DHCS
DAVID MAXWELL-JOLLY
Director

State of California—Health and Human Services Agency
Department of Health Care Services

ARNOLD SCHWARZENEGGER
Governor

June 11, 2009

VIA FACSIMILE AND U.S. MAIL

Ms. Paula Higashi
Executive Director
Commission on State Mandates
800 Ninth Street, Suite 300
Sacramento, California 95814

Re: Department of Health Care Services' Comment on Test Claim 08-TC-04
Medi-Cal Eligibility of Juvenile Offenders

Dear Ms. Higashi:

The Department of Health Care Services (Department) respectfully submits its comments to the Alameda test claim cited above.

If you have any questions concerning this submission, please contact Mr. Jannsen Tan at (916) 440-7715 or via email at jtan@dhs.ca.gov.

Sincerely,

Michael E. Kilpatrick
Assistant Chief Counsel

Jannsen L. Tan
Staff Counsel

Enclosure

cc: See attached mailing list

Commission on State Mandates

Original List Date:
Last Updated:
List Print Date: 02/09/2009
Claim Number: 08-tc-04
Issue: Medi Cal Eligibility of Juvenile Offenders

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901
Fax: (916) 939-7801

Ms. Harmeet Barkschat
Mandate Resource Services, LLC
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1280
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 449-5252

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Tel: (916)595-2646
Fax:

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244
Fax: (916) 368-5723

Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	**Claimant Representative** Tel: (916) 471-5538 Fax: (916) 366-4838
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339
Mr. Leonard Kaye County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-9791 Fax: (213) 617-8106
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 12th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Tel: (909) 386-8850 Fax: (909) 386-8830
Ms. Sharon K. Joyce Department of Corrections Legal Affairs Division P.O. Box 942883 Sacramento, CA 94283-0001	Tel: Fax:
Ms. Sharon Stevenson Department of Health Care Services 1501 Capitol Avenue, MS 0010 P.O. Box 997413 Sacramento, CA 95814	Tel: Fax:
Mr. Louie Martirez Alameda County 1221 Oak Street, STE. 555 Oakland, CA 94612	**Claimant** Tel: (510) 208-9922 Fax: (510) 272-3784

DECLARATION OF JOHN ZAPATA

I, John Zapata, declare that I am over the age of eighteen and am not a party to this action. If called to testify, I would and could testify competently from my own personal knowledge, as follows:

I

I am a Unit Chief in the California Department of health Care Services, Medi-Cal Eligibility Division. I have held this position since 2005. My unit is responsible for implementation of Eligibility requirements related to the institutional status of Medi-Cal applicants and beneficiaries, including, but not limited to the eligibility of incarcerated individuals and individuals in institutions for Mental Disease. I first joined the Medi-Cal Eligibility Division as an analyst in 1989. I received a Bachelors Degree in Urban Studies and Planning from the University of California, San Diego. I received a Masters Degree in Public Affairs from the University of Texas at Austin.

II

Medi-Cal is California's version of the federal Medicaid program. The Medicaid program is funded with State and federal funds. In California, the Department of Health Care Services has delegated the function of establishing and terminating Medi-Cal eligibility to the 58 County Welfare Departments under Welfare and Institutions Code Section 14016 and California Code of Regulations title 22, section 50101 (a) (1). As a result, Counties receive reimbursement from both state and federal funding for making eligibility determinations for juvenile detainees who want Medi-Cal upon release. Under current Medi-Cal rules, incarcerated individuals are not eligible for Medi-Cal benefits.

III

Welfare and Institutions Code section 14029.5 requires the County Probation department to forward available information about specified incarcerated juveniles to the County Welfare Department. To the extent that county juvenile facilities are responsible for providing necessary health care to juveniles who need care immediately upon release, the savings that result to the county when Medi-cal eligibility is established immediately upon release should more than offset the cost of transmitting information about the juvenile to another county agency.

IV

Under current Medi-Cal rules, counties have 45 days to determine Medi-Cal eligibility for non-disabled individuals and up to 90 days if the individual is disabled. Historically, this has led to delays in obtaining Medi-cal benefits for incarcerated individuals who need health care immediately upon release. If a county releases an incarcerated juvenile before Medi-Cal eligibility is established, it is reasonable to assume that some, if not all of the juvenile's health care will be covered by county programs or the correctional facility. Any

services provided by non-Medi-Cal providers during this time would not be reimbursed to the county even after Medi-Cal eligibility is established. The process required by Welfare and Institutions Code section 14029.5 will facilitate the establishment of Medi-Cal Eligibility effective immediately upon release and therefore should reduce county funded health care costs for eligible juveniles.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration is signed in Sacramento, California on June 11, 2009.

