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COMMISSION ON
STATE MANDATES

COMMENTS ON PROPOSED CONSOLIDATED PARAMETERS AND GUIDELINES

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

Upon review of the Consolidated Parameters and Guidelines, it is apparent that there are some omissions. Although Commission Staff has undertaken the Herculean task of consolidating three sets of Parameters and Guidelines, there are problems and omissions. These problems need to be addressed so they do not arise again in whatever audits may be undertaken by the State Controller's Office.

1. <u>One Time Activity of Updating the Interagency Agreement Is Omitted</u>

In the Parameters and Guidelines for Handicapped and Disabled Students II, Section IV A provided reimbursement for the one-time activity to update the interagency agreement. Although these Parameters and Guidelines are effective as of July 1, 2001, it is still conceivable that a county has not yet updated their interagency agreement to add the additional eight components. This would not be a problem if the prior Parameters and Guidelines were to remain in existence, but they are not. Although local agencies have been required to update their agreements, due to local problems and concerns, same may not have been done. We respectfully request that this reimbursable component remain, if only for one year, noting that it is a one-time event, so that all agencies can be sure of receiving reimbursement for this activity.

2. <u>Omission Under Assessments</u>

In the Parameters and Guidelines for Handicapped and Disabled Students upon reconsideration, in section IVB, there is an item 6, which states as follows:

> 6. If a mental health assessment cannot be completed within the time limits, provide notice to the IEP team administrator or designee no later than 15 days before the scheduled IEP meeting.

The foregoing provision does not appear any where in the Consolidated Parameters and Guidelines.

Additionally, under the Parameters and Guidelines for Handicapped and Disabled Students II, there is provision IV B 10, which states as follows:

> 10. The County of origin shall prepare yearly IEP reassessments to determine the needs of a pupil. [Citations omitted.]

Again, this provision does not appear anywhere in the Consolidated Parameters and Guidelines.

3. Omission Under Provision of Psychotherapy

In the Parameters and Guidelines for Handicapped and Disabled Students II, Section IV G, there is an item 6, which states as follows:

> 6. 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. [Citation omitted.]

This provision also does not make it to the Consolidated Parameters and Guidelines.

4. Problems With SED Provisions

It is our understanding that the purpose of the Consolidated Parameters and Guidelines was to consolidate not only Handicapped and Disabled Reconsideration with Handicapped and Disabled II, but to include the provisions for SED pupils as well. However, none of the activities contained in SED, Section IV B, Continuing Costs, appear anywhere.

Subdivision B1 provides authorization to reimburse the county for payments to the out of state vendors for the residential placements. This does not appear in the Consolidated Parameters and Guidelines. No where in that document does it state that the county gets reimbursed for the pupil's placement, whether in state, or out of state. This matter needs to be clarified. If this matter is not clarified, it will result in needless audits.

Subdivision B2 deals with case management of these pupils. The Consolidated Parameters and Guidelines do not specify that case management is reimbursable, whether the pupil is in an in state or out of state placement, or not. This just leads to confusion and the possibility of an audit exception.

Travel is extremely important, for both in state and out of state placements, for the pupil as well as for the case manager, and for visitation as well. Travel has always been a subject for audit, and we would like to see assurances, by way of specifics in the Parameters and Guidelines, that the cost of travel for both the pupil, visitation and the case manager are specifically included.

Additionally, program management is an integral part of a program as large as this. To not have a provision for program management does not recognize the complexities of program administration.

5. Claim Preparation Issues

Traditionally, counties have used two methodologies for preparing the actual claims. The first method, which is used by what I believe to be a majority of counties, utilizes the Mental Health Cost Report method. The other methodology is to utilize the actual increased cost method. This was recognized in the amendments to the Parameters and Guidelines which were filed by the County of San Bernardino, and which were adopted by the Commission in August of 1996. To that end, the Parameters and Guidelines recognized that if the actual increased cost method was utilized, the direct administrative costs for the program would be chargeable. For easy reference, a true and correct copy of the adopted Parameters and Guidelines which allowed either of the two methodologies is attached hereto as Exhibit 1 and incorporated herein by reference.c

We request that the Commission allow either of the two methodologies for claiming costs, with the proviso that in the event the actual increased cost methodology is used, that administrative costs be allowed, as they have been for years. Obviously, the ICRP language will have to be changed to reflect the current status of this matter. However, to change the methods that various counties have utilized to claim costs for the past twenty years will result in substantial confusion and additional work for the claimants herein.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 30th day of March, 2006, at Modesto, California.

