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DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
Statutes 1994, Chapter 1128 (AB 1892)
Statutes 1996, Chapter 654 (AB 2726)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed
June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and
Emergency regulations effective July 1, 1998 [Register 98, No. 26],
final regulations effective August 9, 1999 [Register 99, No. 33])

Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); and
Seriously Emotionally Disturbed (SED) Pupils:
Out-of-State Mental Health Services (97-TC-05)

11-PGA-06

Department of Finance, Requestor

EXECUTIVE SUMMARY

This is a request to amend the consolidated parameters and guidelines filed by the Department of Finance for *Handicapped and Disabled Students*, *Handicapped and Disabled Students II*, and *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* to end reimbursement for these programs beginning July 1, 2011, pursuant to Statutes 2011, chapter 43 (AB 114).

The Executive Summary will be provided with the proposed statement of decision.

STAFF ANALYSIS

Requestor

Department of Finance

Chronology

- 12/21/2011 Department of Finance filed a request to amend parameters and guidelines
- 01/18/2012 Commission staff issued a notice of complete filing and schedule for comments issued
- 06/14/2012 Draft staff analysis and proposed amendment to parameters and guidelines issued

I. Summary of the Mandate

The consolidated programs were enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guarantees to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. Under federal law, a state's educational agency is responsible for meeting the IDEA requirements. However, states have the option under federal law to assign responsibility for the provision of mental health or other related services to other local agencies.¹ Thus, the test claim statutes (codified in chapter 26.5 of the Government Code by AB 3632, beginning with section 7560) shifted to counties the responsibility and funding of the mental health services required by the IDEA and identified in a pupil's individualized education plan (IEP).

On October 26, 2006, the Commission consolidated the parameters and guidelines for the *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* programs for claiming costs beginning in fiscal year 2006-2007. The consolidated parameters and guidelines were last amended in July 2010 to correct language in Section VI of the parameters and guidelines, dealing with the record retention requirements unique to the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* program.²

On December 21, 2011, the Department of Finance requested that these parameters and guidelines be amended to reflect AB 114, a budget trailer bill enacted on June 30, 2011, to end reimbursement for the consolidated program on June 30, 2011.³

AB 114 (Stats. 2011, ch. 43)

AB 114 eliminates the test claim statutory requirements for counties, shifts the responsibilities of providing mental health services required by a pupil's IEP to school districts, and continues the

¹ 20 U.S.C. section 1412(a)(11) and (a)(12).

² Exhibit B.

³ Exhibit A.

funding for educationally related mental health services to pupils.⁴ AB 114 amended the test claim statutes as follows:

- Section 32 amended Government Code section 7572, by eliminating former subdivision (c), which stated the following: “Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter.” Section 32 also amended former subdivision (e) by eliminating the requirement for the local education agency to invite the county mental health professional to meet with the IEP team whenever mental health services are considered for inclusion in the IEP team.
- Sections 33-38, 41, 42, 43, 48, 49, and 51 added a subdivision to Government Code sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7, and Welfare and Institutions Code sections 5701.3, 5701.6, and 18356.1 to state the following: “This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.”
- Section 40 amended Government Code section 7585, which addresses an agency’s failure to provide services required under an IEP. The bill eliminated references to mental health services provided by counties under Government Code section 7576.
- Section 44 repealed Government Code section 7588, which provided that “This chapter shall become operative on July 1, 1986, except Section 7583, which shall become operative on January 1, 1985.”
- Section 47 amended Welfare and Institutions Code section 5651 to eliminate former subdivision (a)(2), which provided that the annual county mental health services performance contract shall include assurances “that the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirements of that chapter.”

⁴ The floor analysis on AB 114, prepared by the Assembly on June 28, 2011, states the following:

Amend and repeals various sections of the Education, Government, and Welfare and Institutions code to repeal the state AB 3632 mandate program, which mandated counties to provide mental health services to students with disabilities. This mandate was suspended due to the veto of funding for the AB 3632 mandate in the 2010-2011 budget by Governor Schwarzenegger. As a result of this elimination, responsibility for educationally related mental health services, as required by federal law for student[s] with disabilities, is permanently shifted to schools. Pursuant to federal law, local educational agencies are required to update the Individualized Education Plan of each child that will experience a change in services as a result of this shift of responsibility.