John A. Zapata

John Zapata

Introduction

The current test claim of Alameda County regarding alleged increased costs to county probation and county welfare departments does not meet the standards for a state mandate and should be denied. The requirements of SB1469 do not impose a new program or higher level of service because under existing laws, counties already are required to assist all applicants and beneficiaries and provide care for all juvenile detainees.

Statement of the Law

"Medi-Cal" is the name given to California's system for administering the federal government's Medicaid program which provides financial assistance to states so that they may furnish health care to qualified indigent persons[1]. The Department of Health Care Services (DHCS) is the state agency charged with administering the Medi-Cal program. As the single state Medicaid agency, DHCS is responsible for beneficiary eligibility determinations. DHCS has delegated the function of establishing and terminating eligibility to the County Welfare Department (CWD) under Welfare and Institutions Code section 14016 and California Code of Regulations, title 22, section 50101 (a) (1). As a result, Counties receive funding from both state and federal funding for making eligibility determinations and redeterminations of juvenile detainees upon release.[2] Pursuant to Welfare and Institutions Code section 14012, California Code of Regulations, title 22, section 50189, 42 Code of Federal Regulations section 435.945(d), the CWD has an obligation to conduct eligibility screening of all applicants and to perform redeterminations of individuals whenever there is a change of circumstances or at least every twelve months.

Under Welfare and Institutions Code section 14053, and California Code of Regulations, title 22, section 50273, individuals who are inmates of public institutions are not eligible for Medi-Cal. These include minors in juvenile detention facilities, minors in correction facilities, minors on juvenile intensive probation in a juvenile detention center, and minors in a secure treatment facility that is part of the criminal justice system. In other words, any juvenile taken into custody loses Medi-Cal eligibility when he or she is booked into a correctional facility. This is in compliance with federal law that provides that Medicaid [Medi-Cal] benefits generally cannot be paid for incarcerated individuals, although, federal law allows incarcerated individuals to retain eligibility.

---

[1] Welfare and Institutions Code section 1400 et seq.; 42 United States Code section 1396 et seq.

[2] 42 Code of Federal Regulations section 431.11(d) "If eligibility is determined by State agencies other than the Medicaid agency or by local agencies under the supervision of other State agencies, the plan must include a description of the staff ...and the functions they perform." California Code of Regulations, title 22, sections 50023, 50101 and 50141; 42 United States Code Annotated section 1396a(a)(5); 42 Code of Federal Regulations section 431.11(d) [the single state agency may delegate the eligibility determination to local agencies]

SB 1469, which enacted Welfare and Institutions Code section 14029.5, requires the County Juvenile Detention (County Probation Department) facility to provide specified information relating to a ward of the county who is scheduled to be released to the appropriate CWD. It also requires the county to initiate an application and determine the individual's eligibility for the Medi-Cal program[3]. SB 1469 specifically requires the County Probation Department to notify the CWD when a juvenile is ordered incarcerated for 30 days or longer so the CWD can determine if the juvenile will be eligible for Medi-Cal or the Healthy Families Program once he or she is released.

According to the Alameda County Probation Department website, "Deputy Probation Officers fulfill the roles of Peace Officer, Case Manager, and Advocate for youths involved in delinquent behaviour. Probation Officers serve in various functions, including Intake, Investigations, Supervision of High Risk Youths and Gender Specific Girl's Caseloads, Community Probation Program, Out-of-Home Placement, Family Preservation Program, Home Supervision and Court Officers."[4] Counties are responsible for the case management of juveniles who have been incarcerated in the juvenile justice system[5]. Senate Bill 81 (2007) section 25 which codified Welfare and Institutions Code section 1766 states that if a person has been committed to the Department of Corrections and Rehabilitations, Division of Juvenile Facilities, the county of commitment shall supervise the parole and within 60 days of intake, the Division of Juvenile Facilities shall provide the County Probation Department with a treatment plan for the ward. Additionally, SB 81 (2007) section 31 also clearly provides that it is the intent of the Legislature that the authority for counties to receive wards who otherwise would be committed to the custody and supervision of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall not constitute a higher level of service or new program in excess of the programmatic funding included under SB 81. It also adds that it is the intent of the Legislature that the state has provided funding from an adequate level of care for youthful offenders received by the county pursuant to SB 81 and that each county shall be limited in its expenditures to funds specifically made available for such purposes.

