

ITEM 6
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT
AND
STATEMENT OF DECISION

Welfare and Institutions Code Sections ~~6250 and 6600~~ through ~~6608~~ 6602

Statutes 1995, Chapter 762

Statutes 1995, Chapter 763

Statutes 1996, Chapter 4

As Modified by:

Proposition 83, General Election, November 7, 2006

Sexually Violent Predators

CSM-4509

(amended by 05-PGA-43, 12-MR-01)

Department of Finance, Requester

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates' (Commission's) regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.¹ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.² Oral or written testimony is offered under oath or affirmation in article 7 hearings.³

I. SUMMARY OF THE MANDATE

These proposed amended parameters and guidelines pertain to the *Sexually Violent Predators* test claim, CSM-4509, as modified by the Commission's new test claim decision, 12-MR-02, adopted December 6, 2013. Based on the filing date of the redetermination request, the period of reimbursement for these amended parameters and guidelines begins on July 1, 2011.

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sexual offenses. Before detention and treatment are imposed, a designated county attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the inmate is a sexually violent predator, as defined in the test claim statutes. If the inmate accused of being a sexually violent

¹ California Code of Regulations, Title 2, section 1187.

² Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

³ *Ibid.*

predator is indigent, the test claim statutes require counties to provide the indigent person with assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.⁴

The new test claim decision, adopted December 6, 2013, provides continuing reimbursement only for preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing, and for transportation between a courthouse and a secure facility for purposes of the probable cause hearing.⁵ The Commission, pursuant to the redetermination decision authorized by Government Code section 17570, found that both of these activities were imposed by the Legislature, but that all remaining activities previously approved were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f).⁶

II. PROCEDURAL HISTORY

On June 25, 1998, the Commission adopted a statement of decision on the test claim. On September 24, 1998, the Commission adopted parameters and guidelines, identifying the activities for reimbursement as stated above.⁷ On October 30, 2009, the parameters and guidelines were amended pursuant to a boilerplate language amendment request brought by the State Controller's Office.⁸

On January 15, 2013, the Department of Finance (Finance) filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570, alleging that Proposition 83, approved by the voters on November 8, 2006, constitutes a subsequent change in law, as defined, which modifies the state's liability under the test claim statute.⁹ On December 6, 2013, the Commission adopted a new test claim decision to reflect the state's modified liability under the test claim statutes.¹⁰ On December 13, 2013, Commission staff issued a draft expedited amendment to parameters and guidelines, pursuant to sections 17570(i) and 17557.¹¹ On December 27, 2013 the County of San Diego submitted written comments on the draft expedited

⁴ Exhibit A, Test Claim Statement of Decision, at p. 13.

⁵ Exhibit E, New Test Claim Statement of Decision, at pp. 54-55.

⁶ *Ibid.*

⁷ Exhibit B, Parameters and Guidelines, adopted September 24, 1998, at pp. 3-5.

⁸ Exhibit C, Amended Parameters and Guidelines, adopted October 30, 2009.

⁹ Exhibit D, Redetermination Request, dated January 15, 2013.

¹⁰ Exhibit E, New Test Claim Decision, adopted December 6, 2013.

¹¹ Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.

amendment to parameters and guidelines.¹² On January 2, 2014, the State Controller's Office submitted written comments on the draft expedited amendment to parameters and guidelines.¹³

III. DISCUSSION

A. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)

Government Code section 17570(f) provides that redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."¹⁴ Based on the January 15, 2013 filing date for the redetermination request,¹⁵ eligibility for reimbursement or loss of reimbursement under the new test claim decision adopted pursuant to that request is established beginning July 1, 2011.

B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

In the draft expedited amended parameters and guidelines, the following two activities only were identified for reimbursement, in accordance with the new test claim decision:¹⁶

1. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
2. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.

This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.

In comments on the draft expedited amended parameters and guidelines, the County of San Diego urged the Commission to consider additional "reasonably necessary" activities related to the two activities identified above. Specifically, the County asserted that preparation for a

¹² Exhibit G, County of San Diego Comments.

¹³ Exhibit H, Controller's Comments.

¹⁴ Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

¹⁵ Exhibit D, Redetermination Request.