Section 55 of the bill also directs the Departments of Education and Mental Health to modify or repeal the joint regulations adopted to implement the program that are no longer supported by statute.⁵ These regulations are located in Title 2, sections 60000 et seq., and are considered the “meat” of the program. The regulations are included in the consolidated parameters and guidelines for reimbursement. Section 60000 introduces the regulatory requirements by stating the following:

The provisions of this chapter shall implement Chapter 26.5, commencing with Section 7570, of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to pupils with disabilities. This chapter applies to the State Departments of Mental Health, Health Services, Social Services, and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas.

Following the enactment of AB 114, working group meetings and webinars with school districts were conducted by the Department of Education to help transition the provision of psychological and other mental health services to school districts. The webinar documents state that the Title 2 regulations related to the test claim statutes are no longer supported by statute and will need to be

⁵ AB 114, section 55 states the following:

- (a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are not longer supported by statute due to the amendments in Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.
- (b) The State Department of Education and the appropriate departments within the California Health and Human Services Agency shall review regulations to ensure the appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.
- (c) The State Department of Education and the appropriate departments within the California Health and Human Services Agency may adopt regulations to implement Sections . . . 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Education and the appropriate departments within the California Health and Human Services Agency are hereby exempted, for this purpose, from the requirements of subdivision (b) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

readopted, amended and adopted, or repealed.⁶ As of this date, however, the regulations still exist in the California Code of Regulations.

II. Procedural History

The Department of Finance requests that the consolidated parameters and guidelines be amended to end reimbursement for the program on June 30, 2011, pursuant to AB 114. No comments have been received on the request.

III. Staff Findings⁷

The request to amend the parameters and guidelines for this consolidated program raises a couple of legal issues. Although the enabling statutes for the program have been amended by the Legislature to become inoperative and, thus, no longer imposing a state-mandated program beginning July 1, 2011, the regulations that implement the program have not yet been amended or repealed and still exist in the California Code of Regulations. Thus, the issue is whether counties continue to be mandated by the state to comply with the regulations in Title 2, sections 60000 et seq. For the reasons below, staff finds that the activities required by sections 60000, et seq., and included in the consolidated parameters and guidelines, no longer impose a reimbursable state-mandated program pursuant to article XIII B, section 6.

Government Code sections 11340, et seq., governs the rulemaking process. Government Code section 11342.2 states that “no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.” Thus, state agencies do not have the discretion to promulgate a regulation that is inconsistent with the governing statute. Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and not effective.⁸

AB 114 repealed and made inoperative the statutes that originally shifted the provision of psychotherapy and other mental health treatment services for pupils based on their IEPs to counties. Although the regulations in Title 2, sections 60000, et seq., were valid when promulgated by the Departments of Education and Mental Health, the regulatory requirements imposed on counties now conflict with the enabling statutes. Therefore, the requirements imposed on counties are not in effect pursuant to Government Code section 11342.2, and the test claim regulations no longer constitute a state-mandated program on counties.

Furthermore, AB 114 was intended to implement changes made in the Budget Act for fiscal year 2011-2012 and its plain language makes inoperative the test claim statutes beginning July 1, 2011. Therefore, staff finds that the consolidated mandated program ends on

⁶ Exhibit ____.

⁷ As of January 1, 2011, Commission hearings on the adoption of proposed amendments to parameters and guidelines are conducted under Article 7 of the Commission’s regulations. Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and is based on substantial evidence in the record. Oral or written testimony is offered under oath or affirmation. (Gov. Code, § 17559(b); Cal. Code Regs., tit. 2, § 1187.5.)

⁸ *Ontario Community Foundation, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816-817; *Woods v. Superior Court* (1981) 28 Cal.3d 668, 678.

June 30, 2011, and that counties are no longer eligible to claim reimbursement for these programs beginning July 1, 2011.

The proposed parameters and guidelines amendment adds language to the title, Section I Summary, and Section III Period of Reimbursement to clarify that effective July 1, 2011, the consolidated mandated program is no longer reimbursable.