For indigents, counties are required under Welfare and Institutions Code section 17000 *et seq.,* to provide for necessary medical services to indigents not covered by any other program. Funding for medical services of indigent youth must come from the County.

Welfare and Institutions Code section 14029.5 merely requires the County Probation Department to forward the incarcerated juvenile's information to the CWD in order to reestablish previous Medi-Cal eligibility. The present test claim states that it takes a half hour per inmate, but it appears that the Country Probation Department just

---

[3] SB 1469

[4] www.co.alameda.ca.us/probation/jfs.htm

[5] Welfare and Institutions Code section 650 et seq., 850 et seq., and 207.1 (e) (1).

needs to forward a printout of its monthly report to the CWD with the release dates of all juvenile detainees.

I. Does Welfare and Institutions Code section 14029.5 impose a new program or higher level of service within an existing program upon local entities?

Response: Welfare and Institutions Code section 14029.5 does not impose a new program or higher level of service in an existing program upon local entities because Counties are required to assist all applicants and beneficiaries with establishing eligibility to provide comprehensive health benefits to low income persons. Welfare and Institutions Code section 14029.5 merely clarifies the responsibility of the County Probation Department to report the release date and any information in its possession for each juvenile detainee to the CWD. Welfare and Institutions Code section 14029.5 provides:

> Welfare and Institutions Code section 14029.5:
>
> i. the county juvenile detention facility shall provide the appropriate county welfare department with the ward's *name, his or her scheduled or actual release date, any known information regarding the ward's Medi-Cal status prior to disposition, and sufficient information, when available, for the county welfare department to begin the process of determining the ward's eligibility for benefits* under this chapter, including, if the ward is a minor, contact information for the ward's parent or guardian, if available.
>
> ii. the county welfare department *shall initiate an application* for any ward not already enrolled in the Medi-Cal program, and determine the individual's eligibility for benefits under the Medi-Cal program.

Pursuant to Welfare and Institutions Code section 14012; California Code of Regulations, title 22, section 50189, and 42 Code of Federal Regulations section 435.945(d), the CWD has an obligation to conduct eligibility screening of all applicants and to perform redeterminations of individuals whenever there is a change of circumstances or at least every twelve months. This requirement has been codified since the late 1970's.

Welfare and Institutions Code section 14029.5 does not add any function to what the CWD already is doing. Counties already receive sufficient funding from state and the federal government to conduct eligibility determinations.

The notice provided by the County Probation Department to the CWD entail at most, a *de minimis* reallocation of resources that would not result to a reimbursable state mandate.

The County Probation Department is already being compensated for their Case Management activities which include intake, investigations and coordination of services for the juvenile (*see supra*). The ministerial act of providing information which they already possess to the CWD requires no training nor additional costs. The CWD is also already compensated for the redeterminations.

a) No shifting of financial responsibility to local agencies.

The California Constitution article XIIIB, section 6(a), provides, in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...." The purpose of this provision "is to preclude *the state from shifting financial responsibility for carrying out governmental functions to local agencies,* which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIIIA and XIIIB impose. [Citations.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

SB 1469 enacting Welfare and Institutions Code section 14029.5 is not a new program nor does it require a higher level of service because it does not shift the financial responsibility of carrying out governmental functions to local agencies.

The county responsibility for eligibility determinations for all potential applicants and beneficiaries has been in place since at least March 23, 1979, the effective date of 42 Code of Federal Regulations sections 431.11 and 431.10 [both predate the enactment of Government Code section 17514.] Counties and county welfare departments already are being reimbursed for their duties to determine eligibility of all potential applicants or beneficiaries and redetermine eligibility at the time of any change of circumstances, irrespective of the status of the applicant or beneficiary as an inmate, under Welfare and Institutions Codes section 14005.37[6], California Code of Regulations, title 22, section 50120, 50141[7] or redetermination, section 50189.

SB 1469, enacting Welfare and Institutions Code section 14029.5 is simply clarifying that the eligibility determination or redetermination can commence when the County Probation Department learns of the disposition of the juvenile applicant or beneficiary and notifies the CWD.

---

[6] Welfare and Institutions Code section 14005.37 (a)...whenever a county receives information about changes in a beneficiary's circumstances that may affect eligibility for Medi-Cal benefits, the county shall promptly redetermine eligibility c) For purposes of acquiring information necessary to conduct the eligibility determination d)...a count shall make every reasonable effort to gather information available to the county that is relevant to the beneficiary's Medi-Cal eligibility prior to contacting the beneficiary

[7] California Code of Regulations, title 22, section 50141 The county department shall receive and act upon all applications, reapplications, requests for restoration and redetermination without delay and in accordance with the provisions of this article.

