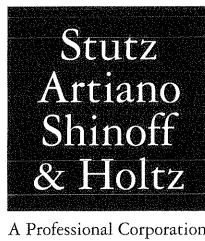


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Arthur M. Palkowitz  
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RECEIVED  
March 7, 2013  
Commission on  
State Mandates

March 6, 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 claimant requests the date to submit comments, March 6, 2013, be continued until March 31, 2013 (1183.01(c)(1)) and the hearing scheduled for April 19, 2013 be continued to an upcoming Commission hearing. (1183.01(c)(2)) This request is to provide the claimant an opportunity to respond to the Draft Staff Analysis.

The issues to be addressed in claimant's comments include, but are not limited, to the following:

1. Section 2 (g) of the test claim statute, attached to the test claim, states emergency regulations may be adopted to implement the statute.<sup>1</sup>
2. The test claim identifies the activities listed in the regulations. (Draft Staff Analysis, p. 15)<sup>2</sup>
3. Staff application of regulation 1183.02 (c) requiring the register number of

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<sup>1</sup> Section 2 (g) of the test claim statute states (g) 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>2</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)

Heather Halsey  
Executive Director  
Commission on State Mandates

March 6, 2013  
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Health and Safety Code sections 120325 and 120335  
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regulations be included with the test claim form. (See footnote 29 of the Draft Staff Analysis)<sup>3</sup>

4. The test claim: Under the heading "7. Documentation" support the written narrative with copies of all of the following: does not include copies of register number of regulations.<sup>4</sup>

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<sup>3</sup> California Code of Regulations; Title 2. Administration; Division 2. Financial Operations; Chapter 2.5. Commission on State Mandates; Article 3. Test Claims (Refs & Annos); § 1183.02. Review of Test Claim.

(a) Within ten (10) days of receipt of a completed test claim, or amendment thereto, commission staff shall send a copy of the test claim or amendment to the Department of Finance, Office of the State Controller, any affected state agency, and any known interested parties, and shall post it on the commission's web site.

(b) The executive director shall notify the Department of Finance, Office of the State Controller, and any affected state agency that they shall have the opportunity to review and provide written response, opposition, or recommendations concerning the test claim within thirty (30) days and to present evidence at the hearing on the test claim.

(c) Content and Form. Written responses, opposition, or recommendations on the test claim shall contain the following documentary evidence, if applicable:

(1) If assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief.

(2) Include a copy of relevant portions of state constitutional provisions, federal statutes, and executive orders, and a copy of administrative decisions and court decisions that may impact the alleged mandate, unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

(d) The written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, and telephone number shall be included. If the authorized representative can be reached via facsimile machine or e-mail, the facsimile number and e-mail address shall also be included.

(e) Filing. An original and two (2) copies of a written response, opposition, or recommendations and supporting documentation concerning a test claim shall be filed with commission staff and served in accordance with section 1181.2 of these regulations. Proof of service shall be included with the response, opposition, or recommendations filed with commission staff.

(f) If a hard copy is submitted the original document shall be unbound and single-sided.

<sup>4</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

Heather Halsey  
Executive Director  
Commission on State Mandates

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5. The application Government Code 17554 permitting the parties agree to waive the application of any procedural requirement.<sup>5</sup>

Please provide me the proof of service of the electronic emails sent pertaining to this test claim from February 13, 2013 to March 6, 2013. If you have any questions, comments or would like to discuss the issues raised in this letter please feel free to contact me.

Very truly yours,

STUTZ ARTIANO SHINOFF & HOLTZ  
A Professional Corporation



Arthur M. Palkowitz

AMP:p

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- (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

<sup>5</sup> Gov. Code 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.