

ARNOLD SCHWARZENEGGER  
GOVERNOR



# STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

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## REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

January 1, 2008 – June 30, 2008

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## TABLE OF CONTENTS

	<u>Page</u>
<b>EXECUTIVE SUMMARY</b> .....	iii
<b>I. INTRODUCTION</b> .....	01
<b>II. NEW MANDATES</b> .....	03
1. <i>Enrollment Fee Collection and Waivers, 99-TC-13 and 00-TC-15</i> .....	05
2. <i>Binding Arbitration; 01-TC-07</i> .....	15
3. <i>Handicapped and Disabled Students II; 02-TC-40 and 02-TC-49</i> .....	21
<b>III. JOINTLY DEVELOPED STATEWIDE ESTIMATE OF COSTS</b> .....	30
1. <i>Firearm Hearings for Discharged Inpatients</i> .....	31
<b>IV. PENDING STATEWIDE COST ESTIMATES</b> .....	33



## EXECUTIVE SUMMARY

State law requires the Commission on State Mandates to report to the Legislature on the number of mandates it has found, the estimated statewide costs of these mandates, and the reasons for recommending reimbursement. This report fulfills that requirement.

### New Mandates

Between January 1, 2008 and June 30, 2008, the Commission adopted four statewide cost estimates totaling \$177,653,634. This amount is not proposed for appropriation in the 2008-2009 Budget.

### Pending Statewide Cost Estimates

There are currently 23 approved mandates for which statewide cost estimates are pending.



## INTRODUCTION

### **Statewide Cost Estimates**

The Commission on State Mandates (Commission) is required to report to the Legislature at least twice each calendar year on the number of mandates it has found, the estimated statewide costs of each mandate, and the reasons for recommending reimbursement.<sup>1</sup>

After the Commission submits its semiannual report to the Legislature, the Legislative Analyst is required to submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the Commission's reports. The Legislative Analyst's report shall make recommendations as to whether the mandate should be repealed, funded, suspended, or modified.

Upon receipt of the report submitted by the Commission pursuant to Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.<sup>2</sup>

The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodology, and adopted statewide estimate of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodology, and adopted statewide estimate of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.<sup>3</sup>

### **Jointly Developed Statewide Estimate of Costs**

In 2007, AB 1222 (Statutes 2007, chapter 329) was enacted to provide an alternate process for determining the costs of mandated programs. Under AB 1222, local governments and the Department of Finance may jointly develop reimbursement methodologies and statewide estimate of costs for mandated programs for approval by the Commission. Jointly developed statewide estimate of costs that are approved by the Commission will be included in the Commission's Annual Reports to the Legislature.

### **Mandate Funding Provisions**

If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.<sup>4</sup>

If payment for an initial reimbursement claim is being made more than 365 days after adoption of the statewide cost estimate, the State Controller's Office (SCO) shall include accrued interest at the Pooled Money Investment Account rate.<sup>5</sup>

If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the SCO will prorate the claims.<sup>6</sup> If the deficiency funds are not

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<sup>1</sup> Government Code section 17600.

<sup>2</sup> Government Code section 17612, subdivision (a).

<sup>3</sup> Government Code section 17612, subdivision (b).

<sup>4</sup> Government Code section 17612, subdivision (c).

<sup>5</sup> Government Code section 17561.5, subdivision (a).

appropriated in the Budget Act, the SCO reports this information to the legislative budget committees and the Commission.

Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district mandate claims for costs incurred prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act, the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

The following table shows the three statewide cost estimates and one jointly developed statewide estimate of costs that have been adopted during the period of January 1, 2008 through June 30, 2008.

**Statewide Cost Estimates (SCE) Adopted  
During the Period of January 1, 2008 – June 30, 2008**

Date SCE Adopted <sup>7</sup>	Test Claim	Period of Reimbursement (Fiscal Years)	Estimated Costs		
			Education	Non-Education	Totals
01/31/2008	<i>Enrollment Fee Collection and Waivers, 99-TC-13 and 00-TC-15</i>	1998-1999 through 2007-2008	\$162,128,285		\$162,128,285
06/26/2008	<i>Handicapped and Disabled Students II; 02-TC-40 and 02-TC-49</i>	2001-2002 through 2005-2006		\$15,159,333	\$15,159,333
06/26/2008	<i>Binding Arbitration; 01-TC-07</i>	Jan 1, 2001 through Apr 20, 2003		\$211,341	\$211,341
6/26/2008	<i>Firearm Hearings for Discharged Inpatients 99-TC-11, (07-RRM-01)</i>	1998-1999 through 2006- 2007		\$154,675	\$154,675
<b>TOTALS</b>			\$162,128,285	\$15,525,349	<b>\$177,653,634</b>

<sup>6</sup> Government Code section 17567.

<sup>7</sup> If payment for an initial reimbursement claim is made more than 365 days after adoption of the statewide cost estimate, the Controller shall include accrued interest at the Pooled Money Investment Account rate. (Gov. Code, § 17561.6, subd. (a).)

## **II. NEW MANDATES**



***Enrollment Fee Collection and Waivers***  
**(99-TC-13 and 00-TC-15)**

Education Code Section 76300  
 Statutes 1984xx, Chapter 1 (AB 1)  
 Statutes 1984, Chapters 274 and 1401  
 Statutes 1985, Chapters 920 and 1454  
 Statutes 1986, Chapters 46 and 394  
 Statutes 1987, Chapter 1118  
 Statutes 1989, Chapter 136  
 Statutes 1991, Chapter 114  
 Statutes 1992, Chapter 703  
 Statutes 1993, Chapters 8, 66, 67, and 1124  
 Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589)  
 Statutes 1995, Chapter 308 (AB 825)  
 Statutes 1996, Chapter 63 (AB 3031)  
 Statutes 1999, Chapter 72 (AB 1118)  
 California Code or Regulations, Title 5, Sections 58501-58503;  
 58611- 58613, 58620, 58630

Test Claims Filed: June 22, 2000 and June 4, 2001  
 Reimbursement Period for this Estimate: July 1, 1998 through June 30, 2008  
 Eligible Claimants: Community College Districts  
 Statewide Cost Estimate: \$162,128,285  
 Adopted: January 31, 2008

The proposed statewide cost estimate includes ten fiscal years for a total of \$162,128,285. This is an average of \$ 16,212,828 annually in costs for the state. Following is a breakdown of total costs claimed per fiscal year, revised adjustments for offsets, and revised totals.