The test case alleges new costs to the County Probation Department by the requirement of reporting "sufficient" information to the CWD. However, any additional cost, if any to the County Probation Department, are minimal and are not "costs" for purposes of California Constitution article XIII B, section 6. Not every increase in a locality's budget resulting from compliance with a new state directive is a reimbursable state mandate. Rather, in order for a reimbursable state mandate to be found, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding[8]. This is not the case with SB 1469, since the CWDs are already reimbursed for the eligibility determinations and any cost attributed to notice to the County's Probation Department is but a facet of the its case management duties.

In *City of San Jose v. State of California,* (45 Cal.App.4th 1802, 53 Cal.Rptr.2d 521), Government Code section 29550 authorized counties to charge cities and other local entities for costs of booking into county jails persons who had been arrested by employees of the cities and other entities. (45 Cal.App.4th at p. 1806; 53 Cal.Rptr.2d 521.) The State argued the measure merely reallocated booking costs, and that there was no shifting of cost from state to local entities, therefore it did not fall within article XIII B, section 6. (45 Cal.App.4th at p. 1806; 53 Cal.Rptr.2d 521.) The city contended counties function as agents of the state, charged with enforcement of state's criminal laws; and that detaining and booking are an integral part of this process. (*Id.* at p. 1808; 53 Cal.Rptr.2d 521.) The City of San Jose claims that at the time of trial it had incurred expenses of over $10 million as a result of costs imposed pursuant to Government Code section 29550.

The courts agreed with the State and held that "nothing in article XIIIB prohibits the shifting of costs between local governmental entities." Furthermore, the courts agreed with the finding of the Commission of State Mandates that found maintenance of jails and detention of prisoners, had always been a local matter, and cities and counties were both forms of local government; therefore, there was no shift in costs between *state* and local entities.

Applying the above rationale to the present case, it is clear that the costs of providing notice to the CWD by the County Probation Department, does not entail a finding of a reimbursable state mandate. First, case management of juveniles is a county matter, and providing notice to the parents of minors and the CWD, is part and parcel of its duties as Intake and Case Management (*see supra).* Second, similar to the *San Jose* case, the present test case does not involve a shift in costs between state and local entities. In fact, the statute can be easily complied with a minimum reallocation of resources, if at all, between 2 units in a single local entity.

---

[8] *County of Los Angeles* v. *Commission on State Mandates* 110 Cal.App.4th 1176, 1194, 2 Cal.Rptr.3d 419, 435 (Cal.App. 2 Dist.,2003))

b) No state mandate if the *de minimis* cost can be complied with a minimum reallocation of resources.

Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement[9].

Counties are responsible for the case management of juveniles who have been incarcerated in the juvenile justice system. Deputy Probation Officers fulfill the roles of Peace Officer, Case Manager, and Advocate for youths involved in delinquent behaviour; while Probation Officers serve in various functions, including Intake, Investigations, Supervision of High Risk Youths and Gender Specific Girl's Caseloads, Community Probation Program, etc.

Counties are responsible for the case management of juveniles who have been incarcerated in the juvenile justice system[10]. Senate Bill 81 (2007) section 25 which codified Welfare and Institutions Code section 1766 states that if a person has been committed to the Department of Corrections and Rehabilitations, Division of Juvenile Facilities, the county of commitment shall supervise the parole and within 60 days of intake, the Division of Juvenile Facilities shall provide the County Probation Department with a treatment plan for the ward. Additionally, SB 81 (2007) section 31 also clearly provides that it is the intent of the Legislature that the authority for counties to receive wards who otherwise would be committed to the custody and supervision of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall not constitute a higher level of service or new program in excess of the programmatic funding included under SB 81. It also adds that it is the intent of the Legislature that the state has provided funding for an adequate level of care for youthful offenders received by the county pursuant to SB 81 and that each county shall be limited in its expenditures to funds specifically made available for such purposes.

Welfare and Institutions Code section 14029.5 merely requires the County Probation Department to forward the specific information to the CWD in order to reestablish previous Medi-Cal eligibility for released inmates. The specific information needed by the CWD is limited to the name and release date of the juvenile. Such information is readily available to the County Probation Department as part of its Case Management and Intake responsibilities. The present test claim states that the notification process takes a half hour per inmate, but it appears compliance can be achieved simply by forwarding a printout to the CED with the release dates. Ultimately, the case management of juveniles is a local matter and within the ambit of the counties responsibilities. Therefore, the cost, if any, is minimal and only requires the notice from one unit of the county to the other.