Linda Downs,
Assistant Director for Administrative and Fiscal Services
County of Stanislaus

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim Of: County of San Bernardino Claimant	No. CSM-4282 Title 2, Cal. Code Regs., Div. 9, Sections 60000-60200 Chapter 1747, Statutes of 1984 Chapter 1274, Statutes of 1985 ***Handicapped and Disabled Students***

PARAMETERS AND GUIDELINES

The attached ***amended*** Parameters and Guidelines of the Commission on State Mandates are hereby adopted by the Commission on State Mandates in the above entitled matter.

IT IS SO ORDERED August 29, 1996.

K.G. Stewart

Kirk G. Stewart, Executive Director
Commission on State Mandates

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Hearing Date: August 29, 1996
File Number: CSM-4282
Commission Staff: Lucila Ledesma
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Original Adopted: 8/22/9 1
Revised: **8/29/96**

PARAMETERSANDGUIDELINES

Sections 60000-60200
Title 2, California Code of Regulations, Division 9
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Handicapped and Disabled Students

I. SUMMARY OF MANDATE

Chapter 1747 of the Statutes of 1984 added Chapter 26, commencing with section 7570, to Division 7 of Title 1 of the Government code (Gov. Code).

Chapter 1274 of the Statutes of 1985 amended sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, amended and repealed 7583 of, added section 7586.5 and 7586.7 to, and repealed 7574 of, the Gov. Code, and amended section 5651 of the Welfare and Institutions Code.

To the extent that Gov. Code section 7572 and section 60040, Title 2, Code of California Regulations, require county participation in the mental health assessment for "'individuals with exceptional needs, " such legislation and regulations impose a new program or higher level of service upon a county. Furthermore, any related county participation on the expanded "Individualized Education Program" (IEP) team and case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed, " pursuant to subdivisions (a), (b), and (c) of Gov. Code section 7572.5 and their implementing regulations, impose a new program or higher level of service upon a county.

The aforementioned mandatory county participation in the IEP process is not subject to the Short-Doyle Act, and accordingly, such costs related thereto are costs mandated by the state and are fully reimbursable within the meaning of section 6, article XIIIB of the California Constitution.

The provisions of Welfare and Institutions Code section 565 1, subdivision (g), result in a higher level of service within the county Short-Doyle program because the mental health services, pursuant to Gov. Code sections 757 1 and 7576 and their implementing regulations, must be included in the county Short-Doyle annual plan. Such services include psychotherapy and other mental health services provided to "individuals with exceptional needs, " including those designated as "seriously emotionally disturbed, " and required in such individual's IEP.

Such mental health services are subject to the current cost sharing formula of the Short-Doyle Act, through which the state provides ninety (90) percent of the total costs of the Short-Doyle program, and the county is required to provide the remaining ten (10) percent of the funds. Accordingly, only ten (10) percent of such program costs are reimbursable within the meaning of section 6, article XIIIB of the California Constitution as costs mandated by the state, because the Short-Doyle Act currently provides counties ninety (90) percent of the costs of furnishing those mental health services set forth in Gov. Code section 757 1 and 7576 and their implementing regulations, and described in the county's Short-Doyle annual plan pursuant to Welfare and Institutions Code section 565 1, subdivision (g).

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its April 26, 1990 hearing, adopted a Statement of Decision that determined that County participation in the IEP process is a state mandated program and any costs related thereto are fully reimbursable. Furthermore, any mental health treatment required by an IEP is subject to the Short-Doyle cost sharing formula. Consequently, only the county's Short-Doyle share (i.e., ten percent) of the mental health treatment costs will be reimbursed as costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Gov. Code states that a test claim must be submitted on or before December 3 1 following a given fiscal year to establish eligibility for that year. The test claim for this mandate was filed on August 17, 1987, all costs incurred on or after July 1, 1986, are reimbursable.

Actual costs for one fiscal year should be included in each claim, and estimated costs for the subsequent year may be included on the same claim, if applicable, pursuant to Government Code section 17561.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Gov. Code section 17564.

V. REIMBURSABLE COSTS

A. One Hundred (100) percent of any costs related to IEP Participation, Assessment, and Case Management:

1. The scope of the mandate is one hundred (100) percent reimbursement, except that for individuals billed to Medi-Cal only, the Federal Financing Participation portion (FFP) for these activities should be deducted from reimbursable activities not subject to the Short-Doyle Act.

