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October 7, 2025

Juliana F. Gmur
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Comment on the Draft Proposed Decision
Child Physical Abuse and Neglect Exams, 24-TC-05
Statutes 2023, Chapter 841, Section 1 (AB 1402); Penal Code Section
11171, subd. (f)
County of Santa Clara, Claimant

Dear Director Gmur:

The County of Santa Clara ("County") files the following comment in response to the Draft Proposed Decision on test claim 24-TC-05 ("Test Claim"), concerning child physical abuse and neglect exams. The Test Claim asserted that AB 1402, which added subdivision (f) to section 11171 of the Penal Code ("Test Claim Statute"), imposes an unfunded mandate on counties and thus requires subvention pursuant to article XIII B, section 6 of the California Constitution ("Section 6"). The Draft Proposed Decision recommends that the Commission on State Mandates ("Commission") partially approve the test claim.

The County recognizes the careful and rigorous work of the Commission and largely agrees with the Draft Proposed Decision. This Comment focuses narrowly on a single point of contention. The Draft Proposed Decision finds that the Test Claim Statute does not mandate a new program or higher level of service for the increased costs of child physical abuse or neglect exams (hereinafter, "exams") when those costs

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could have been recovered in the past directly from the victim or from the victim's private medical insurance. The Draft Proposed Decision reasons that the Test Claim Statute, as to this subset of exams, does not require any new activity, the Test Claim Statute did not shift any costs from the State to counties, and Section 6 does not require reimbursement for increased costs alone. This finding contrasts with the finding that those exams that were previously reimbursable by the State via Medi-Cal and the Victims' Compensation Board are now reimbursable under Section 6, so long as the Legislature does not appropriate funds to reimburse these exams pursuant to the Test Claim Statute. The County respectfully disagrees with this distinction and requests that the Commission modify the Draft Proposed Decision to recommend reimbursement for all exams (subject to appropriations by the Legislature), whether they were previously reimbursable by the State or by private medical insurance.

DISCUSSION

By transferring full financial responsibility from the State to counties, the Test Claim Statute mandates a new activity as to those exams which were previously chargeable to private medical insurance. In addition, the rationale offered by the Draft Proposed Decision regarding its finding as to private medical insurance would contravene the voters' intent behind Section 6.

A. By Requiring Counties to Provide Exams Free of Charge to Privately Insured Patients, the Test Claim Statute Mandates a New Activity that Transfers Financial Responsibility from the State to Counties.

Among other criteria, Section 6 requires reimbursement when a statute imposes upon counties a new activity and that activity constitutes a "program" that either carries out a governmental function of providing a service to the public or imposes requirements unique to local governments. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.) In 2004, the voters amended Section 6 to clarify that "[a] mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." (Cal. Const., art. XIII B, § 6, subd. (c).)

Subdivision (f) of Penal Code section 11171 does not distinguish between children who have public medical insurance and those who have private medical insurance—in both cases, the Test Claim Statute prohibits charging the victim for the cost of exams. Likewise, the Draft Proposed Decision does not find that counties implement the Test Claim Statute differently whether the child receiving the exam has public insurance or private medical insurance. Yet, it reasons that counties should not receive reimbursement when the child has private medical insurance because the State

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did not shift any costs onto counties where counties previously billed private medical insurance rather than the State.

However, the State did assume full financial responsibility for the mandate before it summarily transferred those costs onto counties. When the Test Claim Statute went into effect on January 1, 2024 and subdivision (g) of Penal Code section 11171 established that “[t]he costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature,” the State assumed full responsibility for all exam costs, regardless of the child’s underlying insurance status. When the Legislature *subsequently* declined to appropriate funding for the Test Claim Statute (Draft Proposed Decision, p. 1 n. 1), it transferred from the State to counties complete responsibility for a required program for which the State previously had complete financial responsibility. (Cal. Const., art. XIII B, § 6, subd. (c).)

Subdivision (c) of Section 6 does not by its terms require the State to hold complete or partial responsibility over the relevant program for any particular duration before transferring financial responsibility to local governments. Prior to Proposition 1A, which added subdivision (c) to Section 6, the California Supreme Court in *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830 identified a mandate that transferred partial financial responsibility from the State to school districts two years after the State assumed full financial responsibility for the cost. (44 Cal.3d at pp. 832-833.) In *County of San Diego v. State of California* (1997) 15 Cal.4th 68, the State assumed full financial responsibility for certain Medi-Cal costs for six years before transferring partial financial responsibility to the county. (15 Cal.4th at p. 80.) What matters is that in each case, the State assumed full responsibility for the program before transferring that cost to local governments. Here, the State assumed full financial responsibility for the cost of exams that were previously reimbursed by private medical insurance. When the Legislature failed to appropriate funding to reimburse these costs, it transferred that financial responsibility in full to counties.