**Breakdown of Total Costs Claimed and Adjustments**

<u>Fiscal Year</u>	<u># Claims</u>	<u>Total Costs Claimed</u>	<u>Enrollment Fee Adjustment (2%)</u>	<u>Fee Waiver Adjustment (.91)</u>	<u>Total Adjustments</u>	<u>Revised Totals</u>
1998-1999	33	\$12,050,951	\$299,828	\$3,834,656	\$4,134,484	\$7,916,467
1999-2000	35	\$16,334,148	\$374,942	\$1,808,075	\$2,183,017	\$14,151,131
2000-2001	39	\$18,341,342	\$545,817	\$2,664,147	\$3,209,964	\$15,131,378
2001-2002	39	\$20,305,630	\$299,199	\$1,909,661	\$2,208,860	\$18,096,770
2002-2003	40	\$21,772,841	\$544,773	\$2,379,566	\$2,924,339	\$18,848,502
2003-2004	38	\$19,981,734	\$762,690	\$1,783,063	\$2,545,753	\$17,435,981
2004-2005	38	\$19,627,817	\$700,855	\$2,487,232	\$3,188,087	\$16,439,730
2005-2006	N/A	\$20,805,486	\$742,906	\$2,636,466	\$3,379,372	\$17,426,114
2006-2007	N/A	\$21,616,900	\$771,880	\$2,739,288	\$3,511,168	\$18,105,732
2007-2008	N/A	<u>\$22,178,939</u>	<u>\$791,949</u>	<u>\$2,810,510</u>	<u>\$3,602,459</u>	<u>\$18,576,480</u>
Totals		\$193,015,788	\$5,834,839	\$25,052,664	\$30,887,503	\$162,128,285

## Summary of the Mandate

On April 24, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Enrollment Fee Collection and Waivers* (99-TC-13 and 00-TC-15). The Commission found that the test claim statutes and executive orders constitute a new program or higher level of service and impose a reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission adopted the parameters and guidelines for this program on January 26, 2006. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by August 1, 2006. Late and amended initial reimbursement claims were accepted by the SCO until August 1, 2007. This statewide cost estimate is based on the reimbursement claims filed for the initial reimbursement period.

The Commission approved the following reimbursable activities for this program:

### A. Enrollment Fee Collection (Reimbursement Period begins July 1, 1998)

#### 1. One-Time Activities

##### a. Policies and Procedures

Prepare district policies and procedures for the collection of enrollment fees.

##### b. Staff Training (One-time per employee)

Training district staff that implement the program on the procedures for the collection of enrollment fees.

#### 2. Ongoing Activities

##### a. Calculating and collecting the student enrollment fee for each student enrolled, except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, §76300, subs. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503). This includes:

- i. Referencing student accounts and records to determine course workload, status of payments, and eligibility for fee waiver. Printing a list of enrolled courses.
- ii. Calculating the total enrollment fee to be collected. Identifying method of payment. Collecting cash and making change as necessary. Processing credit card and other non-cash payment transactions (however, any fees that may be charged to a community college district by a credit card company or bank are not reimbursable). Preparing a receipt for payment received.
- iii. Answering student's questions regarding enrollment fee collection or referring them to the appropriate person for an answer.
- iv. Updating written and computer records for the enrollment fee information and providing a copy to the student. Copying and filing enrollment fee documentation.
- v. Collecting delinquent enrollment fees, including written or telephonic collection notices to students, turning accounts over to collection agencies, or small claims court action.
- vi. For students who establish fee waiver eligibility after the enrollment fee has been collected, providing a refund or enrollment fees paid and updating

student and district records as required. (Refund process for change in program is not reimbursable).

B. Enrollment Fee Waiver (Reimbursement Period begins July 1, 1999)

1. One-Time Activities

a. Policies and Procedures

Prepare district policies and procedures for determining which students are eligible for waiver of the enrollment fees.

b. Staff Training (One-time per employee)

Training district staff that implement the program on the procedures for determining which students are eligible for waiver of the enrollment fee.

2. Ongoing Activities

- a. Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Recording and maintaining records that document all of the financial assistance provided to students for the waiver of enrollment fees in a manner that will enable an independent determination of the district's certification of the need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

- b. Waiving student fees in accordance with groups listed in Education Code section 76300, subdivisions (g) and (h).) Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal. Code Regs., tit. 5 §§ 58612, 58613 & 58620). This includes:
- i. Answering student's questions regarding enrollment fee waivers or referring them to the appropriate person for an answer.
  - ii. Receiving of waiver applications from students by mail, fax, computer online access, or in person, or in the form of eligibility information processed by the financial aid office.
  - iii. Evaluating each application and verification documents (dependency status, household size and income, SSI and TANF/CalWorks, etc.) for compliance with eligibility standards utilizing information provided by the student, from the student financial aid records (e.g., Free Application for Federal Student Aid (FAFSA)), and other records.
  - iv. In the case of an incomplete application or incomplete documentation, notify the student of the additional required information and how to obtain that information. Hold student application and documentation in suspense file until all information is received.
  - v. In the case of an approved application, copy all documentation and file the information for further review or audit. Entering the approved application information into district records and /or notifying other personnel performing other parts of the process (e.g., cashier's office). Providing the student with proof of eligibility or an award letter, and file paper documents in the annual file.

- vi. In the case of a denied application, reviewing and evaluating additional information and documentation provided by the student if the denial is appealed by the student. Provide written notification to the student of the results of the appeal or any change in eligibility status.
- c. Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.)

### **Statewide Cost Estimate**

Staff reviewed SCO summary reports on the amounts claimed and actual reimbursement claims. Forty (40) claimants filed 316 reimbursement claims for fiscal years 1998-99 through 2006-2007. Since actual cost claims for 2005-2006 through 2007-2008 are not yet due, fiscal year 2004-2005 claiming data is used to calculate estimated costs for claims that will be filed for fiscal years 2005-2006 through 2007-2008.

Staff made the following assumptions and used the following methodology to develop a statewide cost estimate for the *Enrollment Fee Collection and Waivers* programs. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

#### Assumptions

Staff made the following assumptions:

- *The actual amounts claimed will not increase for fiscal years 1998-1999 through 2004-2005 because August 1, 2007 was the last day to file late or amended claims for the initial reimbursement period.*
- *The same community college districts filing initial reimbursement claims for fiscal year 2004-2005 will file claims for fiscal years 2005-2006 through 2007-2008.*
- *Costs for fiscal years 2005-2006 through 2007-2008 will increase if new claimants file reimbursement claims.*

For other community college district mandates, as many as 60 community college districts have filed reimbursement claims. Thus, if any of the remaining community college districts file reimbursement claims for fiscal years 2005-2006 through 2007-2008, the proposed statewide cost estimate will increase.

