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June 22, 2026



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

Re: Rebuttal to the Department of Finance
CARE Act County Legal Counsel, 25-TC-02
County of Santa Clara, Claimant
Statutes 2022, Chapter 319 (SB 1338)
Statutes 2023, Chapter 283 (SB 35)
Statutes 2023, Chapter 640 (SB 42)
Statutes 2024, Chapter 646 (SB 1323)
Statutes 2024, Chapter 647 (SB 1400)
Statutes 2025, Chapter 528 (SB 27)
Welfare & Institutions Code sections 5977, subd. (b)(4), (b)(7)(A), (c)(2);
5977.1, subd. (a)(1), (a)(4), (c)(3)(A), (d)(2), (d)(3), (d)(5);
5977.2, subd. (a)(1); 5977.3, subd. (a)(1); 5977.4, subd. (d);
5978.1, subd. (c)

Dear Director Gmur:

The County of Santa Clara ("County") files this rebuttal to the Comment of the California Department of Finance ("DOF") on the County's test claim number 25-TC-02 ("Test Claim"). The County respectfully asks the Commission to find that the DOF's arguments lack merit and that the statutes added by the Community Assistance,

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Recovery, and Empowerment (CARE) Act impose a reimbursable mandate pursuant to article XIII B, section 6 of the California Constitution (“Section 6”).

DISCUSSION

Section 6 requires the State of California (“State”) to reimburse local governments for the costs of complying with a State statute, wherever (1) the statute “compels the local agency to act,” (2) “the compelled activity requires the agency to provide a new program or higher level of service,” and (3) none of seven statutory or four constitutional exceptions applies. (*Coast Cmty. Coll. Dist. v. Commission on State Mandates*, 13 Cal. 5th 800, 808 (2022) [citation omitted].) The Test Claim argues that in enacting the CARE Act and its amendments, the Legislature mandated counties to direct their attorneys to participate in court proceedings and provide legal counsel to the departments and agencies that carry out the processes created by the CARE Act. Section 6 requires the State to reimburse counties for these mandated activities.

On May 22, 2026, the DOF filed a Comment asking the Commission to deny the County’s test claim or otherwise restrict reimbursements for mandated activities under the CARE Act. But the DOF does not engage with the County’s evidence or that of other local governments that filed supportive comments, nor does it cite case law or test claim decisions to support its arguments. The DOF’s arguments fail because (1) the CARE Act creates a reimbursable mandate under Section 6, (2) the State’s funding scheme does not adequately reimburse costs of county counsel under the mandate, and (3) it would be improper to deny reimbursement where a county behavioral health agency files a CARE Act petition.

First, the DOF is incorrect in arguing that because the test claim statutes do not *expressly* require county counsel to represent behavioral health agencies in CARE Act proceedings, the CARE Act cannot impose a reimbursable mandate. (DOF Comment at p. 2.) “The proper focus in a legal compulsion inquiry is upon the nature of the claimants’ participation in the *underlying programs*” and is not restricted to language in the test claim statute alone. (Commission on State Mandates, Test Claim Decision, *Internet Websites and Email Addresses*, No. 24-TC-04 at p. 31 [emphasis added].) Thus, courts and the Commission frequently find mandatory new programs under Section 6 based on compulsory language in legislation *outside* a test claim statute. (See, e.g., *ibid.*) For example, where the Legislature passed a law establishing circumstances that mandate student expulsion, the Supreme Court held that the State must reimburse the costs of holding expulsion hearings for those students pursuant to a different state law. (*San Diego Unified Sch. Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 883-84.) Similarly, in assessing a statute requiring local governments to migrate their websites and email addresses to the .gov domain under Section 6, the Commission reasoned that “the question . . . depends on whether cities and counties are legally compelled to have a public website in the first place.” (Test

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Claim Decision, No. 24-TC-04 at p. 31.) The requirement was a reimbursable mandate even though the statute did not “explicitly say all cities and counties shall maintain a public internet website,” because preexisting laws require local governments to maintain websites in particular circumstances. (*Id.* at pp. 31-34.)