¹⁶ Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.

probable cause hearing by indigent defense counsel also requires the “retention of qualified experts, investigators and professionals,” and that costs related to housing potential sexually violent predators pending a probable cause hearing should continue to be reimbursable.¹⁷

- i. Activities and costs related to housing potential sexually violent predators pending trial are expressly denied in the test claim decision.*

The Commission found, in the new test claim decision, that costs to house a potential sexually violent predator at a secure facility pending trial were not reimbursable, because the “purpose and intent of Proposition 83 is to protect the public from dangerous felony offenders...” and the proper operation of the program “requires therefore that persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.”¹⁸ Therefore, the Commission found that holding potential sexually violent predators in custody pending trial was an essential function of the program as enacted by the voters, and thus the attendant housing costs are no longer reimbursable pursuant to section 17556(f). The Commission’s findings state expressly that the approved activity of transportation between the courthouse and a secure facility for probable cause hearings “does not include housing potential sexually violent predators pending the probable cause hearing or trial.”¹⁹ That determination is final and no longer subject to reconsideration, and therefore costs pertaining to housing a potential sexually violent predator are not reimbursable in these parameters and guidelines.

- ii. Activities and costs related to retention of necessary experts, investigators, and professionals for preparation for a probable cause hearing are reasonably necessary to comply with the mandate and should remain reimbursable.*

The County also urges the Commission to consider providing reimbursement in the parameters and guidelines for “costs the county’s designated counsel and indigent defense counsel incur for retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing.” The County asserts that “[e]ven though these costs are not expressly identified as reimbursable costs in the original test claim decision, these costs have been and should continue to be reimbursed to claimants by the state.” The County “requests that the [C]ommission specifically find that these costs continue to be reimbursable to local agencies pursuant to the SVP mandate,” because, the County asserts, “retention of qualified experts, investigators and professionals for probable cause hearings is critical to the prosecution and defense of individuals at the probable cause hearing.”²⁰

Reasonably necessary activities proposed must be supported by substantial evidence in order to withstand judicial review, and that evidence must include something other than hearsay evidence.²¹ Here, the County submits the declaration of Mr. Michael Ruiz, a Deputy Public

¹⁷ Exhibit G, County of San Diego Comments, at pp. 2-3.

¹⁸ Exhibit E, New Test Claim Statement of Decision, at p. 37.

¹⁹ Exhibit E, New Test Claim Statement of Decision, at p. 55.

²⁰ Exhibit G, County of San Diego Comments, at p. 2.

²¹ Government Code section 17559(b) (Stats. 1999, ch. 643 (Ab 1679)) [citing Code of Civil Procedure section 1094.5].

Defender for the County of San Diego. Mr. Ruiz states that “retention of necessary experts, investigators and professionals for purposes of preparing for a probable cause hearing can be critical to the defense of individual [sic].”²² In addition, Mr. Ruiz states that “[t]he probable cause hearing is a critical stage of any SVP civil commitment proceeding, and that “SVP litigation is a high-end forensic practice...and the assistance of qualified professionals is critical to the preparation of these cases.”²³ Mr. Ruiz also states that “[a]t the probable cause stage of SVP proceedings, practitioners for both sides must be able to independently assess both the diagnostic and the relative risk conclusions reached by the designated DSH evaluators.”²⁴

Based on the foregoing, staff finds that the activity of “Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing” should be modified to include the retention of necessary experts, investigators, and professionals for preparation. However, the amended activity may not be interpreted to provide reimbursement for preparation for trial; the amended activity shall provide as follows:

1. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
 - d. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.

IV. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the attached proposed statement of decision and proposed amended parameters and guidelines. Staff further recommends that the Commission authorize staff to make any non-substantive, technical corrections to the amended parameters and guidelines following the Commission hearing on this matter.

²² Exhibit G, County of San Diego Comments, at pp. 6-7.

²³ Exhibit G, County of San Diego Comments, at p. 7.