- *The statewide cost estimate will increase as community college district enrollments and waivers continue to increase.*

The total statewide headcount and number of Board of Governors' Waivers reported by community college districts has increased for the past two fiscal years.

**Table 1**  
**Total Headcounts, Board of Governor’s Waivers, and**  
**Financial Aid Amount**  
**By Fiscal Year**

Fiscal (Academic) Year	Total Headcount by Academic Year	Total Board of Governors Waivers and Percent Change From Prior Year	Financial Aid Amount
1998-1999	2,437,575	473,910 (NA)	\$ 95,307,029
1999-2000	2,546,591	579,657 (22.3%)	85,924,368
2000-2001	2,648,850	500,257 (-13.7%)	89,343,576
2001-2002	2,809,514	548,283 (9.6%)	92,433,300
2002-2003	2,819,997	606,348 (10.6%)	102,620,674
2003-2004	2,545,479	663,024 (9.3%)	168,185,325
2004-2005	2,515,488	724,611 (9.3%)	266,282,347
2005-2006	2,550,682	740,430 (2.2%)	273,788,614
2006-2007	2,621,399	Data Not Available	Data Not Available

Source: [www.cccco.ca.gov](http://www.cccco.ca.gov)

- *The claims may be inaccurate because the initial reimbursement claims are un-audited.*

The actual amounts claimed will be reduced if the SCO reduces claims that are excessive or unreasonable.

Therefore, if the initial reimbursement claims are audited, the total cost of this program will be lower than the proposed statewide cost estimate.

- *There is a wide variation in costs incurred to implement this program.*

Staff selected fiscal year 2002-2003 for review because claims were filed by 40 community college districts representing 56% of eligible claimants, 66% of the statewide headcount and 70% of the waivers granted. See Table 3, Overview of 2002-2003 Claims.

The highest claim was filed by Los Angeles Community College District for \$2,950,953 and the lowest by Santa Barbara Community College District for \$6,787. The number of waivers granted by all claimants ranged from 7% to 57% of total headcount.

To compare costs, staff established a unit rate based on the total student headcount and number of waivers reported to the state. Since the reimbursable activities are based on student enrollment and waivers, these counts are the most appropriate measure on which to calculate a unit for cost comparisons. The unit is based on the total amount claimed divided by the total of “Head Count of students” and “number of waivers reported to the Board of Governors.” The totals used for district head counts and waivers are from the California Community Colleges Chancellor’s Office Website: <http://www.cccco.ca.gov>.

The unit rate ranged from a low of \$.12 (Santa Barbara Community College District) to \$100.45 (Palo Verde Community College District), with a mean of \$9.46. The unit for Los Angeles Community College District is \$9.06. The median is about \$7.00.

- *Enrollment Fee Collection Offsets were verified with the assistance of the California Community Colleges Chancellor's Office and the State Controller's Office.*

In April 2007, staff reviewed actual cost claims to assess whether the offsets specified in the parameters and guidelines and claiming instructions had been reported and deducted.

The Commission's decision and the parameters and guidelines identified offsetting savings and reimbursements for claimants to deduct when filing reimbursement claims. The Controller's claiming instructions further specified that if applicable, claimants should enter the following offsets, as specified in the parameters and guidelines, in the Cost Reduction Summary of the claim, on Line (09) Offsetting Savings, and submit a detailed schedule of savings with the claim.

### **Enrollment Fee Collection Program**

The costs of the *Enrollment Fee Collection* program are subject to an offset of two percent (2%) of the revenue from enrollment fees. (Ed. Code, § 76000, subd. (c).)

### **Enrollment Fee Waiver Program**

The costs of the *Enrollment Fee Waiver* program are subject to the following offsets:

July 1, 1999 to July 4, 2000:

- For low income students<sup>8</sup> or recipients of public assistance,<sup>9</sup> or dependents or surviving spouses of National Guard soldiers killed in the line of duty,<sup>10</sup> as defined:
  - an offset identified in Education Code section 76300, subdivision (m), that requires the Community College Board of Governors, from funds in the annual budget act, to allocate to community colleges two percent (2%) of the fees waived, under subdivisions (g) [low income students, as defined, or specified recipients of public assistance] and (h) [dependents or surviving spouses of California National Guard soldiers killed in the line of duty, as defined] of section 76300; and
- For determination of financial need and delivery of student financial aid services, on the basis of the number of low income students (as defined) or recipients of public assistance (as defined), or dependents or surviving spouses of National Guard soldiers killed in the line of duty, for whom fees are waived:

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<sup>8</sup> “[A]ny student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58260 of Title 5 of the California Code of Regulations.” (Ed. Code, § 76300, subd. (g)(2).)

<sup>9</sup> “[A]ny student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.” (Ed. Code, § 76300, subd. (g)(1).)

<sup>10</sup> “[A]ny student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. “Active service of the state,” for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.” (Ed. Code, § 76300, subd. (h).)

- from funds provided in the annual State Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to seven percent (7%) of the fee waivers provided pursuant to subdivisions (g) [low income students, as defined, or specified recipients of public assistance] and (h) [dependents or surviving spouses of California National Guard soldiers killed in the line of duty, as defined].<sup>11</sup>

Beginning July 5, 2000:

- For low income students (as defined, or recipients of public assistance (as defined) or dependents or surviving spouses of National Guard soldiers killed in the line of duty, for whom fees are waived (as defined):
  - an offset identified in Education Code section 76300, subdivision (m), that requires the Community College Board of Governors, from funds in the annual budget act, to allocate to community colleges two percent (2%) of the fees waived, under subdivisions (g) [low income students, as defined, or specified recipients of public assistance] and (h) [dependents of California National Guard soldiers killed in the line of duty as defined] of section 76300;
- For determination of financial need and delivery of student financial aid services, on the basis of the number of low income students (as defined) or recipients of public assistance (as defined) for whom fees are waived
  - requires the Board of Governors to allocate from funds in the annual State Budget Act ninety-one cents (\$0.91) per credit unit waived pursuant to subdivisions (g) [low income students, as defined, or specified recipients of public assistance] and (h) [dependents of California National Guard soldiers killed in the line of duty as defined]
- Any budget augmentation received under the Board Financial Assistance Program Administrative Allowance, or any other state budget augmentation received for administering the fee waiver program.