---

[9] *County of Los Angeles* v. *Commission on State Mandates* 110 Cal.App.4th 1176, 1195, 2 Cal.Rptr.3d 419, 436 (Cal.App. 2 Dist.,2003)

[10] Welfare and Institutions Code section 650 et seq., 850 et seq., and 207.1 (e) (1).

In the case of *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194-1195, the courts held:

> "While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state-mandated reimbursable program (*Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 541, 234 Cal.Rptr. 795), our interpretation is supported by the hortatory statutory language that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities." (§ 13519.) Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state-mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by section 13519."

c) SB 1147, enacting Welfare and Institutions Code section 14011.10 effective January 2010 amends and supplements SB 1469.

SB 1469 which enacted Welfare and Institutions Code section 14029.5 was amended by SB 1147 in 2008. Welfare and Institutions Code section 14029.5 must be read in concert with Welfare and Institutions Code section 14011.10, which provides for the suspension rather than termination of eligibility for juvenile inmates and specifically states that no state general fund program shall be created[11].

Welfare and Institutions Code Section 14011.10 (d) states that "Nothing in this section shall create a state-funded benefit or program..."

In guiding the Commission of Mandates in determining whether a state mandate exists, Government Code section 17556 provides that:

> "The commission shall not find costs mandated by the state, as defined in Section 17514,in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

[11] See Welfare and Institutions Code section 14011.10, section (d) as enacted by SB 1147

"xxx-xxx-xxx

"(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

In this case, SB 1147 provides for cost savings and amends 14029.5 to work in conjunction with Welfare and Institutions Code section 14011.10. With the passage of Welfare and Institutions Code section 14011.10 any juvenile already on Medi-Cal prior to incarceration is automatically reinstated as eligible for Medi-Cal on the date of release. This would result in lower costs by the County in the re-determination of the juvenile eligibility for Medi-Cal, since the juvenile's eligibility is merely suspended during the incarceration. This cost savings was not factored in by the County Welfare Department. Cost savings by the County Welfare department would naturally result from the new requirements of 14011.10 since work hours by the County Welfare department would be minimized since the re-determination of eligibility will be less work intensive. The notice by the County Probation Department would automatically suspend eligibility as opposed to terminating eligibility.

II Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose cost mandated by the state?

Response: Yes, the Government Code section 17556 does preclude the Commission from finding that the test claim of Alameda County imposes costs mandated by the State.

The Government Code provides for two exceptions that are relevant in these instances: (1) local agency exception and (2) federal mandate exception. In these instances, this county and other urban counties who are members of the Urban Counties Caucus as well as local counties alcohol and dug program administrators supported this legislation[12]

a) County Stakeholders Supported SB 1469.

Government Code section 17556 subdivision (a) provide: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim

[12] At page 6, Senate Bill Analysis SB 1469, August 23, 2006. "The County Alcohol and Drug Program Administrators Association of California strongly support the bill. They believe that this bill will provide Medi-Cal and other health benefits for eligible adolescents immediately upon their release from juvenile detention facilities.

submitted by a local agency or school district, if, after a hearing, the commission finds..." "The claim is submitted by a local agency...that requested legislative authority for that ... local agency ... to implement the program specified in the statute."

A review of the legislative analyst notes on SB 1469 reveal that Local County advocates[13] supported SB 1469, codified as Welfare and Institutions Code section 14029.5. Supporters of the bill include The County Alcohol and Drug Program Administrators Association of California, California Mental Health Directors Association, Chief Probation Officers of California, City of Los Angeles, City of Santa Monica, County Alcohol and Drug Program Administrators Association, Urban Counties Caucus, and the National Association of Social Workers.

b) There is no state reimbursable mandate if the costs are de minimis and incidental to a federal mandate.