²⁴ Exhibit G, County of San Diego Comments, at p. 7.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDED PARAMETERS AND
GUIDELINES:

Welfare and Institutions Code section 6602;
Statutes 1995, Chapter 762 (SB 1143); Statutes
1995, Chapter 763 (AB 888); Statutes 1996,
Chapter 4 (AB 1496);

Sexually Violent Predators (CSM-4509), As
Modified by:

Proposition 83, General Election,
November 7, 2006

Period of reimbursement begins on July 1, 2011.

Case No.: CSM-4509 (12-MR-01)

Sexually Violent Predators

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted March 28, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on March 28, 2014. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the amended parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

I. SUMMARY OF THE MANDATE

These proposed amended parameters and guidelines pertain to the *Sexually Violent Predators* test claim, CSM-4509, as modified by the Commission's new test claim decision adopted December 6, 2013, pursuant to a redetermination request (12-MR-02) filed by the Department of Finance (Finance). Based on the filing date of the redetermination request, the period of reimbursement for these amended parameters and guidelines begins on July 1, 2011.²⁵

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then

²⁵ Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

conducted to determine beyond a reasonable doubt if the inmate is a sexually violent predator, as defined in the statutes. If the inmate accused of being a sexually violent predator is indigent, the test claim statutes require counties to provide the indigent with assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.²⁶

The new test claim decision, adopted December 6, 2013, provides continuing reimbursement only for preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing, and for transportation between a courthouse and a secure facility for purposes of the probable cause hearing.²⁷ The Commission, pursuant to the redetermination decision authorized by Government Code section 17570, found that both of these activities were imposed by the Legislature, but that all other activities previously approved were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f).²⁸

II. PROCEDURAL HISTORY

On June 25, 1998, the Commission adopted a test claim statement of decision approving reimbursement for certain activities of the Sexually Violent Predators program.²⁹ On September 24, 1998, the Commission adopted parameters and guidelines.³⁰ On October 30, 2009, the parameters and guidelines were amended pursuant to a boilerplate language amendment request brought by the State Controller's Office.³¹

On January 15, 2013, Finance filed a request for redetermination of the Sexually Violent Predators mandate, CSM-4509.³² On December 6, 2013, the Commission adopted a new test claim decision to reflect the state's modified liability.³³ On December 13, 2013, Commission staff issued a draft expedited amendment to parameters and guidelines, in accordance with the Commission's new test claim decision.³⁴ On December 27, 2013, the County of San Diego submitted written comments on the draft expedited amendment to parameters and guidelines.³⁵

²⁶ Exhibit A, Test Claim Statement of Decision, adopted June 25, 1998, at p. 13.

²⁷ Exhibit E, New Test Claim Statement of Decision, at pp. 54-55.

²⁸ *Ibid.*

²⁹ Exhibit A, Test Claim Statement of Decision.

³⁰ Exhibit B, Parameters and Guidelines, adopted September 24, 1998, at pp. 3-5.

³¹ Exhibit C, Amended Parameters and Guidelines, adopted October 30, 2009.

³² Exhibit D, Redetermination Request, dated January 15, 2013.

³³ Exhibit E, New Test Claim Statement of Decision.

³⁴ Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.

On January 2, 2014, the State Controller's Office submitted written comments on the draft expedited amendment to parameters and guidelines.³⁶

III. COMMISSION FINDINGS

A. Period of Reimbursement (Section III. of Parameters and Guidelines)

Government Code section 17570(f) provides that redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."³⁷ Based on the January 15, 2013 filing date,³⁸ eligibility for reimbursement or loss of reimbursement under the new test claim decision adopted pursuant to that request is established beginning July 1, 2011.

B. Reimbursable Activities (Section IV. of Parameters and Guidelines)

In the draft expedited amended parameters and guidelines, the following two activities only were identified for reimbursement, in accordance with the new test claim decision:³⁹

1. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
2. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.

This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.

The Commission finds that the above reimbursable activities are consistent with the new test claim statement of decision, and should continue to be reimbursable in the amended parameters and guidelines.

³⁵ Exhibit G, County of San Diego Comments.

³⁶ Exhibit H, Controller's Comments.

³⁷ Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

³⁸ Exhibit D, Redetermination Request.

³⁹ Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.