2. For each eligible claimant, the following cost items are one hundred (100) percent reimbursable (Gov. Code, section 7572, subd. (d)(1)):

   a. Whenever an LEA refers an individual suspected of being an 'individual with exceptional needs' to the local mental health department, mental health assessment and recommendation by qualified mental health professionals in conformance with assessment procedures set forth in Article 2 (commencing with section 56320) of Chapter 4 of part 30 of Division 4 of the Education Code, and regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, including but not limited to the following mandated services:
   i. interview with the child and family,
   ii. collateral interviews, as necessary,
   iii. review of the records,
   iv. observation of the child at school, and
   v. psychological testing and/or psychiatric assessment, as necessary.

   b. Review and discussion of mental health assessment and recommendation with parent and appropriate IEP team members. (Government Code section 7572, subd. (d)(1)).

   c. Attendance by the mental health professional who conducted the assessment at IEP meetings, when requested. (Government Code section 7572, subd. (d)(1)).

   d. Review by claimant's mental health professional of any independent assessment(s) submitted by the IEP team. (Government Code section 7572, subd. (d)(2)).

   e. When the written mental health assessment report provided by the local mental health program determines that an "individual with special needs' is 'seriously emotionally disturbed', and any member of the IEP team recommends residential placement based upon relevant assessment information, inclusion of

the claimant's mental health professional on that individual's expanded IEP team.

f. When the IEP prescribes residential placement for an 'individual with exceptional needs ' who is 'seriously emotionally disturbed, ' claimant' s mental health personnel's identification of out-of-home placement, case management, six month review of IEP, and expanded IEP responsibilities. (Government Code section 7572.5).

g. Required participation in due process procedures, including but not limited to due process hearings.

3. One hundred (100) percent of any administrative costs related to IEP Participation, Assessment, and Case Management, whether direct or indirect.

B. Ten (10) percent of any costs related to mental health treatment services rendered under the Short-Doyle Act :

1. The scope of the mandate is ten (10) percent reimbursement.

2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):

a. Individual therapy,

b. Collateral therapy and contacts,

c. Group therapy,

d. Day treatment, and

e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement.

3. Ten (10) percent of any administrative costs related to mental health treatment services rendered under the Short-Doyle Act, whether direct or indirect.

Vi. CLAIM PREPARATION

There are two satisfactory methods of submitting claims for reimbursement of increased costs incurred to comply with the mandate:

A. Actual Increased Costs Method. To claim under the Actual Increased Costs Method, report actual increased costs incurred for each of the following expense categories in the format specified by the State Controller's claiming instructions. Attach supporting schedules as necessary:

1. Employee Salaries and Benefits: Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and supplies: Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purpose of this mandate.

3. Direct Administrative Costs:

   a. One hundred (100) percent of any direct administrative costs related to IEP Participation, Assessment, and Case Management.

   b. Ten (10) percent of any direct administrative costs related to mental health treatment rendered under the Short-Doyle Act.

4. Indirect Administrative and Overhead Costs: To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions:

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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

1. To the extent that reimbursable indirect costs have not already been reimbursed by DMH from categorical funding sources, they may be claimed under this method in either of the two following ways prescribed in the State Controller's claiming instructions :

   a. Ten (10) percent of related direct labor, excluding fringe benefits. This method may not result in a total combined reimbursement from DMH and SCO for program indirect costs which exceeds ten (10) percent of total program direct labor costs, excluding fringe benefits.

   OR if an indirect cost rate greater than ten (10) percent is being claimed,

   b. By preparation of an "Indirect Cost Rate Proposal" (ICRP) in full compliance with Office of Management and Budget Circular No. A-87 (OMB A-87). Note that OMB A-87 was revised as of May 17, 1995, and that while OMB A-87 is based on the concept of full allocation of indirect costs, it recognizes that in addition to its restrictions, there may be state laws or state regulations which further restrict allowability of costs. Additionally, if more than one department is involved in the mandated program; each department must have its own ICRP. Under this method, total reimbursement for program indirect costs from combined DMH and SCO sources must not exceed the total for those items as computed in the ICRP(s).

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. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

A. Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed.

B. The following reimbursements for this mandate shall be deducted from the claim:

1. Any direct payments (categorical funding) received from the State which are specifically allocated to this program; and

2. Any other reimbursement for this mandate (excluding Short-Doyle funding, private insurance payments, and Medi-Cal payments), which is received from any source, e.g. federal, state, etc.

IX. 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.