IV. Staff Recommendation

Staff recommends the Commission adopt this analysis as its statement of decision and the attached proposed amendments to the parameters and guidelines.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Proposed for Amendment: July 27, 2012

Amended: July 29, 2010 (09-PGA-03)

Adopted: October 26, 2006

**PROPOSED AMENDMENT TO CONSOLIDATED
PARAMETERS AND GUIDELINES**

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)

Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)

Statutes 1996, Chapter 654 (Assem. Bill No. 2726)

California Code of Regulations, Title 2, Sections 60000-60610

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Handicapped and Disabled Students (04-RL-4282-10);

Handicapped and Disabled Students II (02-TC-40/02-TC-49); and

Seriously Emotionally Disturbed (SED) Pupils:

Out-of-State Mental Health Services (97-TC-05)

11-PGA-06

~~Commencing with Fiscal Year 2008-2009~~

Reimbursement for these programs end on June 30, 2011

I. SUMMARY OF THE MANDATE

The *Handicapped and Disabled Students* program was enacted in 1984 and 1985 as the state's response to federal legislation (Individuals with Disabilities Education Act, or IDEA) that guaranteed to disabled pupils, including those with mental health needs, the right to receive a free and appropriate public education, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The legislation shifted to counties the responsibility and funding of mental health services required by a pupil's individualized education plan (IEP).

The Commission on State Mandates (Commission) adopted amended parameters and guidelines for the *Handicapped and Disabled Students* program (CSM 4282) on January 26, 2006, ending the period of reimbursement for costs incurred through and including June 30, 2004. Costs incurred after this date are claimed under the parameters and guidelines for the Commission's decision on reconsideration, *Handicapped and Disabled Students* (04-RL-4282-10).

The Commission adopted its Statement of Decision on the reconsideration of *Handicapped and Disabled Students* (04-RL-4282-10) on May 26, 2005. The Commission found that the 1990 Statement of Decision in *Handicapped and Disabled Students* correctly concluded that the test claim legislation imposes a reimbursable state-mandated program on counties pursuant to article XIII B, section 6 of the California Constitution. The Commission determined, however, that the 1990 Statement of Decision does not fully identify all of the activities mandated by the

statutes and regulations pled in the test claim or the offsetting revenue applicable to the claim. Thus, the Commission, on reconsideration, identified the activities expressly required by the test claim legislation and the offsetting revenue that must be identified and deducted from the costs claimed. Parameters and guidelines were adopted on January 26, 2006, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2004.

The Commission also adopted a Statement of Decision for the *Handicapped and Disabled Students II* program on May 26, 2005, addressing the statutory and regulatory amendments to the program. Parameters and guidelines were adopted on December 9, 2005, and corrected on July 21, 2006, with a period of reimbursement beginning July 1, 2001.

On May 25, 2000, the Commission adopted a Statement of Decision for the *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* (97-TC-05) program, addressing the counties' responsibilities for out-of-state placement of seriously emotionally disturbed students. Parameters and guidelines were adopted on October 26, 2000, and corrected on July 21, 2006, with a period of reimbursement beginning January 1, 1997.

These parameters and guidelines consolidate the Commission's decisions on the Reconsideration of *Handicapped and Disabled Students* 04-RL-4282-10), *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and *SED Pupils: Out-of-State Mental Health Services* (97-TC-05) for reimbursement claims filed for costs incurred commencing with the 2006-2007 fiscal year.

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for counties and transferred responsibility to school districts, effective July 1, 2011. Thus, beginning July 1, 2011, these programs no longer constitute reimbursable state-mandated programs for counties.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Beginning July 1, 2011, these programs are no longer eligible for reimbursement. Reimbursement for these programs end on June 30, 2011.

The period of reimbursement for the activities in this consolidated parameters and guidelines begins on July 1, 2006.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

- A. The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures (Cal. Code Regs., tit. 2, § 60030):
 1. Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code section 7575, subdivision (f). For purposes of this subdivision only, the term "appropriate" means any service identified in the pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(2).)
 2. A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons. (Cal. Code Regs, tit. 2, § 60030, subd. (c)(4).)
 3. Development of a mental health assessment plan and its implementation. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(5).)
 4. At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(7).)
 5. The provision of mental health services as soon as possible following the development of the IEP pursuant to section 300.342 of Title 34 of the Code of Federal Regulations. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(9).)

6. The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(14).)
7. The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided. (Cal. Code Regs., tit. 2, § 60030, subd. (c)(15).)
8. Mutual staff development for education and mental health staff pursuant to Government Code section 7586.6, subdivision (a). (Cal. Code Regs., tit. 2, § 60030, subd. (c)(17).)