Under the federal mandate exception of Government Code section 17556, the commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

> "xxx-xxx-xxx
>
> "(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> xxx-xxx-xxx

The requirements of this statute come within the federal requirement to redetermine eligibility whenever there is a change in circumstances. Federal law requires states to redetermine eligibility every 12 months or *whenever the agency is informed* of a change in circumstances. This duty is concomitant to the eligibility determinations that are already delegated to the CWD. The CWD is already paid to perform eligibility determinations and redeterminations and naturally, the guidelines in performing such determinations must be followed by the CWD. Part and parcel of its delegated and already paid for duties include "procedures designed to ensure that

[13] At p. 6. *Bill Analysis*, SB 1469, Aug.23, 2006 Senate Rules Committee, Support. "California Mental Health Directors Association, Chief Probation Officers of California, city of Los Angeles, City of Santa Monica, County Alcohol and Drug Program Administrators Association, Urban Counties Caucus."

recipients make timely reports of any changes in circumstances that may affect their eligibility." Hence, the notice provided to the CWD is incidental to its duty.

42 Code of Federal Regulations section 435.916 Periodic redeterminations of Medicaid eligibility:

> "(a) The agency must redetermine the eligibility of Medicaid recipients, with respect to circumstances that may change, at least every 12 months, however--
>
> "(1) The agency may consider blindness as continuing until the review physician under § 435.531 determines that a recipient's vision has improved beyond the definition of blindness contained in the plan; and
> "(2) The agency may consider disability as continuing until the review team under § 435.541 determines that a recipient's disability no longer meets the definition of disability contained in the plan.
>
> "(b) Procedures for reporting changes. The agency must have procedures designed to ensure that recipients make timely and accurate reports of any change in circumstances that may affect their eligibility.
>
> "(c) CWD or Local Agency action on information about changes.
>
> "(1) The agency must promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his eligibility.
>
> "(2) If the agency has information about anticipated changes in a recipient's circumstances, it must redetermine eligibility at the appropriate time based on those changes."

Based on the above federal duty of the CWD to redetermine eligibility based on information on any anticipated changes in a recipients circumstance, there is no state mandate where the costs to WDs are '*de minimis*'. In the recent case of *California School Board Assn. v. State of California*[14]

> "...the Supreme Court specified what costs associated with expulsion of a student from a public school were reimbursable as state mandates. The court determined that although some costs were reimbursable as state mandates, **others were not because they were incidental to federal mandates and were *de minimis***

[14] (March 9, 2009 3rdDCA) 2009 WL 581162 at page 18

> [at 33 Cal.4th at p. 889-890 Emphasis added]....The claimant realized that it was not entitled to state reimbursement for costs that were federally mandated, but asserted a claim for those costs that resulted from state mandates that exceeded the federal due process requirement." [at 33 Cal.4th at p. 885]

The ruling of the court in this case corresponds to the holding of the court in the *San Diego Unified School District v. Commission on State Mandates*[15]

> "Incidental and *de minimis* costs interpreting Gov. Code section 17556 subdivision (c)..."the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections...[the statutes]viewed singly or cumulatively, did not significantly increase the cost of compliance with the federal mandate...for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that re intended to implement an applicable federal law—and whose costs are, in context, de minimis—<u>should be treated as part and parcel of the underlying federal mandate.</u>"

Applying the holding of the court above to the present case, it is clear that the de minimis cost, if any of notifying the CWD, is incidental to the federal mandate delegated to the county of determining and redetermining eligibility. Federal law prohibits Medicaid coverage during incarceration but allows eligibility to be maintained during the interim of incarceration. Welfare and Institutions Code section 14029.5 addresses this federal requirement and makes sure that the juveniles' eligibility is on-line as soon as the juvenile is released. Nothing in Welfare and Institutions Code 14029.5 exceeds the requirements of federal law.

c) *De minimis* cost, if any are offset by savings as a result of the lessened work hours by virtue of the early eligibility of the juvenile under Welfare and Institutions Code Section 14029.5.

Under Government Code section 17553, (2) (B) the test claim must identify: "Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;

Neither the County of Alameda in the Declaration of Patricia Fair or the declaration of Allan Burdick provides anything but estimates in support of the request to confirm that SB 1469 constitutes a state mandate. The estimates of approximately 7.5 hours of work per juvenile for the potential 70,000 juvenile detainees[16] as described by

[15] (2004) 33Cal.4th859, 889.
[16] At page 3, Bill Analysis, Senate Third Reading SB 1469.

the Senate Bill Analysis for SB 1469 and the projection of statewide probation costs of $1,178,926 for Probation Officer services for 24,562 inmates are unsupported by actual data to show both costs and savings.

For an undetermined time period, Alameda County reports actual costs of $1,274.68 for meetings with the state[17] and with its probation department. Alameda County projects annual costs of $14,948.41[18] for the Alameda County Probation Department to send to the Alameda County Welfare Department the names and release dates of juvenile detainees. Alameda County however does not report the value of increased Medi-Cal reimbursement for eligibility of formerly ineligible beneficiaries who required county care under Welfare and Institutions Code section 17000.