Here, the Test Claim statutes require county attorneys to undertake reimbursable activities because laws underlying the CARE Act require counties to provide counsel to their agencies and officers. (See Test Claim at pp. 13-14.) For example, Government Code section 26520 requires counties to provide counsel, who “shall render legal services to the county without fee.” (Gov. Code, § 26520; see also *id.*, § 26529 [“In counties that have a county counsel, the county counsel shall discharge all the duties vested in the district attorney” under § 26520.] Among other duties, “county counsel shall defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in the officer’s official capacity.” (*Id.*, § 26529.) Further, under state law and the Rules of Professional Conduct, county counsel must keep their client informed about judicial proceedings, vigorously advocate on their behalf, and provide legal advice to help them make informed decisions. (Test Claim at pp. 13-14.) Because the Test Claim statutes mandate new civil judicial procedures requiring counties to draft and file court documents, analyze decisions, present evidence, and argue in hearings, there can be no question that county counsel must participate in implementing the new CARE Act programs. (*Id.* at pp. 8-9; Kerrigan Decl. at ¶¶ 6-7.) The DOF does not dispute the County’s arguments about these underlying laws. Moreover, the current scheme for reimbursing CARE Act implementation *anticipates* county counsel’s participation by including costs of legal “support services” as a component of an “overhead” fee added to payments for *all reimbursed activities*. (Test Claim at p. 11; Wheelehan Decl. at ¶¶ 14-15, Ex. C at p. 17.)

Second, the DOF asserts that the County “has not provided evidence that the funding provided by the state to counties is insufficient to pay for legal representation or advice” (DOF Comment at p. 3), but it is the *State’s* burden—one the DOF does not attempt to carry—to prove that Section 6 does not apply because the Legislature provided “additional revenue that was specifically intended to fund the costs of the state mandate *in an amount sufficient to fund the cost of the state mandate.*” (Gov. Code, § 17556(e) [emphasis added]; *Department of Fin. v. Commission on State Mandates* (2016) 1 Cal.5th 749, 769 [holding that the State bears the burden of claiming an exception under Gov. Code, § 17556].) Instead, the DOF purports to shift that burden onto the County. Nevertheless, the County *has* shown that the existing funding scheme is inadequate to cover mandatory county counsel costs associated with the CARE Act. (See, e.g., Test Claim at pp. 10-11.) As a matter of arithmetic, the time a county counsel would claim for performing mandated activities cannot be adequately reimbursed by the “infrastructure and support services” overhead the State has added to standardized rates paid to reimburse *other* employees’ implementation activities. (Wheelehan Decl. at ¶¶ 14-15, Ex. C at p. 17.) Even more starkly, there is no overhead

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reimbursement at all for the mandatory activities counties are not permitted to file claims for because they are completed by counsel alone, such as preparing for hearings, analyzing judicial orders, and developing legal advice. (Wheehehan Decl. at ¶¶ 16-18.)

Third, the DOF is incorrect that the Commission should deny reimbursement for work of county counsel under the CARE Act in circumstances where a county's behavioral health agency files an initial CARE Act petition. (DOF Comment at p. 3.) The DOF cites only a provision describing where the director of a behavioral health agency "*may*" file a petition (Welf. & Inst. Code, § 5974), but as an initial matter, there are multiple circumstances where the same director *must* do so. For example, the behavioral health agency "shall be the petitioner" where a court refers an individual to the CARE process from assisted outpatient treatment or certain misdemeanor proceedings and it "shall file a petition" where a mental health facility refers an eligible individual for the CARE process. (Welf. & Inst. Code, §§ 5978, 5978.1, subd. (c).)

As for circumstances where a county behavioral health agency files a petition on a discretionary basis, the Supreme Court held that reimbursement is not limited under Section 6 "whenever an entity makes an initial discretionary decision" that increases the cost of implementing a mandate. (*San Diego Unified Sch. Dist.*, 33 Cal.4th at p. 888.) For example, an executive order requiring counties to provide firefighters with protective clothing was reimbursable without an analogous restriction, notwithstanding that "a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected." (*Ibid.* [citing *Carmel Valley Fire Prot. Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-38].) Similarly, the State must reimburse cities and counties for the costs of migrating "*any* websites" and "*each* public email address" to the .gov domain, even though a county could presumably reduce the cost of complying with that law by hosting a smaller number of websites or hiring fewer employees. (Test Claim Decision, *Internet Websites and Email Addresses*, No. 24-TC-04 at p. 3 [emphasis added].) Here, it would contradict this precedent to restrict reimbursements where a director of a county behavioral health agency files an initial CARE Act petition.