#### Final Staff Analysis – December Hearing

Commission staff issued the draft staff analysis on September 6, 2007. In the draft staff analysis, staff requested assistance from the *California Community College Chancellor's Office (Chancellor's Office)* and the *State Controller's Office (SCO)* to verify offsetting revenues from enrollment fees, number of credit units waived, and amount of fees waived, by fiscal year, and any budget augmentations received.

On October 10, 2007, Department of Finance submitted comments on the draft staff analysis concurring that the Chancellor's Office and the SCO should assist the Commission in assessing if offsetting savings and reimbursements were properly reported and deducted.

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<sup>11</sup> These waiver provisions were subsequently expanded to waive fees for children of law enforcement personnel or firefighters killed in the line of duty (Ed. Code, § 76300, subd. (i)), or dependents of victims of the September 11, 2001 terrorist attacks (Ed. Code, § 76300, subd. (j)), but these parameters and guidelines do not include those waiver recipients because they were added by Statutes 2002, chapter 450 and are outside the scope of the Statement of Decision.

The Chancellor's Office provided a spreadsheet reporting enrollment fees collected and the 2% offset for fiscal years 2001-2002 through 2006-2007. This spreadsheet was sent to the SCO to compare with enrollment fee offsets reported. The SCO reviewed claims and compiled a new spreadsheet. The new spreadsheet by fiscal year, identified claimants, claimed amounts, claimed 2% offsets, claimed waiver offsets, and Chancellor's 2% offset, and 2% claimed difference. Based on this additional documentation, staff revised the draft statewide cost estimate for the December 6 hearing.

The Department of Finance requested that the statewide cost estimate be postponed to allow the department to work with the Chancellor's Office in providing more complete information on offsets. The hearing was postponed.

#### Submission of New Information by the Chancellor's Office

On January 7, 2008, the Chancellor's Office submitted the additional data requested related to the student fee collection and waiver program. Data was included from additional years for the 2 percent of fees calculation and also included data related to two additional allocations. This information was compiled with input from the Department of Finance. The information provided is on a statewide basis for each community college district by fiscal year. Thus, this information must be compared with the actual claims filed and offsets reported.

#### Review by the State Controller's Office

Commission staff forwarded the new information from the Chancellor's Office to the State Controller's Office to review actual offsets taken against the claimed amounts. On January 17, 2008, the Controller's Office forwarded the worksheets documenting their review.

#### Revised Final Staff Analysis – January 2008 Hearing

Commission staff reviewed the new information from the Chancellor's Office and the State Controller's Office to revise the proposed statewide cost estimate.

#### Methodology

##### *Fiscal Years 1998-1999 through 2004-2005*

The proposed statewide cost estimate for fiscal years 1998-1999 through 2004-2005 is based on the total of actual reimbursement claims filed with the SCO for these years.

##### *Fiscal Years 2005-2006 through 2007-2008*

Staff used 2004-2005 actual costs as the base for calculating estimated costs for fiscal years 2005-2006 through 2007-2008 by multiplying by the implicit price deflator, as follows:

- 2005-2006 cost estimate is calculated by multiplying the 2004-2005 total by the implicit price deflator for 2005-2006 (6%);
- 2006-2007 cost estimate is calculated by multiplying the 2005-2006 cost estimate by the implicit price deflator for 2006-2007 (3.9%); and,
- 2007-2008 cost estimate is calculated by multiplying the 2006-2007 cost estimate by the implicit price deflator for 2007-2008 (2.6%).

##### *Revisions Based on 2% Offsetting Revenues Reported by the Chancellor's Office for Enrollment Fee Collections*

Adjustments are made for unreported 2% offsetting revenues for enrollment fee collections, as reported by the Chancellor's Office for fiscal years 1998-1999 through 2004-2005. Although the Chancellor's Office reported 2% offsetting revenues for fiscal years 2005-2006 through 2007-2008, staff calculated the 2% claimed differences for those years by multiplying the adjustment

for 2004-2005 by the implicit price deflator, as detailed above. This was necessary because only a limited number of claims were filed and most did not include offsets. The total adjustment would be \$5,834,838.

*Revisions Based on Board Financial Assistance Program (BFAP) Administrative Allowance (\$.91 X enrollment fee credit unit for each student for whom fees are waived)*

The Chancellor's Office provided additional information on two different offsets for the fee waiver program. Although the parameters and guidelines identify both offsets, the Program Manual Definitions provided by the Chancellor's Office states that the administrative allowance (.91) to administer the BOG Fee Waiver Program may be expended solely for financial aid professional, technical, clerical and/or temporary staff (including student help) who report directly to the financial aid director. Funds may not be used for salaries for personnel at the level of financial aid manager or above. In addition to these specific personnel costs funds may also be used for expenses associated with staff training and for the development and production of financial aid outreach materials. Funds may also be used for computer hardware or software necessary for and solely dedicated to the delivery of student financial aid.

Thus, based on this information, staff finds that adjustments should be made for unreported offsetting revenues for the enrollment fee waiver program (.91), as reported by the Chancellor's Office for fiscal years 1998 through 2004-2005. Although the Chancellor's Office reported offsetting revenues for fiscal years 2005-2006 through 2007-2008, staff calculated the adjustments for those years by multiplying the adjustment for 2004-2005 by the implicit price deflator, as detailed above. The total adjustments would amount to \$25,052,664.

*No offset adjustments are made based on the BFAP 2% Fund.*

Although offsets may be taken if BFAP 2% Funds are used to pay for the Fee Waiver Program, there is no mandate for such funds to be used for this program. According to the Chancellor's Office, each year the college receives an amount equal to 2% of the total fees waived to be used in the college general fund. These funds do not have to be spent on the administration of student aid. Therefore, staff does not include an adjustment for the 2% of the total fees waived by the claimant community college districts.

Proposed Statewide Cost Estimate - Revised

The total amount claimed and estimated for ten fiscal years is \$ 193,015,788. However, based on the new information provided by the Chancellor's Office and the review of actual offsets reported by the Controller's Office, staff proposes that this total be adjusted by \$30,887,503. Thus, staff's proposed statewide cost estimate, as revised, is \$ 162,128,285.

**Conclusion**

On January 31, 2008, the Commission on State Mandates adopted a statewide cost estimate of \$162,128,285 for the costs incurred by community college districts to implement the state-mandated program from July 1, 1998 through June 30, 2008.



