

Adopted: 7/22/93
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PARAMETERS AND GUIDELINES
Chapter 1579, Statutes of 1988
Chapter 768, Statutes of 1991
LAW ENFORCEMENT/INMATE AIDS TESTING

I. SUMMARY OF MANDATE

Chapter 1579, Statutes of 1988 added Title 8, commencing with Section 7500, to Part 3 of the Penal Code, to require the implementation of a new program of testing the following individuals for exposure to the Human Immunodeficiency Virus (HIV):

1. Law enforcement personnel
2. Inmates of correctional institutions
3. Persons under arrest or taken into custody
4. Parolees and probationers

I The provisions of Title 8 require that all law enforcement employees report to the chief medical officer any instance in which they come into contact with the bodily fluids of an inmate, a person under arrest, or in custody, and a parolee or probationer. Furthermore, Title 8 also establishes the bases for both law enforcement employees and inmates of a correctional institution to petition the chief medical officer for testing of specified individuals for the presence of HIV.

Title 8 of the Penal Code also establishes the various activities of the chief medical officer in implementing its provisions and for the establishment of a three-person committee to review appeals by persons to be tested for the presence of HIV.

Chapter 768, Statutes of 1991 (Chapter 768/91), added section 7514, subdivision (b), and section 7555 to the Penal Code.

Subdivision (b), of Penal Code section 7514, requires local law enforcement agencies that filed a request for an HIV test of an inmate of a correctional facility, an individual taken into custody, or a parolee/probationer, during the previous calendar year, to report the data to the Joint Legislative Committee on Prison Construction and Operations annually, until January 15, 1995. These reports are to contain data regarding the request for a test, plus specifics regarding the disposition of each request, the counseling provided, and its extent for each case.

I Penal Code section 7555 provides that Title 8 of the Penal Code, commencing with section 7500, regarding **AIDS** testing, will remain operative until July 1, 1994.

II. COMMISSION ON MANDATES DECISION

At its hearing of January 24, 1991, the Commission determined that, with the exception of the below cited Sections, Title 8, of Part 3 of the Penal Code, commencing with section 7500, as enacted by Chapter 1579, Statutes of 1988, requires local agencies to implement a new program, or a higher level of service in an existing program, within the meaning of Government Code section 17514 and section 6 of Article XIIIIB of the California Constitution.

The Commission also determined that Penal Code sections 7500 through 7504, inclusive; section 7518, subdivision (a); section 7540; section 7550; section 7552; and section 7553 do not require local agencies to implement a new program, or a higher level of service in an existing program, within the meaning of Government Code section 17514 and section 6 of Article XIIIIB of the California Constitution.

At its hearing of May 27, 1993, the Commission determined that Penal Code section 7514, subdivision (b), and Penal Code section 7555, require local agencies to implement a new program or a higher level of service in an existing program within the meaning of Government Code section 17514 and section 6 of article XIIIIB of the California Constitution.

III. ELIGIBLE CLAIMANTS

All counties and cities that incur costs as the result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF CLAIM

Section 17557 of the Government Code requires test claims to be submitted on or before December 31 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year.

Chapter 1579, Statutes of 1988, was an urgency statute, and became effective September 30, 1988. The test claim for this mandate was filed by the County of Fresno on November 30, 1989. Therefore, reimbursement claims for those provisions set forth in Chapter 1579, Statutes of 1988, may be filed for costs incurred on or after September 30, 1988.

Chapter 768, Statutes of 1991, was an urgency statute, and became effective October 9, 1991. The test claim for this mandate was filed by the County of Fresno on December 31, 1992. Therefore, reimbursement claims for those provisions set forth in

Chapter 768, Statutes of 1991, may be filed for costs incurred on or after October 9, 1991.

Actual costs for one fiscal year should 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(d)(3), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs per claimant for a given fiscal year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

Penal Code section 7555, provides the provisions of Title 8 of the Penal Code, commencing with section 7500, regarding AIDS testing, shall remain operative only until July 1, 1994, and as of January 1, 1995, is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that dates upon which this title becomes inoperative and is repealed.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Counties and cities shall be reimbursed for the increased costs which they are required to incur to provide testing for antibodies for Human Immunodeficiency Virus (HIV) of law enforcement personnel, inmates of correctional institutions, persons under arrest or taken into custody, and parolees and probationers.

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable:

1. Obtaining compliance with officer/inmate request and ensuring that procedures are followed.
 - a. Contact with offended parties and offenders.
 1. Receipt of reports.
 2. Time of county health officer or his or her designee, to review, evaluate, and determine whether there is a significant risk that HIV was transmitted, and make written recommendations.

3. If request for HIV testing is denied and appeal is filed, the costs incurred for the panel's hearing of the appeal.

NOTE: The cost of arranging for the appeals panel is not a reimbursable activity. This function is performed by the Department of Health Services, Office of AIDS. Pursuant to Penal Code section 7515, subdivision (b), the appeals panel will consist of the chief medical officer making the original decision, a representative of the law enforcement agency or institution that filed the report, and physician/surgeon who will be selected, appointed, and reimbursed by the Department of Health Services.

4. If request for HIV testing is approved, costs incurred in the location of offended parties and offenders, as well as costs incurred in any appeal filed from the granting of HIV testing including the costs incurred for the panel's hearing of the appeal.
- b. Proceeding with action to secure compliance with order for HIV antibody testing including:
1. Costs incurred in pre-test and post-test counseling and specimen collection.

Counseling activities should not exceed the recommended time frames set forth in the "Confidential Testing Program Policies and Guidelines" issued by the State Department of Health Services, Office of AIDS. If the recommended time limits are exceeded, an explanation justifying why additional time was needed, as well as, documentation of the additional time expended must be submitted.
 2. Costs incurred in laboratory testing including, but not limited to, paperwork associated with laboratory testing, labeling of specimen, preparation of lab slip, documentation of laboratory tests and results, and submission of claims.
 3. Costs incurred in laboratory testing including, but not limited to, personnel costs, laboratory testing and purchase of laboratory supplies.

4. Costs incurred in the education of correctional facility staff regarding the AIDS testing program.
 5. If HIV antibody test is positive, costs incurred in the notification of commanding officer of facility and at time of inmate release, notification of parole/probation officer.
 6. Costs incurred in program supervision and quality assurance.
2. The preparation and submission of a report to the Joint Legislative Committee on Prison Construction and Operation as required by Penal Code section 7514, subdivision (b). The report shall be filed by each law enforcement agency in which a request for an HIV test has been filed during the previous calendar year, and shall report data on all requests made during that period, plus specifics of the disposition of each request, the counseling provided, and its extent for each case.

Allowable costs include salary and benefits, services and supplies, postage, travel, laboratory costs, contract costs, overhead, and related costs that are incurred in discharge of this mandated program.

VI. CLAIM PREPARATION

Reimbursement claims should show the actual increased costs incurred by the local agencies in complying with this mandate. Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

Supporting Documentation

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. the average number of hours devoted to each function may be claimed if supported by a documented time study.
2. Services and Supplies

Only expenditures which can be identified a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Costs

Indirect costs may only be claimed in the manner described by the State Controller in his claiming instructions.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings that claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, reimbursement specifically received from this mandate from any non-local source (e.g., federal or state grant) shall be identified and deducted so only net local costs are claimed.

IX. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.