



September 3, 2013

Received
September 3, 2013
Commission on
State Mandates

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Ms. Heather Halsey
Executive Director
Commission on State Mandates
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Re: Request for Comment, *Interagency Child Abuse and Neglect Investigation Reports* Case No.: 00-TC-22

Dear Ms. Halsey:

The California State Association of Counties (CSAC) submits these comments in response to the Commission's June 14, 2013 request. The Commission sought comments following a Department of Finance comment letter suggesting that 2011 Realignment and the addition of section 36 to article XIII of the California Constitution made by Proposition 30 may have an impact on the obligation of the State to reimburse counties for the costs of performing the mandates related to the Interagency Child Abuse and Neglect Investigation Reports (ICAN). Specifically, the Commission posed the following questions:

- 1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 1116, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of the "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?**

The ICAN activities, as identified by the Commission in its December 6, 2007 Statement of Decision, are not among the "public safety services" that are covered by section 36 of article XIII of the California Constitution (Prop. 30). Prop. 30 defines "public safety services" to include those "[p]reventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services." (Cal. Const, art. XIII, § 36, subd. (a), par. (1)(C).) Section 36 also states that "2011 Realignment Legislation" is any legislation enacted on or before September 30, 2012 that is entitled 2011 Realignment and assigns Public Safety Services responsibilities to local agencies. (Cal. Const., art. XIII, § 36, subd. (a), par. (2).)

The Department of Finance correctly notes that under Prop. 30, a mandate of a new program or higher level of service imposed on a local agency by 2011 Realignment Legislation is not a mandate requiring the State to provide a subvention of funds. (Cal. Const., art. XIII, § 36, subd. (c), par. (3).) Under that provision, however, "public safety services" are only exempt from reimbursement if they were assigned to local agencies by 2011 Realignment Legislation. There is nothing in Prop. 30 that broadly exempts from reimbursement any program that could potentially fit within the definition of "public safety services."

The ICAN mandates were not among those transferred to local agencies by 2011 Realignment Legislation. The statutory provisions comprising the ICAN mandates were all adopted prior to Prop. 30, and there is no legislation entitled “2011 Realignment Legislation” adopted prior to September 30, 2012 that realigns or even mentions any of the statutory provisions constituting the ICAN mandates. As such, Prop. 30 has no impact on the ICAN Parameters and Guidelines currently pending before this Commission.

This conclusion is bolstered by how the funding levels for 2011 Realignment were determined. For the health and welfare programs defined in paragraph (1)(C) – (E) of subdivision (a) of section 36 of article XIII, 2011 Realignment involved a shift in funding ratios. (See Stats 2012 ch 35 (SB 1013).) For these programs, the State had been funding a specified percentage of the programs prior to 2011 Realignment, but legislation entitled “2011 Realignment Legislation” was adopted to change the funding ratios between the state and counties for those programs. As a practical matter, the cost of this funding shift was factored into the amount of the funding deposited into the Local Revenue Fund 2011.

However, as this Commission determined in its Statement of Decision, “there is no evidence in the record to demonstrate that the mandated [ICAN] activities have been offset or funded by the state or federal government in a manner and amount ‘sufficient’ to fund the cost of the state mandate.” Further, the Statement of Decision notes that none of the augmentation funding identified by DOF for the ICAN mandates included costs incurred by local law enforcement. Thus, the ICAN mandates were not being funded by the State prior to 2011 Realignment, and therefore were not included in the base funding for child welfare programs or the new law enforcement responsibilities in 2011 realignment funding.

Because the ICAN mandates were not realigned by 2011 Realignment Legislation and were not factored into the base funding for 2011 Realignment, Prop. 30 is not applicable to the issue pending before this Commission.

2. **Does the shift of complete or partial funding responsibility from state to local governments of existing approved mandated activities result in a mandate “imposed by the 2011 Realignment Legislation” within the meaning of paragraph (3)?**

Because the ICAN mandates were not realigned by 2011 Realignment Legislation, this issue is not currently before this Commission. The answer to this question necessarily involves certain factual determinations. As such, CSAC urges the Commission not to reach this issue until such time as the question is directly posed by a mandate pending before the Commission.

3. **Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?**

Prop. 30 provides that any legislation enacted after September 30, 2012, or any regulations, executive orders, or administrative directives implemented after October 9, 2011, that have an

overall effect of increasing costs already borne by a local agency for programs or levels of service mandated by 2011 Realignment Legislation need only be implemented to the extent funding is provided. (Cal. Const., art. XIII, § 36, subd. (c), par. (4)(A)-(C).) Thus, by its terms, Prop. 30 only applies to future new mandates or increases in levels of service related to programs realigned by 2011 Realignment Legislation, and not to mandates that existed prior to 2011 Realignment. Any mandate in existence at the time of 2011 Realignment that was realigned by 2011 Realignment Legislation must be implemented in full, whether or not fully funded, and is not subject to mandate claims. (Cal. Const., art. XIII, § 36, subd. (c), par. (3).)

This question, however, is not relevant to the issue pending before the Commission since the ICAN mandates were not realigned to local agencies by 2011 Realignment Legislation. This Commission should not opine on this issue until such time as the question is directly posed by a mandate pending before the Commission.

CSAC appreciates this opportunity to submit comments on these important issues. Should you have any questions, please do not hesitate to contact Geoffrey Neil at (916) 327-7500, ext 567 or gneill@counties.org.

Sincerely,



Jean Kinney Hurst
Senior Legislative Representative