This activity is reimbursable only if it was not previously claimed under the parameters and guidelines for *Handicapped and Disabled Students II* (02-TC-40/02-TC-49).

- B. Renew the interagency agreement with the local educational agency every three years and, if necessary, revise the agreement (Gov. Code, § 7571; Cal. Code Regs., tit. 2, §§ 60030, 60100)
 1. Renew the interagency agreement every three years, and revise if necessary.
 2. Define the process and procedures for coordinating local services to promote alternatives to out-of-home care of seriously emotionally disturbed pupils.
- C. Referral and Mental Health Assessments (Gov. Code, §§ 7572, 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045, 60200, subd. (c))
 1. Work collaboratively with the local educational agency to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed. (Gov. Code, § 7576, subd. (b)(1).)
 2. A county that receives a referral for a pupil with a different county of origin shall forward the referral within one working day to the county of origin. (Gov. Code, § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040, subd. (g).)
 3. If the county determines that a mental health assessment is not necessary, the county shall document the reasons and notify the parents and the local educational agency of the county determination within one day. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(1).)
 4. If the county determines that the referral is incomplete, the county shall document the reasons, notify the local educational agency within one working day, and return the referral. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(2).)
 5. Notify the local educational agency when an assessment is determined necessary. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
 6. If mental health assessments are deemed necessary by the county, develop a mental health assessment plan and obtain the parent's written informed consent for the assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
 7. Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)

8. Report back to the referring local educational agency or IEP team within 30 days from the date of the receipt of the referral if no parental consent for a mental health assessment has been obtained. (Cal. Code Regs., tit. 2, § 60045, subd. (c).)
9. Notify the local educational agency within one working day after receipt of the parent's written consent for the mental health assessment to establish the date of the IEP meeting. (Cal. Code Regs., tit. 2, § 60045, subd. (d).)
10. Review the following educational information of a pupil referred to the county by a local educational agency for an assessment: a copy of the assessment reports completed in accordance with Education Code section 56327, current and relevant behavior observations of the pupil in a variety of educational and natural settings, a report prepared by personnel that provided "specialized" counseling and guidance services to the pupil and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (a).)
11. If necessary, observe the pupil in the school environment to determine if mental health assessments are needed.
12. If necessary, interview the pupil and family, and conduct collateral interviews.
13. Assess the pupil within the time required by Education Code section 56344. (Cal. Code Regs., tit. 2, § 60045, subd. (e).)
14. Prepare and provide to the IEP team, and the parent or guardian, a written assessment report in accordance with Education Code section 56327. The report shall include the following information: whether the pupil may need special education and related services; the basis for making the determination; the relevant behavior noted during the observation of the pupil in the appropriate setting; the relationship of that behavior to the pupil's academic and social functioning; the educationally relevant health and development, and medical findings, if any; for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and the need for specialized services, materials, equipment for pupils with low incidence disabilities. (Cal. Code Regs., tit. 2, § 60045, subds. (f) and (g).)
15. Provide the parent with written notification that the parent may require the assessor to attend the IEP meeting to discuss the recommendation when the parent disagrees with the assessor's mental health service recommendation. (Cal. Code Regs., tit. 2, § 60045, subd. (f).)
16. Review and discuss the county recommendation with the parent and the appropriate members of the IEP team before the IEP team meeting. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)
17. In cases where the local education agency refers a pupil to the county for an assessment, attend the IEP meeting if requested by the parent. (Gov. Code, § 7572, subd. (d)(1); Cal. Code Regs., tit. 2, § 60045, subd. (f).)
18. Review independent assessments of a pupil obtained by the parent. (Gov. Code, § 7572, subd. (d)(2).)