1. Some of the activities alleged by the County of San Diego are reasonably necessary to comply with the mandate.

In comments submitted on the draft expedited amended parameters and guidelines, the County of San Diego urged the Commission to consider additional “reasonably necessary” activities related to the two activities identified above. Specifically, the County asserted that preparation for a probable cause hearing by indigent defense counsel also requires the “retention of qualified experts, investigators and professionals,” and that costs related to housing potential sexually violent predators pending a probable cause hearing should continue to be reimbursable.⁴⁰

- i. Activities and costs related to housing potential sexually violent predators pending trial are expressly denied in the test claim decision.*

In the new test claim decision, the Commission found that costs to house a potential sexually violent predator at a secure facility pending trial were not reimbursable, because the “purpose and intent of Proposition 83 is to protect the public from dangerous felony offenders...” and the proper operation of the program “requires therefore that persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.”⁴¹ Therefore, the Commission found that holding potential sexually violent predators in custody pending trial was an essential function of the program as enacted by the voters, and thus the attendant housing costs are no longer reimbursable pursuant to section 17556(f).

The County argues here that costs related to housing each potential sexually violent predator during the probable cause hearing should continue to be reimbursable. The County states that “inmates that are the subject of the SVP proceedings are housed by the California Department of Corrections and Rehabilitation at facilities throughout the state as far east as Calipatria and as far north as Coalinga.” When an inmate is brought back to the County for trial on the issue of whether he or she is a sexually violent predator, the inmate is “generally brought to the San Diego Central Jail, processed and then transferred to and housed at the George Bailey Detention Facility in Otay Mesa.”⁴² The County asserts that its “Sheriff is responsible for housing these inmates for the duration of their stay in San Diego County, which often lasts several months.”⁴³

However, whether or not a probable cause hearing is held, the “stay in San Diego County” for which the County seeks reimbursement ultimately concludes with an SVP trial, which the Commission has determined is no longer reimbursable. The County fails to allege an incremental increase in service or cost that is required to house an inmate pending a probable cause hearing, over and above that required to house the same person only for trial. Moreover, the “cost to process and intake an inmate, [and to] provide medical exams” would logically be incurred by the counties even if no probable cause hearing were required. These initial intake activities would be required pending an SVP trial, and therefore these activities are necessary to

⁴⁰ Exhibit G, County of San Diego Comments, at pp. 2-3.

⁴¹ Exhibit E, New Test Claim Statement of Decision, at p. 37.

⁴² Exhibit G, County of San Diego Comments, at p. 3.

⁴³ Exhibit G, County of San Diego Comments, at p. 9.

implement the voter-enacted ballot measure and are no longer reimbursable, consistent with the Commission's new test claim decision.

More importantly, based on the findings cited above from the new test claim decision, it would be inconsistent with the new test claim decision to now include in the parameters and guidelines reimbursement for housing costs pending a probable cause hearing. The Commission's findings state expressly that the approved activity of transportation between the courthouse and a secure facility for probable cause hearings "does not include housing potential sexually violent predators pending the probable cause hearing or trial."⁴⁴ That determination is final and no longer subject to reconsideration, and therefore costs pertaining to housing a potential sexually violent predator are not reimbursable in these parameters and guidelines.

- ii. *Activities and costs related to retention of necessary experts, investigators, and professionals for preparation for a probable cause hearing are reasonably necessary to comply with the mandate and should remain reimbursable.*

In addition to the costs of housing inmates pending probable cause hearings, the County urges the Commission to consider providing reimbursement in the parameters and guidelines for "costs the county's designated counsel and indigent defense counsel incur for retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing." The County asserts that "[e]ven though these costs are not expressly identified as reimbursable costs in the original test claim decision, these costs have been and should continue to be reimbursed to claimants by the state." The County "requests that the [C]ommission specifically find that these costs continue to be reimbursable to local agencies pursuant to the SVP mandate," because, the County asserts, "retention of qualified experts, investigators and professionals for probable cause hearings is critical to the prosecution and defense of individuals at the probable cause hearing."⁴⁵

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.⁴⁶ The Commission's regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice "in the manner and of such information as is described in Government Code section 11515."⁴⁷ Therefore the reasonably necessary activities proposed must be supported by substantial evidence in order to withstand judicial review, and that evidence must include something other than hearsay evidence.