Ms. Fair, states that the $1,274.68 was the cost of time for initial meetings to discuss implementation of the statute.[19] Further she estimates that it will take 3.25 hours per "work" plus "2.5" hours per week to process notices, [5.75 hours per week for each individual, i.e., to obtain the name and date of release of each juvenile, send it to the Alameda CWD and issue a Medi-Cal card]. The declaration does not document any time study or task delineation as the basis for these numbers. Furthermore, the activities cited by Ms. Fair associated with those hours involve giving notice to the Social Services Agency, or the CWD. As noted above, such notice can be easily performed with much less work by simply forwarding a computer printout of the information to the CWD. The notices to the parents are also merely incidental to the functions of the county juvenile system. The other activities cited by Ms. Fair, are already being performed by the CWD, which is already being compensated for making eligibility determinations.

In the declaration of Mr. Allan P. Burdick, referring to AB 1489 (sic), he states that the cost per inmate is 30 minutes of a probation officers time ($70 an hour) plus clerical time ($26 per hour) for a blended rate of $48 per hour per juvenile. Total cost $1,178,926 for 24,562 juveniles. It is unclear how Mr. Burdick arrived at his estimated costs since the sole requirement under SB 1469 is to send the name, date of release and other available information to the CWD. The information sought is already in their possession as an incident to their case management and intake duties. All they have to do is pass on information they already possess to the CWD. As part of their case management duties, they are already tasked in coordinating the juvenile's information to the court and other beneficial parties to benefit the juvenile ward.

Furthermore, the test claim fails to take into consideration numerous offsets that could offset the minimal work hours allegedly required in notifying the CWD. Specifically, the county failed to factor in potential savings that could offset the work hours as a result of Medi-Cal starting coverage immediately upon release of the juvenile. Under the old rules (before the effective date of Welf. & Inst. Code §14029.5), the County was responsible for the health care of the juvenile 60-90 days from release

[17] See In Re Test Claim by Alameda County Section 5, page 4.
[18] *Id* at page 5.
[19] *Id* at page 7.

from incarceration. During the 45-90 day period, the juvenile was still not covered by Medi-Cal, hence, the County would expend work hours to determine and direct the health care needs of the juvenile. Once approved under Medi-Cal, Medi-Cal would retroactively cover the 45-90 day period. Under Welfare and Institutions Code section 14029.5, Medi-Cal would be on-line immediately and the County would not have to expend work hours managing the transition, directing the health care of the juvenile. Consequently, the counties will realize a savings from Welfare and Institutions Code section 14029.5 since they will not expend any work hours directing the juvenile's health care needs during those 60-90 days since Medi-Cal would be immediately online.

Furthermore, any services provided by non-Medi-Cal providers during the 45-90 day period would not be reimbursed to the county even after Medi-Cal eligibility is established. The process under Welfare and Institutions Code section 14029.5 will cancel out the 45-90 day period, and hence would not subject the county to potential services that are not reimbursable thereby resulting in savings to the County.

Lastly, the county failed to take into consideration any potential savings mentioned in the SB 1469's analysis regarding lower costs to counties because lower recidivism will lower rates of incarceration since the juvenile inmates will receive mental health and alcohol and drug treatment upon release[20].

III. Have funds been appropriated for this program (e.g. state budget) or are there other sources of funding available? If so, what is the source?

No appropriation has been identified by the test claim and no funds have been appropriated for this program.

No funds have been appropriated for this program by either the state or federal government. Although the federal government pays a portion of the county services related to administration including the eligibility determination process at the county level. This federal participation however does not extend to administrative activities done by probation officers.

Only CWD expenditures for determinations of eligibility for Medi-Cal are eligible for reimbursement by the state. Under 42 Code of Federal Regulations section 433.51, certified public expenditures eligible for Federal Financial Participation (FFP) include local city and county expenditures to cover administrative costs of eligibility determinations. The only costs not covered are the costs of probation officers and correctional staff for sending the names and release dates to CWDs. The State of California had previously sought to obtain FFP for the work of probation officers,

[20] At pages 2,3 Assembly Analysis Aug. 22, 2006. "There are huge rates of recidivism among the juvenile population. Often, the reason for a ward's return to custody is the result of his or her failure to receive treatment for a mental health or substance abuse disorder. The author reports that a recent study conducted at the University of California, Irvine found that harmful alcohol and drug use by adolescents in juvenile detention facilities is at a 70% level, or roughly 70,000 of the 100,000 admissions to juvenile halls across California counties in 2004.

however, in 1995 the department received a disallowance of similar claims: "[Item no.](7) FFP for activities of probation or correctional officers in penal institutions was improperly attributed to Medi-Cal"; *HCFA Letter to California Department of Health Services*, from Nancy Dapper, Acting Regional Administrator, Re: CA-95-001-ADM Mar. 1, 1995.