Moreover, the restriction the DOF seeks undermines the very purpose of the CARE Act—to "create and implement throughout California a new program for identifying those with mental illness who need treatment" (Test Claim at p. 22)—because it would force directors of behavioral health agencies, who are among those best situated to bring CARE Act petitions, to balance an individual's health against the need to preserve the county's limited fiscal resources during a period of severe budgetary strain. Indeed, the reimbursement system established by the California Department of Health Care Services incorporates *no such limitation*, but instead reimburses local governments for all covered activities, no matter who filed an initial petition. (See Wheehehan Decl., Ex. B.) And Governor Newsom has initiated accountability measures for "underperforming counties" to "strengthen implementation,"

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stating that “lives are on the line.” (“Governor Newsom Announces New CARE Court Accountability Measures” (Mar. 2, 2026), <https://www.gov.ca.gov/2026/03/02/governor-newsom-announces-new-care-court-accountability-measures-to-get-more-chronically-mentally-ill-off-our-streets-awards-291-million-in-funding-for-services-and-housing/>; see also County of Los Angeles, Comment, *CARE Act County Legal Counsel*, Test Claim No. 25-TC-02, Attachment III [letter from Governor Newsom to county supervisor calling county’s below average petition rate “concerning” and noting that his office conducted outreach to county’s behavioral health leadership about “strengthen[ing] petition rates”].)

While restricting reimbursement as the DOF requests would provide a limited financial benefit to the State, it would be far more detrimental to those poised to benefit from the CARE Act—the patients themselves and their families and communities. As the State’s actions and statements above suggest, the stakes are simply too high to implement a reimbursement system that risks discouraging behavioral health agency directors from filing CARE Act petitions.

CONCLUSION

The CARE Act is designed to protect a county’s most vulnerable residents who are “currently experiencing a serious mental disorder” and are “unlikely to survive safely in the community without supervision” or are “in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others.” (Welf. & Inst. Code, § 5972.) The Commission should find that Section 6 requires the State to compensate counties for the crucial—and mandatory—activities county counsel undertake to implement this new program.

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the foregoing is true and complete to the best of my personal knowledge, information, or belief.

Sincerely,

June 22, 2026

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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 June 24, 2026, I served the:

- **Current Mailing List dated June 9, 2026**
- **California State Association of Counties' (CSAC) Rebuttal Comments filed June 22, 2026**
- **Claimant's Rebuttal Comments filed June 22, 2026**

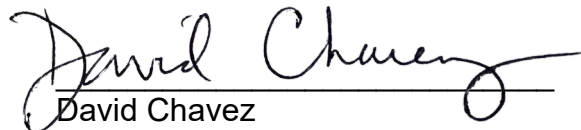
CARE Act County Legal Counsel, 25-TC-02

Statutes 2022, Chapter 319 (SB 1338); Statutes 2023, Chapter 283 (SB 35);
Statutes 2023, Chapter 640 (SB 42); Statutes 2024, Chapter 647 (SB 1400);
Statutes 2024, Chapter 646 (SB 1323); Statutes 2025, Chapter 528 (SB 27);
Welf. & Inst. Code, § 5977(b)(4); (b)(7)(A); (c)(2); Welf. & Inst. Code, §
5977.1(a)(1); (a)(4); (c)(3)(A); (d)(2), (3), (5); Welf. & Inst. Code, § 5977.2(a)(1);
Welf. & Inst. Code, § 5977.3(a)(1); Welf. & Inst. Code, § 5977.4(d); Welf. & Inst.
Code, § 5978.1(c)

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 June 24, 2026 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/9/26

Claim Number: 25-TC-02

Matter: CARE Act County Legal Counsel

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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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