***Binding Arbitration***  
**(01-TC-07)**

Code of Civil Procedure

Sections 1299.2, 1299.3, 1299.4, subdivision (b),  
1299.5, subdivision (a), 1299.6, subdivision (a),  
1299.8 and 1299.9, subdivision (b)

Statutes 2000, Chapter 906

Test Claim Filed: October 24, 2001

Reimbursement Period for this Estimate: January 1, 2001, through April 30, 2003

Eligible Claimant: Napa County

Statewide Cost Estimate: \$ 211,341

Adopted: June 26, 2008

The proposed statewide cost estimate includes two fiscal years for a total of \$ 211,341.

**Summary of the Mandate**

The test claim statutes in their entirety were declared unconstitutional by the California Supreme Court on April 21, 2003, as violating portions of article XI of the California Constitution. The basis for the decision is that the statutes (1) deprived the county of its authority to provide for the compensation of its employees as guaranteed in article XI, section 1, subdivision (b); and (2) delegate to a private body the power to interfere with local agency financial affairs and to perform a municipal function, as prohibited in article XI, section 11, subdivision (a). However, before this decision, only one county implemented the new program.

On March 29, 2007, the Commission on State Mandates (Commission) reconsidered the Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law. The Commission adopted a new decision and approved reimbursement for the following state-mandated activities pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
  - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
  - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
  - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
  - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
  - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
  - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).<sup>12</sup>

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<sup>12</sup> Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).<sup>13</sup>
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).<sup>14</sup>

### **Proposed Parameters and Guidelines**

The proposed parameters and guidelines for this program are also on this agenda. If adopted, the State Controller's Office will issue claiming instructions within 60 days; and one eligible claimant may file reimbursement claims. The original claimant, City of Palos Verdes, did not incur actual costs but filed the test claim based on estimated costs. The County of Napa joined the claim as a co-claimant and alleged increased actual costs incurred during the period of reimbursement, January 1, 2001 through April 20, 2003. (Throughout this test claim proceeding, we have identified only one county that is an eligible claimant.)

### **Proposed Statewide Cost Estimate**

On May 21, 2008, the Commission staff issued a Proposed Statewide Cost Estimate of \$10,000. The estimate was based on a declaration filed with the Commission on January 24, 2007. In that declaration, Deputy County Counsel Jacqueline M. Gong declared under penalty of perjury, that:

The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.<sup>15</sup>

To prepare the draft staff analysis and proposed statewide cost estimate, staff made the following assumptions regarding the statewide cost estimate for this program:

- There will be only one eligible claimant, County of Napa.
- The actual full cost of the County of Napa's interest arbitration process is yet to be determined. However, there is a declaration to support a statewide estimate in the amount of \$ 10,000.

### **Comments Filed by the Department of Finance and the County of Napa**

On June 3, 2008, the Department of Finance filed comments in support of the Proposed Statewide Cost Estimate of \$10,000. On June 4, 2008, the County of Napa filed a new declaration in support of amending the statewide cost estimate to \$213,341.

The declaration of Jacqueline M. Gong, Deputy County Counsel of Napa, declared that the "actual, full cost of the County's interest arbitration process is yet to be determined. However, I

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<sup>13</sup> Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

<sup>14</sup> Incorporating by reference Code of Civil Procedure section 1283.05.

<sup>15</sup> Request to Join as Co-Test Claimant by County of Napa, filed on January 24, 2007, Declaration of Jacqueline M. Gong, Paragraph 6.

have reviewed documentation that generally identifies staff and time spent in the arbitration process....” Ms. Gong describes the County’s summary of Estimated Staff Time and Costs as an “approximation of the staff time and related costs for conducting the arbitration.” This summary is excerpted below.

Employee Class	Hours	Productive Hourly Rate <sup>16</sup>	Contract Services	Total
Deputy County Counsel	250	\$83.33		\$20,833.33
Human Resources Director	150	\$80.87		\$12,130.50
Principal HR Analyst	20	\$63.49		\$1,269.78
Benefits Administrator	15	\$58.75		\$ 881.25
Legal Secretary	5	\$34.65		\$ 173.23
Asst. CEO	15	\$85.73		\$1,285.95
Auditor-Controller	5	\$88.60		\$ 443.02
CEO Analyst	5	\$64.88		\$ 324.39
Outside Counsel			\$ 126,000	
Expert Witnesses			\$ 50,000	
		Totals	\$176,000	\$37,341.45
Total Estimated Cost	\$213,341			

Footnote 2 of this declaration further explains:

The county retained outside counsel for the arbitration. The services were provided pursuant to Napa County Agreement No. 4489 and the First Amendment to this Agreement .... The contract provided for a maximum amount of \$172,000 for compensation and expenses, including the retention of experts and consultants. In addition, County directly retained one expert witness/consultant to address retirement benefit costs. The estimate of \$176,000 for costs of outside counsel and expert witnesses is based upon a review of documentation relating to invoices paid by the County.

The county also prepared a chart of county staff and others who participated in various reimbursable arbitration activities, based on the proposed parameters and guidelines as modified by claimant and staff and set for hearing on June 26, 2008.

Staff reviewed the contract for retention of outside legal counsel. In Exhibit A, Scope of Work, the contract authorized legal representation in “court proceedings.” Since litigation costs are not reimbursable, staff e-mailed Ms. Gong to request clarification.

Ms. Gong responded:

Our outside counsel did not appear on behalf of or represent the County in any court proceedings. I believe the agreement language regarding court proceedings was included

<sup>16</sup> This rate includes administrative overhead in support of the staff position.

in the event there were potential disputes regarding the scope or application of Code of Civil Procedure Section 1299 et. seq. as the arbitration progressed. Early on, the union initially filed a motion to compel arbitration which I handled on behalf of the County; the County's position was that the motion was without merit and that it had not refused to arbitrate and had in fact proceeded with selection of our arbitration panel member. I did have outside counsel review my pleadings on the motion to compel arbitration, but counsel's billing time in reviewing the pleadings is interspersed with time preparing for the arbitration (strategizing/calling the neutral arbitrator/preparing for the preliminary meeting with the arbitration panel); the time is not clearly separated out. The motion was held in abeyance pending the parties proceeding with arbitration and ultimately dismissed. A rough, ballpark estimate of outside counsel's time on the motion to compel arbitration (consultation- review of pleadings- strategizing about discussions with the neutral arbitrator) amounts to approximately \$2000 (10 hours of attorney time at \$200/hour) and that is probably generous.

Since costs for litigation are not reimbursable, county's estimated cost of \$213,341 is reduced by \$2,000.

