised any new facts or arguments that merit reconsideration of the staff's analysis.

Thank you for your consideration of this matter. If you have any questions in advance of the May 26, 2011 hearing on the County's IRC, please do not hesitate to contact me at (408) 299-5969.

Very truly yours,

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County Counsel



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Acting Lead Deputy County Counsel