⁴⁴ Exhibit E, New Test Claim Statement of Decision, at p. 55.

⁴⁵ Exhibit G, County of San Diego Comments, at p. 2.

⁴⁶ Government Code section 17559(b) (Stats. 1999, ch. 643 (Ab 1679)) [citing Code of Civil Procedure section 1094.5].

⁴⁷ Code of Regulations, title 2, section 1187.5.

The County submits the declaration of Mr. Michael Ruiz, a Deputy Public Defender for the County of San Diego. Mr. Ruiz states that “retention of necessary experts, investigators and professionals for purposes of preparing for a probable cause hearing can be critical to the defense of individual [sic].”⁴⁸ In addition, Mr. Ruiz states that “[t]he probable cause hearing is a critical stage of any SVP civil commitment proceeding, and that “SVP litigation is a high-end forensic practice...and the assistance of qualified professionals is critical to the preparation of these cases.”⁴⁹ Mr. Ruiz also states that “[a]t the probable cause stage of SVP proceedings, practitioners for both sides must be able to independently assess both the diagnostic and the relative risk conclusions reached by the designated DSH evaluators.”⁵⁰

No evidence has been filed to rebut this declaration.

Therefore, based on the foregoing, the Commission finds that the activity of “Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing” should be modified to include the retention of necessary experts, investigators, and professionals for preparation. However, the amended activity may not be interpreted to provide reimbursement for preparation for trial; the amended activity shall provide as follows:

1. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
 - d. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.

IV. CONCLUSION

Based on the foregoing analysis, the Commission hereby adopts the proposed statement of decision and attached proposed amendments to the parameters and guidelines.

⁴⁸ Exhibit G, County of San Diego Comments, at pp. 6-7.

⁴⁹ Exhibit G, County of San Diego Comments, at p. 7.

⁵⁰ Exhibit G, County of San Diego Comments, at p. 7.

Amended: March 28, 2014

Amended: October 30, 2009

Adopted: September 24, 1998

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AMENDMENT TO PARAMETERS AND GUIDELINES

Welfare and Institutions Code Sections ~~6250 and 6600~~ through ~~6608~~ 6602

Statutes 1995, Chapter 762

Statutes 1995, Chapter 763

Statutes 1996, Chapter 4

As Modified by:

Proposition 83, General Election, November 7, 2006

Sexually Violent Predators

CSM-4509

(amended by 05-PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011 ~~with claims filed for the~~
~~July 1, 2005 through June 30, 2006 period of reimbursement.~~

I. Summary of the Mandate

~~Statutes 1995, c~~Chapters 762 and 763, ~~Statutes of 1995,~~ and ~~Statutes 1996, c~~Chapter 4, ~~Statutes of 1996,~~ established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission on State Mandates (Commission) adopted a ~~s~~Statement of ~~d~~Decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, ~~subd.-(i).~~)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, ~~subd.-(i).~~)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, ~~subd.-(i).~~)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)

- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, ~~subds. (b) through (d)~~, and 6608, ~~subds. (a) through (d).~~)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, ~~subd. (d).~~)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

~~Chapters 762 and 763, Statutes of 1995, were enacted on October 11, 1995, and became operative on January 1, 1996. Chapter 4, Statutes of 1996, relating to the transportation and housing of potential sexually violent predators at a secured facility, was enacted as an urgency measure and became operative on January 25, 1996.~~

On November 7, 2006, the voters approved Proposition 83, also known as Jessica's Law, which amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the *Sexually Violent Predators*, CSM-4509 test claim.

On January 15, 2013, the Department of Finance filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570. A new test claim decision was adopted December 6, 2013, and these parameters and guidelines were amended, as follows, pursuant to that decision.