Thus, based on staff's review of the County's new declaration, supporting evidence, and clarification of costs for litigation, staff revises the proposed statewide cost estimate to \$211,341.

### **Revised Assumptions**

- There will be only one eligible claimant, County of Napa.
- The actual one-time full cost of the County of Napa's interest arbitration process is yet to be determined. However, a declaration by Deputy County Counsel Jacqueline Gong supports a statewide cost estimate in the amount of \$ 211,341.
- Actual amount to be claimed may be higher than the estimated amount of \$211,341.
- If the County of Napa's actual reimbursement claim is audited by the State Controller, the amount claimed may be reduced.

### **Conclusion**

On June 26, 2008, the Commission on State Mandates adopted a statewide cost estimate of \$211,341 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

## Binding Arbitration: Attachment 1

### Updated Chronology: Collective Bargaining Process, Mediation, and Binding Arbitration

July 2000	Napa County begins collective bargaining process with Deputy Sheriff's Association.
November, December, January, February	Mediation – four occasions
Jan. 1, 2001 Jan. 16, 2001	PERIOD OF REIMBURSEMENT BEGINS During mediation, the DSA requested economic issues be submitted to binding arbitration.
	County consulted with other agencies; the County's Human Resources Director met with legal counsel.
Feb. 20, 2001	Last day of mediation ... County designated its Human Resources Director as its partisan panel member; DSA designated its panel member.
	Discussions between the County's Human Resources Director and legal counsel, the County planned its approach in participating in the joint selection of the neutral arbitrator.
March 2001	County and DSA jointly designated impartial chairperson. <i>Napa County contracts with Curiale Dellaverson Hirschfeld Kelly &amp; Kramer, LLP to represent County, as counsel of record in binding interest arbitration between the County and the Napa County Deputy Sheriffs' Association pursuant to California Code of Civil Procedure Section 1299 et seq. (\$122,000)</i>
April 17, 2001	Parties met with arbitration panel. <ul style="list-style-type: none"> <li>• Identified the disputed economic issues.</li> <li>• Established hearing timetable for exchange of requested information, exhibits, witness lists.</li> <li>• Agreed on hearing dates.</li> </ul> Parties settled on two economic proposals on retirement and dental benefits.
April 17 – May 22	Parties conducted discovery and exchanged documents as agreed to with the arbitration panel: Responses to discovery requests involved staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. County also incurred costs for legal counsel, both in-house and retained outside counsel. County searched for and retained expert witnesses to analyze the fiscal impact of proposed economic issues on the County and its ability to pay, as well as to study the comparability of the County's economic proposals to similarly

	<p>situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	5 days before hearing, parties submitted last best final offer from negotiations.
May 22, 2001	<p>Parties participated in hearing – 3-days.</p> <p>Legal counsel, staff, expert and general witnesses.</p>
	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
	Panel selects the party's last best offer on each disputed economic issue that most nearly adheres to specified factors under CCP 1299.6.
September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p> <p><i>County amends contract with Curiale Dellaverson Hirschfeld Kelly &amp; Kraemer, LLP, by increasing maximum amount by \$50,000.</i></p>

***Handicapped and Disabled Students II***  
**(02-TC-40, 02-TC-49)**

Government Code Sections 7572.55 and 7576  
 Statutes 1994, Chapter 1128, Statutes 1996, Chapter 654

California Code of Regulations, Title 2, Sections 60000 et seq.  
 (Emergency Regulations effective July 1, 1998 [Register 98, No. 26],  
 Final Regulations effective August 9, 1999 [Register 99, No. 33])

Test Claims Filed: June 27, 2003 and June 30, 2003  
 Reimbursement Period for this Estimate: July 1, 2001 through June 30, 2006  
 Eligible Claimants: Counties  
 Statewide Cost Estimate: \$15,159,333  
 Adopted: June 26, 2008

The proposed statewide cost estimate includes five fiscal years for a total of \$15,159,333. This is an average of \$ 3,031,867 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

(1) Fiscal Year	(2) Number of Counties Filing Claims with SCO	(3) Estimated Costs
2001-2002	10	\$3,675,807
2002-2003	7	4,023,666
2003-2004	6	3,346,827
2004-2005	5	2,027,657
2005-2006	6	2,085,376
<b>TOTAL</b>	34	<b>\$ 15,159,333</b>

**Summary of the Mandate**

On May 26, 2005, the Commission on State Mandates (Commission) adopted its Statement of Decision for the *Handicapped and Disabled Students II* program, finding that Government Code sections 7572.55 and 7576, as added or amended in 1994 and 1996, and the joint regulations adopted by the Departments of Mental Health and Education as emergency regulations in 1998 and final regulations in 1999 (Cal. Code Regs., tit. 2, §§ 60000 et seq.), impose a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The County of Stanislaus filed its test claim on June 27, 2003, and the County of Los Angeles filed its test claim on June 30, 2003. The Commission adopted a Statement of Decision on May 26, 2005, and the parameters and guidelines on December 9, 2005.

The State Controller's Office (SCO) issued State Mandated Costs Claiming Instructions No. 2006-03 on February 17, 2006 for filing initial reimbursement claims (fiscal years 2001-02 to 2004-05) with the SCO by June 19, 2006, and for fiscal year 2005-2006 by January 16, 2007.

The Commission issued corrected parameters and guidelines on July 21, 2006 and the SCO issued revised State Mandated Cost Claiming Instructions No. 2007-02 on January 2, 2007. A new filing date of May 2, 2007 was set for filing initial reimbursement claims.

## Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

### A. Interagency Agreements (Cal. Code Regs., tit. 2, § 60030)

The one-time activity of revising the interagency agreement with each local educational agency to include the following eight procedures:

- 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).)

*(The activities of updating or renewing the interagency agreements are not reimbursable.)*

### B. Referral and Mental Health Assessments (Gov. Code, § 7576; Cal. Code Regs., tit. 2, §§ 60040, 60045)

- 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) Provide the assessment plan to the parent. (Cal. Code Regs., tit. 2, § 60045, subd. (b).)
- 7) 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).)
- 8) 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).)
- 9) 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).)
- 10) The county of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. (Cal. Code Regs., tit. 2, § 60045, subd. (h).)

C. 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.

D. Participate as a Member of the Expanded IEP Team When Residential Placement of a Pupil is Recommended (Gov. Code, § 7572.55; Cal Code Regs., tit. 2, § 60100)

- 1) 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. (Gov. Code, § 7572.55, subd. (c).)
- 2) 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).)