19. Following review of the independent assessment, discuss the recommendation with the parent and with the IEP team before the meeting of the IEP team. (Gov. Code, § 7572, subd. (d)(2).)
 20. In cases where the parent has obtained an independent assessment, attend the IEP team meeting if requested. (Gov. Code, § 7572, subd. (d)(2).)
 21. The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)
- D. Transfers and Interim Placements (Cal. Code Regs., tit. 2, § 60055)
1. Following a pupil's transfer to a new school district, the county shall provide interim mental health services, as specified in the existing IEP, for thirty days, unless the parent agrees otherwise.
 2. Participate as a member of the IEP team of a transfer pupil to review the interim services and make a determination of services.
- E. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and in-state or out-of-state residential placement may be necessary (Gov. Code, §§ 7572.5, subds. (a) and (b), 7572.55; Cal. Code Regs., tit. 2, § 60100)
1. Participate as a member of the IEP team whenever the assessment of a pupil determines the pupil is seriously emotionally disturbed and residential placement may be necessary.
 2. Re-assess the pupil in accordance with section 60400 of the regulations, if necessary.
 3. When a recommendation is made that a child be placed in an out-of-state residential facility, the expanded IEP team, with the county as a participant, shall develop a plan for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. Residential placements for a pupil who is seriously emotionally disturbed may be made out of California only when no in-state facility can meet the pupil's needs and only when the requirements of Title 2, California Code of Regulations, section 60100, subdivisions (d) and (e), have been met. (Gov. Code, § 7572.55, subd. (c); Cal. Code Regs., tit. 2, § 60100, subd. (h).)
 4. The expanded IEP team, with the county as a participant, shall document the alternatives to residential placement that were considered and the reasons why they were rejected. (Cal. Code Regs., tit. 2, § 60100, subd. (c).)
 5. The expanded IEP team, with the county as a participant, shall ensure that placement is in accordance with the admission criteria of the facility. (Cal. Code Regs., tit. 2, § 60100, subd. (j).)
 6. When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in either in-state or out-of-state residential care, counties shall ensure that: (1) the mental health services are specified in the IEP in accordance with federal law, and (2) the mental health services are provided by qualified mental health professionals. (Cal. Code Regs., tit. 2, § 60100, subd. (i).)

- F. Designate the lead case manager if the IEP calls for in-state or out-of-state residential placement of a seriously emotionally disturbed pupil to perform the following activities (Gov. Code, § 7572.5, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 60100, 60110)
1. Convene parents and representatives of public and private agencies in order to identify the appropriate residential facility. (Cal. Code Regs., tit. 2, §§ 60110, subd. (c)(1).)
 2. Identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. (Cal. Code Regs., tit. 2, §§ 60100, subd. (e), 60110, subd. (c)(2).)
 3. Document the determination that no nearby placement alternative that is able to implement the IEP can be identified and seek an appropriate placement that is as close to the parents' home as possible. (Cal. Code Regs., tit. 2, § 60100, subd. (f).)
 4. Coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in residential placement. The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of the pupil. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(1).)
 5. When the IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the lead case manager shall ensure that placement is in accordance with admission, continuing stay, and discharge criteria of the community treatment facility. (Cal. Code Regs., tit. 2, § 60110, subd. (b)(3).)
 6. Complete the local mental health program payment authorization in order to initiate out of home care payments. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(3).)
 7. Coordinate the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(4).)
 8. Develop the plan for and assist the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(5).)
 9. Facilitate the enrollment of the pupil in the residential facility. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(6).)
 10. Notify the local educational agency that the placement has been arranged and coordinate the transportation of the pupil to the facility if needed. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(7).)
 11. Conduct quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the IEP. (Cal. Code Regs., tit. 2, § 60110, subd. (c)(8).)

12. Evaluate the continuing stay criteria, as defined in Welfare and Institutions Code section 4094, of a pupil placed in a community treatment facility every 90 days. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(8).)
 13. Notify the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the IEP. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(9).)
 14. Schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as the pupil remains in residential placement. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(10).)
 15. Facilitate placement authorization from the county's interagency placement committee pursuant to Welfare and Institutions Code section 4094.5, subdivision (e)(1), by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility. (Cal. Code Regs, tit. 2, § 60110, subd. (c)(11).)
- G. Authorize payments to in-state or out-of-state residential care providers / Issue payments to providers of in-state or out-of-state residential care for the residential and non-educational costs of seriously emotionally disturbed pupils (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e))
1. Authorize payments to residential facilities based on rates established by the Department of Social Services in accordance with Welfare and Institutions Code sections 18350 and 18356. This activity requires counties to determine that the residential placement meets all the criteria established in Welfare and Institutions Code sections 18350 through 18356 before authorizing payment.
 2. Issue payments to providers of out-of-home residential facilities for the residential and non-educational costs of seriously emotionally disturbed pupils. Payments are for the costs of food, clothing, shelter, daily supervision, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. Counties are eligible to be reimbursed for 60 percent of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility.