II. Eligible Claimants

Any ~~County~~ies or ~~city~~ies and ~~county~~ies which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. Period of Reimbursement

~~This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.~~

~~Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the County of Los Angeles on May 30, 1996. Therefore, costs incurred for Chapter 762, Statutes of 1995 and Chapter 763, Statutes of 1995, are eligible for reimbursement on or after January 1, 1996. Costs incurred for Chapter 4, Statutes of 1996, regarding transport and secured custody of defendants, are eligible for reimbursement on or after January 25, 1996.~~

~~Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, 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 total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

Government Code section 17570(f) provides that a request for adoption of a new test claim decision (mandate redetermination) shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year. The request for mandate redetermination was filed on January 15, 2013, establishing eligibility for reimbursement or loss of reimbursement based on a new test claim decision on or after July 1, 2011.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities.

Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, ~~based upon personal knowledge.~~” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with

local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, ~~all direct and indirect costs of labor, supplies and services, for the following activities only are eligible for reimbursement:~~

~~A. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings.~~

~~1. Development of internal policies and procedures (one time activity).~~

~~2. One time training for each employee who normally works on the sexually violent predator program on the county's internal policies and procedures.~~

~~B. The following reimbursable activities must be specifically identified to a defendant:~~

~~— 1. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. Such activity includes the following:~~

~~a. Secretarial and paralegal services to assist the county's designated counsel; and~~

~~b. Copying and making long distance telephone calls.~~

~~c. Investigator services that are necessary to determine the sufficiency of the factual evidence supporting a petition.~~

~~2. Preparation and filing of the petition for commitment by the county's designated counsel. Such activities include secretarial and paralegal services to assist the county's designated counsel in the preparation and filing of the petition for commitment.~~

~~3. 1. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:~~

~~a. Secretarial, paralegal and investigator services;~~

~~b. Copying and making long distance telephone calls; and~~

~~c. Travel.~~

~~d. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.~~

This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.

4. ~~Preparation and attendance by the county's designated counsel and indigent defense counsel at pre-trial and trial hearings. Preparation for the pre-trial and trial hearings include the following:~~
 - a. ~~Secretarial, paralegal and investigator services;~~
 - b. ~~Copying and making long distance telephone calls; and~~
 - c. ~~Travel.~~
5. ~~Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. Preparation for the subsequent hearings includes the following:~~
 - a. ~~Secretarial, paralegal and investigator services;~~
 - b. ~~Copying and making long distance telephone calls; and~~
 - c. ~~Travel.~~
6. ~~Retention of court approved experts, investigators, and professionals for the indigent defendant in preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. Such activity includes the following:~~
 - a. ~~Copying and long distance telephone calls made by the court approved expert, investigator and/or professional; and~~
 - b. ~~Travel.~~
7. ~~Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator.~~ 2. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation and housing costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of housing and transportation, in which case no reimbursement of such costs shall be permitted.

This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.

V. Claim Preparation and Submission

~~Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.~~

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

A. Direct Costs

~~Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.~~

~~Claimed costs shall be supported by the following cost element information:~~

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.~~

~~Reimbursement for personal services include compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.~~

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

~~Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.~~

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

~~Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the~~

~~inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.~~

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

~~List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is reimbursable.~~

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.~~

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.~~

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training

time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (the OMB) Circular A-87. Claimants have the option of using 10% ~~percent~~ of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) ~~for the department~~ if the indirect cost rate claimed exceeds 10% ~~percent~~. ~~If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.~~

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, Appendices A and B (OMB Circular A-87 attachments A & B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs

to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. Record Retention

Pursuant to Government Code section 17558.5, ~~subdivision (a)~~, a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If the State Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

~~VII. Data for Development of a Statewide Cost Estimate~~

~~The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 95814, Facsimile number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the Legislature's appropriation for this program.~~

VII. Offsetting Savings Revenues and Other Reimbursements

Any offsetting savings revenue the claimant experiences in the same program as a ~~direct~~ result of the ~~subject mandates~~ same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate ~~received~~ from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

~~IX. State Controller's Office Required Certification~~

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

VIII. State Controller's Claiming Instructions

Pursuant to Government Code section 17558(b), the State Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

derived from these parameters and guidelines and the statements of decision on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. Remedies Before the Commission

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the State Controller to modify the claiming instructions and the State Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. Legal and Factual Basis for the Parameters and Guidelines

The statements of decision for the mandate redetermination request and new test claim decision and amendments to parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record is on file with the Commission.