Activities being performed by probation or correctional officers in various juvenile or adult detention facilities were being coded as allowable Medi-Cal Administrative Claiming activities. However, such detention facilities are public penal institutions, and any medical services or administrative activities provided to the inmates in such public institutions are not allowable Federal Medicaid expenditures.

With regard to the lack of appropriation in the DHCS budget, the courts in the case of *County of San Diego v. State* [21], summarized the State's defense to a test case as follows:

> "[The State] generally put on witnesses from various state agencies who testified the specific items in their budgets had historically never been used to fund local mandates. Rather, they were used to fund salaries, expenditures and programs of the state agency. Several of the agencies also could not guarantee funds would be available at the end of the fiscal year. They also indicated state law precluded agencies from functioning with a deficit." The court noted the parties had stipulated that the specific potential funding sources the Counties had identified through Hamm's testimony " 'have historically not been used to provide reimbursement to local agencies for the State mandated costs at issue in this lawsuit...' "

The court held:

> "We are sympathetic to the financial burden placed on the Counties by the State's failure to meet its reimbursement requirements under article XIIIB, section 6. Civil Code section 3523 provides that "[f]or every wrong there is a remedy." However, this statute does not permit a remedy through the courts when the remedy is with the Legislature. (*Tulare County v. Kings County* (1897) 117 Cal. 195, 202-203, 49 P. 8.) This case is more about legislative *inaction*-i.e., the Legislature's failure to appropriate money it was constitutionally required to appropriate-than the failure of state officials to carry out ministerial duties. As the California Supreme Court stated in *Myers v. English* (1858) 9 Cal. 341: "It is within the legitimate power of the judiciary, to

[21] 164 Cal.App.4th 580, 591, 79 Cal.Rptr.3d 489, 498 (Cal.App. 4 Dist.,2008)

> declare the *action* of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; but the Courts have no means, and no power, to avoid the effects of *non-action.* The Legislature being the creative element in the system, its action cannot be quickened by the other departments. Therefore, when the Legislature fails to make an appropriation, we cannot remedy that evil. It is a discretion specially confided by the Constitution to the body possessing the power of taxation.

Lastly, the Legislature in subsequent legislation, SB 1147, amending SB 1469, specifically stated that suspension and restoration of eligibility during incarceration shall not create a state funding benefit or program. Welfare and Institutions Code section 14011.10 provides:

> Welfare and Institutions Code section 14011.10
>
> "(a) Benefits provided under this chapter to an individual under 21 years of age who is an inmate of a public institution shall be suspended in accordance with Section 1396d(a)(28)(A) of Title 42 of the United States Code as provided in subdivision (c).
>
> "(b) County welfare departments shall be required to notify the department within 10 days of receiving information that an individual under 21 years of age on Medi-Cal in the county is or will be an inmate of a public institution.
>
> "(c) If an individual under 21 years of age is a Medi-Cal beneficiary on the date he or she becomes an inmate of a public institution, his or her benefits under this chapter and under Chapter 8 (commencing with Section 14200) shall be suspended effective the date he or she becomes an inmate of a public institution. The suspension will end on the date he or she is no longer an inmate of a public institution or one year from the date he or she becomes an inmate of a public institution, whichever is sooner.
>
> "(d) Nothing in this section shall create a state-funded benefit or program. Health care services under this chapter and Chapter 8 (commencing with Section 14200) shall not be available to inmates of public institutions whose Medi-Cal benefits have been suspended under this section."

As no funds have been identified nor appropriated, the County has no remedy before the Commission.

Conclusion

For all of the reasons stated herein: counties are already responsible for determining and redetermining eligibility for all persons including juvenile detainees; they already receive federal funding for all determinations and redeterminations they do; counties are responsible for health care for juvenile detainees. Nothing in the evidence presented by Alameda County demonstrates that the requirements of SB1469 impose a new program or higher level of service in an existing program upon local entities. Therefore, the Commission on State Mandates should deny the test claim of Alameda and make a finding that the legislature did not create a new state mandate under SB 1469