Welfare and Institutions Code section 18355.5 applies to this program and prohibits a county from claiming reimbursement for its 60-percent share of the total residential and non-educational costs of a seriously emotionally disturbed child placed in an out-of-home residential facility if the county claims reimbursement for these costs from the Local Revenue Fund identified in Welfare and Institutions Code section 17600 and receives the funds.
 3. Submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed pupils for 24-hour out-of-home care.

- H. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c)¹)
1. The host county shall make its provider network available and provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
 2. The county of origin shall negotiate with the host county to obtain access to limited resources, such as intensive day treatment and day rehabilitation. (Cal. Code Regs., tit. 2, § 60200, subd. (c)(1).)
 3. Provide case management services to a pupil when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
 4. Provide case management services and individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
 5. Provide mental health assessments, collateral services, intensive day treatment, and day rehabilitation services when required by the pupil's IEP. These services shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
 6. Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)
 7. Notify the parent and the local educational agency when the parent and the county mutually agree upon the completion or termination of a service, or when the pupil is no longer participating in treatment. ((Cal. Code Regs., tit. 2, § 60050, subd. (b).)

When providing psychotherapy or other mental health treatment services, the activities of crisis intervention, vocational services, and socialization services are not reimbursable.

- I. Participate in due process hearings relating to mental health assessments or services (Gov. Code, § 7586; Cal. Code Regs., tit. 2, § 60550.) When there is a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or

¹ Section 60200, subdivision (c), of the regulations defines the financial responsibilities of the counties and states that "the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100 [pupils placed in residential facilities]. Mental health services shall be provided directly by the community mental health service [the county] or by contractors."

the provision of a free, appropriate public education to the child relating to mental health assessments or services, the following activities are eligible for reimbursement:

1. Retaining county counsel to represent the county mental health agency in dispute resolution. The cost of retaining county counsel is reimbursable.
2. Preparation of witnesses and documentary evidence to be presented at hearings.
3. Preparation of correspondence and/or responses to motions for dismissal, continuance, and other procedural issues.
4. Attendance and participation in formal mediation conferences.
5. Attendance and participation in information resolution conferences.
6. Attendance and participation in pre-hearing status conferences convened by the Office of Administrative Hearings.
7. Attendance and participation in settlement conferences convened by the Office of Administrative Hearings.
8. Attendance and participation in Due Process hearings conducted by the Office of Administrative Hearings.
9. Paying for psychological and other mental health treatment services mandated by the test claim legislation (California Code of Regulations, title 2, sections 60020, subdivisions (f) and (i)), and the out-of-home residential care of a seriously emotionally disturbed pupil (Gov. Code, § 7581; Cal. Code Regs., tit. 2, § 60200, subd. (e)), that are required by an order of a hearing officer or a settlement agreement between the parties to be provided to a pupil following due process hearing procedures initiated by a parent or guardian.

Attorneys' fees when parents prevail in due process hearings and in negotiated settlement agreements are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate: the direct cost reporting method and the cost report method.

Direct Cost Reporting Method

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by

productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital

expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Cost Report Method

A. Cost Report Method

Under this claiming method, the mandate reimbursement claim is still submitted on the State Controller's claiming forms in accordance with claiming instructions. A complete copy of the annual cost report, including all supporting schedules attached to the cost report as filed with the Department of Mental Health, must also be filed with the claim forms submitted to the State Controller.

B. Indirect Cost Rates

To the extent that reimbursable indirect costs have not already been reimbursed, they may be claimed under this method.

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Funds received by a county pursuant to Government Code section 7576.5.
2. Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
3. Funds received and applied to this program from appropriations made by the Legislature in future Budget Acts for disbursement by the State Controller's Office.
4. Private insurance proceeds obtained with the consent of a parent for purposes of this program.
5. Medi-Cal proceeds obtained from the state or federal government, exclusive of the county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.
6. Any other reimbursement received from the federal or state government, or other non-local source.

Except as expressly provided in section IV(G)(2) of these parameters and guidelines, Realignment funds received from the Local Revenue Fund that are used by a county for this program are not required to be deducted from the costs claimed. (Stats. 2004, ch. 493, § 6 (Sen. Bill No. 1895).)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

~~The Statements of Decision are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for these test claims. The administrative records, including the Statements of Decision, are on file with the Commission.~~ The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.