The Draft Proposed Decision relies on *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, for the proposition that “increased costs alone do not constitute a reimbursable mandate.” (45 Cal.App.4th at p. 1817.) *City of San Jose*, however, is not fully applicable to the Test Claim Statute. There, the test claim statute did not impose a mandate because it gave counties the discretionary authority to shift costs from one local government, counties, to another, cities. (*Id.* at pp. 1815-1816.) There, the fact that the test claim statute resulted in increased costs to cities did not provide an independent basis to identify a reimbursable mandate under Section 6. But in decisions like *Lucia Mar* and the *County of San Diego*, the increased costs were reimbursable because they followed the transfer of financial responsibility from the State to the local government. The Test Claim Statute effects a transfer of financial responsibility akin to those in *Lucia Mar* and the *County of San Diego* and does not mirror the facts or reasoning in *City of San Jose*.

B. Section 6 Does Not Permit the State to Evade its Reimbursement Obligation by Repealing a Local Government Fee Authority.

Legal limitations on local governments' ability to charge fees and taxes "is a primary reason article XIII B, section 6 exists and requires subvention." (*Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 580.) "[T]he purpose of article XIII B, section 6 'is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.' " (*Ibid.*, quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Article XIII A and Article XIII C, which limit local government taxing authority, are complemented by Article XIII B, which limits government spending. (*Id.* at pp. 598-599.) Section 6 requires subvention because "limits on local governments' taxing and spending authority . . . deprive local governments of the authority to enact taxes to pay for new state mandates. . . . They limit local government's authority to proposing a tax only, a level of authority that does not guarantee resources to pay for a new mandate. Article XIII B, section 6 provides them with those resources." (*Id.* at p. 599.)

The Test Claim Statute goes farther than the concern animating *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, which concerned voter approval requirements for fees. In that case, the court grappled with whether a local government had sufficient fee authority to recoup the cost of a state mandate. If the local government possessed such fee authority, it could not receive reimbursement pursuant to Section 6 and Government Code section 17556, subdivision (d). (85 Cal.App.5th at p. 560.) Here, there is no dispute that counties had fee authority prior to the Test Claim Statute to charge private medical insurance for these exams. Rather, with the Test Claim Statute, the State *eliminated* the county fee authority and transferred full financial responsibility for child physical abuse and neglect exams onto counties. Where the fee authority in *Department of Finance* was insufficient because it was contingent on voter approval, here the counties are unconditionally barred from charging private medical insurance for exams.

If adopted as final, the Draft Proposed Decision would approve an unlawful basis for the State to evade its obligations under Section 6—namely, the State could impose a mandate for which there is fee authority and subsequently eliminate that fee authority without having to provide reimbursement under Section 6. This maneuver, which would have sweeping implications for all fee-based activities, flouts the voters' intent behind Section 6 and is unconstitutional.

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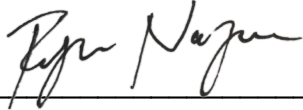
CONCLUSION

The County respectfully disagrees with that portion of the Draft Proposed Decision concerning exams formerly chargeable to private medical insurance. The County thus urges the Commission to adopt a decision approving the Test Claim in full.

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 based on information and belief and that I am authorized and competent to do so.

Very truly yours,
TONY LOPRESTI
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 9, 2025, I served the:

- **Current Mailing List dated September 26, 2025**
- **Claimant's Comments on the Draft Proposed Decision filed October 7, 2025**

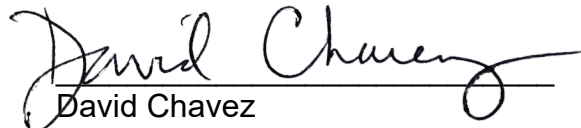
Child Physical Abuse and Neglect Exams, 24-TC-05

Statutes 2023, Chapter 841, (AB 1402); Penal Code Section 11171(f), effective January 1, 2024

County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 9, 2025 at Sacramento, California.



David Chavez

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COMMISSION ON STATE MANDATES

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Last Updated: 9/26/25

Claim Number: 24-TC-05

Matter: Child Physical Abuse and Neglect Exams

Claimant: County of Santa Clara

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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