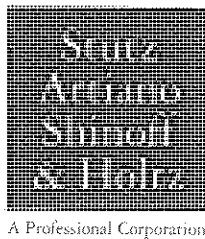


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Commission on  
State Mandates  
May 15, 2013

**LATE FILING**

May 15, 2013

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, CA 95814

**Re: Health and Safety Code sections 120325 and 120335  
Statutes 2010, Chapter 434 (AB 354)  
Immunization Records - Pertussis (11-TC-02)**

Dear Ms. Halsey:

The following comments are submitted in response to the Final Staff Analysis for the Immunization Records - Pertussis (11-TC-02) test claim submitted by the claimant, Twin Rivers Unified School District.

## **1. CLAIMANT HAS COMPLIED WITH TEST CLAIM REQUIREMENTS**

On September 26, 2011, claimant, Twin Rivers Unified School District, filed a test claim with the Commission. On October 5, 2011, Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.<sup>1</sup> "No state agency or other interested party has filed a response to this test claim."<sup>2</sup>

The test claim (page 9), Section G, identifies a prior mandate determinations, Immunization Records: Hepatitis B test claim, made by the Commission on State Mandates that is *related* to the alleged mandate.(emphasis added) The test claim further references the California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075.<sup>3</sup> Section 2 (g) of the test claim statute, attached to the test claim, states emergency regulations may be adopted to

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<sup>1</sup> Immunization Records- Pertussis 11-TC-02 (DSA p. 6)

<sup>2</sup> Immunization Records- Pertussis 11-TC-02 (DSA p. 12)

<sup>3</sup> On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Immunization Records: Hepatitis B test claim, finding that 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; Statutes 1997, chapters 855 and 882; and California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075. (test claim p. 9-10)(DSA p.10)

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implement the statute.<sup>4</sup>

Requiring the register number of regulations be attached to the test claim form is not supported by the reading of the “plain language” contained in the regulation (See footnote 29 of the Final Staff Analysis), nor is it included in the requirements of the test claim form.<sup>5</sup> Accordingly, the Commission has jurisdiction of the Title 17 Regulations referenced above.

**2. TEST CLAIM PLED STATE MANDATED ACTIVITIES**

As pled by the claimant in the test claim, (test claim, p. 7.) school districts are required, “to inform parents/students of the new immunization requirements and will be required to train staff, obtain, review, maintain student immunization records and contact parents and legal guardians for non-compliance. The law requires school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools.”

Other activities pled in the test claim:

Request and review lawful exemption or proof of immunization from each pupil seeking admission to school in the state for the first time.

- Record each pupil's immunization for, or exemption from immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization from each pupil advancing to the seventh grade.

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<sup>4</sup> Section 2 (g) of the test claim statute states, The department may adopt emergency regulations to implement subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rule making provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

<sup>5</sup> 7. Documentation support the written narrative with copies of all of the following:  
(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or  
(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and  
(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and

(E) statutes, chapters of original legislatively determined mandate and any amendments.  
(<http://www.csm.ca.gov/docs/TCForm.pdf>)

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Executive Director  
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- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.<sup>6</sup>

The above required activities impose a state-mandated program on school districts.

**3. CLAIMANT REQUESTS TEST CLAIM BE AMENDED**

The application of Government Code 17554 permits the parties to agree to waive the application of any procedural requirement.<sup>7</sup> Claimant requests the test claim be amended to include the 17 California Code of Regulations sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075 and Register of Actions that are attached. The equitable application of Government Code section 17554, provides all parties to the claim, the opportunity to agree that the commission may waive the application of any procedural requirement of attaching the regulation with the test claim.

**4. COMMISSION MAY TAKE JUDICIAL NOTICE OF THE REGULATIONS**

The Commission need only take judicial notice of the regulations. California Evidence Code Section 452 (b) permits judicial notice with, "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States," (g) "facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute," (h) "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of

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<sup>6</sup> "The activities identified by the claimant are addressed by DPH regulations that exist to implement and interpret Health and Safety Code sections 120325 through 120375." (DSA, p.15)

<sup>7</sup> Government Code section 17554. With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

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reasonably indisputable accuracy.”<sup>8</sup> The analysis fails to provide a rational basis, as there is none, for not taking judicial notice of the regulations.

**CONCLUSION**

Based on the test claim filed timely and complete, no state agency or other interested party filing a response to the test claim, test claim statute referencing regulations along with the application of Government Code 17554 and the doctrine of judicial notice the evidence must be submitted with the findings that the test claim statute is a reimbursable state mandated program.

**CERTIFICATION**

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

  
\_\_\_\_\_  
Arthur M. Palkowitz  
Attorney for the Claimant

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<sup>8</sup> Cal. Evidence Code Section 452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.