- 3) 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).)
  - 4) When the expanded IEP team determines that it is necessary to place a pupil who is seriously emotionally disturbed in 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).)
- E. Case Management Duties for Pupils Placed in Residential Care (Cal. Code Regs., tit. 2, §§ 60100, 60110)
- 1) 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).)
  - 2) 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).)
  - 3) 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).)
  - 4) 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).)
  - 5) 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).)
  - 6) 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).)
  - 7) Evaluate every 90 days 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).)
  - 8) 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).)

F. Authorize Payments to Out-Of-Home Residential Care Providers (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.

G. Provide Psychotherapy or Other Mental Health Treatment Services (Cal. Code Regs., tit. 2, §§ 60020, subd. (i), 60050, subd. (b), 60200, subd. (c))

- 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) *Beginning July 1, 2004*, 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.)*

## Statewide Claiming Data

Staff reviewed the claims data submitted by the county claimants and compiled by the SCO. Based on the original and the revised claiming instructions, fifteen counties filed claims on fiscal years 2001-2002 through 2005-2006, for a total of \$15,159,333.

See Table 1 below:

**TABLE 1**

### STATEWIDE CLAIMING DATA REPORTED BY THE STATE CONTROLLER

Counties	2001-02	2002-03	2003-04	2004-05	2005-2006	
San Francisco <sup>17</sup>	\$ 645,501	\$ 735,233	841,979		\$ 663,064	
Alameda <sup>18</sup>	987,893	147,831				
Fresno	684,308	1,285,229	863,976	592,563		
Inyo	12,883					
Los Angeles		1,703,889	1,572,427			
Mono	12,885					
Monterey				1,272,739	1,036,401	
Nevada	13,801	22,338	22,797	23,527	30,823	
Placer	48,615					
Riverside					125,116	
San Luis Obispo					215,772	
Santa Cruz					14,200	
Solano	1,075,024			122,653		
Tuolumne	134,100	91,621	13,683			
Yolo	60,797	37,525	31,965	16,175		
Totals	3,675,807	4,023,666	3,346,827	2,027,657	2,085,376	\$15,159,333

Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed

<sup>17</sup> The County of San Francisco filed reimbursement claims for fiscal years 2001-2002 through 2003-2004 based on the 2007-02 Claiming Instructions; however, the reimbursement claim for fiscal year 2005-2006 is based on the 2006-03 Claiming Instructions.

<sup>18</sup> The County of Alameda filed a reimbursement claim for fiscal year 2001-2002 based on the 2007-02 Claiming Instructions; however, the reimbursement claim for fiscal year 2002-2003 is based on the 2006-03 Claiming Instructions.

statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

### Assumptions

Staff made the following assumptions:

- 1) The total amount claimed for fiscal year 2001-02 is inaccurate because an additional \$ 1,376,129 was claimed by the Counties of Alameda (\$257,854), Monterey (\$113,960), and Riverside (\$1,004,315) under the *Handicapped and Disabled Students I* program instead of the *Handicapped and Disabled Students II* program.<sup>19</sup>
- 2) Non-claiming counties did not file claims because they did not incur more than \$1000 in increased costs for this program; they previously claimed and received reimbursement for their increased costs under the *Handicapped and Disabled Students I* program; or they *received adequate funding from local educational agencies* pursuant to Government Code section 7576.5 or from the state in the form of direct payments or categorical funding that was specifically allocated to any service provided under this program, or from any other offsetting revenue or reimbursements.
- 3) *The future costs for this program will not be reported as a separate program.* Beginning in fiscal year 2006-07, counties will claim costs under the consolidated parameters and guidelines for the *Handicapped and Disabled Students I, II, and Seriously Emotionally Disturbed Students (Out-of-State Placements)* programs.
- 4) *The actual amount claimed will increase if late or amended claims are filed under the State Mandated Cost Claiming Instructions No. 2007-02.* In February 2008, only 15 counties filed reimbursement claims for this program. Thus, if any counties file late reimbursement claims, the total amount claimed will increase. For this program, late claims may be filed until May 2, 2008.
- 5) *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.
- 6) *Program costs will increase if the number of severely emotionally disturbed students referred to county mental health departments and the costs of services provided increase.*
- 7) *Program costs beginning in fiscal year 2006-2007 will be claimed under consolidated claiming instructions/parameters and guidelines for the entire program. The amounts will be dependent upon the availability, identification and proper deduction of the following offsets identified in the parameters and guidelines:*
  - Funds received by a county pursuant to Government Code section 7576.5.
  - Any direct payments or categorical funding received from the state that is specifically allocated to any service provided under this program.
  - 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.

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<sup>19</sup> State Controller's Revised Audit Reports, Alameda County (May 23, 2007), page 3; Monterey County (December 20, 2006), page 3; and State Controller's Audit Report, Riverside County (February 7, 2007), page 3.

- Private insurance proceeds obtained with the consent of a parent for purposes of this program.
- 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.
- Any other reimbursement received from the federal or state government, or other non-local source.

### Methodology

#### *Fiscal Years 2001-2002 through 2005-2006*

The proposed statewide cost estimate for fiscal years 2001-2002 through 2005-2006 is based on the actual reimbursement claims filed with the SCO for these years. Staff notes that the claims are unaudited and may be inaccurate for the reasons stated above. No adjustments were made to increase the estimate for fiscal year 2001-2002 because the additional \$ 1,376,129 claimed by Alameda, Monterey, and Riverside Counties is accounted for under reimbursement claims filed for *Handicapped and Disabled Students I*.

#### *Fiscal Years 2006-2007 and Future Years*

Staff makes no estimates for fiscal year 2006-2007 and beyond because all increased costs related to this program (also known as AB 3632) may be claimed as part of a consolidated reimbursement claim for the “AB 3632” program (State Mandated Costs Claiming Instructions No. 2007-03).

Both the 2006 and 2007 Budget Acts<sup>20</sup> appropriated \$52 million to the Department of Mental Health “to provide AB 3632 mental health services to special education pupils through a categorical program.” Funds received by counties through this program must be identified by counties and deducted as “offsets.” The proposed 2008-09 budget includes \$104 million for this program.

Staff issued the draft staff analysis and proposed statewide cost estimate on April 25, 2008. Department of Finance filed comments on May 20, 2008, concurring with the staff analysis that costs for this period may be higher as eligible claimants may have submitted late or amended claims subsequent to the drafting of the staff analysis.

### **Conclusion**

On June 26, 2008, the Commission on State Mandates adopted a statewide cost estimate of \$15,159,333 for the costs incurred by counties to implement the state-mandated program from, 2001-2002 through 2005-2006.

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<sup>20</sup> Department of Mental Health, Item 4440-104-001, Statutes 2006, chapter 47 and Statutes 2007, chapter 171.

### **III. JOINTLY DEVELOPED STATEWIDE ESTIMATE OF COSTS**



**Statewide Estimate of Costs**  
**Jointly Developed by the County of Los Angeles and Department of Finance**  
**Firearm Hearings for Discharged Inpatients (99-TC-11)**  
**Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)**  
**Statutes 1999, Chapter 578**  
**Initial Period of Reimbursement: July 1, 1998 through June 30, 2007**  
**Budget Year: 2009-2010**  
**Eligible Claimants: Counties and City and County**  
**Adopted: June 26, 2008**  
**Amount of Statewide Estimate of Costs: \$154,675**

**I. Summary of Statewide Estimate of Costs**

The Department of Finance and the County of Los Angeles (test claimant) developed the statewide estimate of costs (SEC) based on self-reported, unaudited survey data from eighteen (18) counties responding to the Firearm Hearings for Discharged Inpatients Reasonable Reimbursement Methodology (RRM) survey. The SEC includes nine fiscal years for a total cost of \$154,675 (no costs were incurred in the 1998-99 fiscal year). This averages to \$17,186 per year.

According to the Department of Justice (DOJ), the eighteen respondents represented the majority of the counties who process firearm hearing cases under the test claim statutes. DOJ estimated that the total number of these firearm hearing cases reported statewide is approximately 300 per year; and the average number of cases reported by the surveyed claimants is approximately 316. Although DOJ estimated that the average number of cases may increase to 600 per year, this increase has not been reflected in the statewide estimate of costs. The SEC may decrease if some eligible county claimants are unable to meet the \$1,000 minimum threshold for filing reimbursement claims, or may increase if the number of cases increases to 600 per year.

Statewide Estimate of Costs (Fiscal Years 1998-99 to 2007-08)  
Firearm Hearings for Discharged Inpatients

Fiscal Year	Number of Cases	RRM	<i>Total Costs</i>
1998-1999	0	\$36	\$0.00
1999-2000	343	\$41	\$14,063
2000-2001	261	\$46	\$12,006
2001-2002	232	\$51	\$11,832
2002-2003	376	\$56	\$21,056
2003-2004	596	\$61	\$36,356
2004-2005	232	\$66	\$15,312
2005-2006	154	\$71	\$10,934
2006-2007	116	\$76	\$8,816
*2007-2008	300	\$81	\$24,300
Statewide estimate of costs	<b>2,610</b>		<b>\$154,675</b>

\*Estimated average number of cases per year.

## **II. Summary of the Mandate and Reimbursable Activities**

On April 26, 2006, the Commission adopted its Statement of Decision finding that subdivisions (f) and (g) of Section 8103 of the Welfare and Institutions Code (test claim statute) imposed a reimbursable state-mandated program on counties within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code for the district attorney's activities in representing the People of the State of California in civil hearings.

Statutes 1999, Chapter 578 established hearing procedures for persons detained for mental health treatment and evaluation, and eventually discharged, to challenge the firearm prohibition law through a civil hearing in superior court. Under the firearm prohibition law, the detained patient shall not own, possess, control, receive, or purchase a firearm for five years except as permitted pursuant to subdivisions (f) and (g) (subject hearings) of the test claim statutes.

Any county or city and county that have a district attorney's office that incurs increased costs may claim reimbursement for the activities identified below, at the rates established by the reasonable reimbursement methodology adopted by the Commission.

1. District attorney's services required to process a case related to the subject hearings. Activities include, but are not limited to, performing necessary legal tasks to prepare and plead case at the hearing.
2. Legal secretary/paralegal services required to process a case related to the subject hearings. Activities include, but are not limited to, performing administrative functions necessary to process documents for the hearing.
3. Expert witness services required to provide consultation on a case related to the subject hearings. Activities include consulting services provided at the hearing.

### **Conclusion**

On June 26, 2008, the Commission on State Mandates adopted a statewide estimate of costs of \$154,675 for the costs incurred by counties and a city and county to implement the state-mandated program from 1998-1999 through 2007-2008.

## IV. PENDING STATEWIDE COST ESTIMATES

	<b>Local Agencies</b>		<b>School Districts</b>
1.	<i>California Fire Incident Reporting System (CFIRS) Manual, 4419, 00-TC-02</i>	17.	<i>Behavioral Intervention Plans, 4464*</i>
2.	<i>Domestic Violence Arrests and Victim Assistance, 98-TC-14</i>	18.	<i>Charter Schools III, 99-TC-14</i>
3.	<i>Post Conviction: DNA Court Proceedings, 00-TC-21, 01-TC-08</i>	19.	<i>Pupil Discipline Records &amp; Notification to Teachers: Pupils Subject to Suspension or Expulsion, 00-TC-10; 00-TC-11</i>
4.	<i>Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22*</i>	20.	<i>CalSTRS Creditable Compensation, 01-TC-02; 02-TC-19</i>
5.	<i>In-Home Supportive Services II, 00-TC-23</i>	21.	<i>Missing Children Reports, 01-TC-09</i>
6.	<i>Mentally Disordered Offenders: Treatment as a Condition of Parole, 00-TC-28, 05-TC-06</i>	22.	<i>Pupil Safety Notices, 02-TC-13</i>
7.	<i>Racial Profiling: Law Enforcement Training, 01-TC-01</i>	23.	<i>Reporting Improper Governmental Activities, 02-TC-24*</i>
8.	<i>Local Recreational Areas: Background Screenings, 01-TC-11</i>		
9.	<i>Modified Primary Election, 01-TC-13*</i>		
10.	<i>Fifteen Day Close of Voter Registration, 01-TC-15</i>		
11.	<i>Fire Safety Inspections of Care Facilities, 01-TC-16</i>		
12.	<i>Domestic Violence Background Checks, 01-TC-29*</i>		
13.	<i>Local Government Employment Relations, 01-TC-30*</i>		
14.	<i>Local Agency Formation Commissions, 02-TC-23*</i>		
15.	<i>Permanent Absent Voter II, 03-TC-11*</i>		
16.	<i>Voter Identification Procedures, 03-TC-23*</i>		

\* Parameters and Guidelines Phase