

ITEM 6
PROPOSED DECISION
AND
AMENDMENT TO PARAMETERS AND GUIDELINES

Health and Safety Code section 13235(a)

Statutes 1989, Chapter 993 As Modified by:

Statutes 2009-2010, Chapter 12 (ABX 4 12)

Fire Safety Inspections of Care Facilities, 01-TC-16 (13-MR-01)

Department of Finance, Requester

EXECUTIVE SUMMARY

The adoption of this item, prepared pursuant to Government Code section 17570(i), is contingent upon the Commission on State Mandates' approval of Item 5 which is the second hearing of the Commission's finding that the state's liability pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17556(d) has been modified based on the subsequent change in law.

I. Summary of the Mandate

Overview

On September 26, 2014, the Commission determined that the *Fire Safety Inspections of Care Facilities*, 01-TC-16 program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2012 because the state's liability to reimburse this program has been eliminated. Specifically, the Commission adopted a new test claim decision finding that Statutes 2009-2010, chapter 12 (AB X 4 12) amended Health and Safety Code section 13235(a) to provide local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Health and Safety Code section 13235(a), which were the only mandated activities for that program.

II. Procedural History

On July 29, 2013, the Department of Finance (DOF) submitted a request for mandate redetermination for this matter. On July 25, 2014 the Commission adopted a decision finding that Finance had made an adequate showing that the State's liability for this mandate had modified by a subsequent change in law. On July 29, 2014, Commission staff issued a draft proposed decision for the second hearing on the request for a new test claim decision, and draft expedited parameters and guidelines.¹ The State Controller's Office (SCO) submitted comments

¹ Exhibit A, Draft Proposed New Test Claim Decision and Exhibit B Draft Expedited Amendment to Parameters and Guidelines.

concurring with the draft expedited parameters and guidelines.² On September 26, 2014, the Commission adopted a new test claim decision finding that Statutes 2009-2010, chapter 12 (AB X 4 12), effective July 28, 2009, amended Health and safety Code section 13235(a) to provide local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Health and Safety Code section 13235(a).

III. Discussion

In the new test claim decision, the Commission found that there are no costs mandated by the state, as defined by Government Code section 17514, to implement activities pursuant to Health and Safety Code section 13235(a) based on the subsequent change in law brought about by the passage of AB X 4 12 within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The plain language of the amended Health and Safety Code section 13235(a) provides fee authority effective July 29, 2009. However, this request was not filed until July 29, 2013, establishing eligibility for reimbursement beginning July 1, 2012.

Therefore, the activities approved for reimbursement in the prior test claim decision are no longer reimbursable as of July 1, 2012.

IV. Staff Recommendations

Based on the foregoing, staff recommends that the Commission adopt the attached proposed decision and amendment to parameters and guidelines. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the decision following the hearing.

² Exhibit C, State Controller Comments on the Draft Expedited Amendment to Parameters and Guidelines.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Health and Safety Code Section 13235(a);

Statutes 1989, Chapter 993;

As Modified by Statutes 2009-2010, Chapter 12
(ABX 4 12);

Fire Safety Inspections of Care Facilities,
01-TC-16 (13-MR-01)

The reimbursement period for this program ends
June 30, 2012.

Case No.: 01-TC-16 (13-MR-01)

Fire Safety Inspections of Care Facilities

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

(Adopted September 26, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted the proposed decision and amendment to parameters and guidelines during a regularly scheduled hearing on September 26, 2014. [Witness list will be included in the adopted 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 decision and amendment to parameters and guidelines by a vote of [Vote count will be included in the adopted decision].

I. Summary of the Mandate

On September 26, 2014, the Commission adopted a new test claim decision finding that Statutes 2009-2010, chapter 12 (AB X 4 12), amended Health and safety Code section 13235(a) to provide local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Health and Safety Code section 13235(a), which were the only reimbursable mandated activities for this program.

As a result, the Commission concluded that the *Fire Safety Inspections of Care facilities*, 01-TC-16 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2012 because the state's liability to reimburse this program has been eliminated as of June 30, 2012.

II. Procedural History

On July 25, 2014, the Commission adopted the proposed decision for the first hearing on the request for a new test claim decision and directed staff to set the second hearing on this matter. On July 29, 2014, Commission staff issued a draft proposed decision for the second hearing on

the request for a new test claim decision, and draft expedited parameters and guidelines.³ No comments were received on the draft proposed decision for the second hearing on the request for a new test claim decision. However the State Controller's Office did submit comments concurring with the draft expedited parameters and guidelines.⁴ On September 26, 2014, the Commission adopted a new test claim decision finding that Statutes 2009-2010, chapter 12 (AB X 4 12) amended Health and safety Code section 13235(a) to provide local agencies sufficient fee authority to cover the full costs attributable to mandated activities in Health and Safety Code section 13235(a).

III. Discussion

In the new test claim decision, the Commission found that there are no longer costs mandated by the state, as defined by Government Code section 17514, to implement activities pursuant to Health and Safety Code section 13235(a), based on a subsequent change in law brought about by the passage of Statutes 2009-2010 chapter 12 (AB X 4 12), within the meaning of article XIII B, section 6 of the California Constitution. Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The plain language of the amended Health and Safety Code section 13235(a) provides fee authority effective July 29, 2009. However, this request was filed on July 29, 2013, establishing eligibility beginning July 1, 2012. Therefore, the activities approved for reimbursement in the prior test claim decision are no longer reimbursable as of July 1, 2012.

IV. Conclusion

For the foregoing reasons, the Commission hereby adopts the attached proposed decision and amendment to parameters and guidelines.

³ Exhibit A, Draft Proposed New Test Claim Decision and Exhibit B Draft Expedited Amendment to Parameters and Guidelines.

⁴ Exhibit C, State Controller Comments on the Draft Expedited Amendment to Parameters and Guidelines.

Amended: September 26, 2014

Adopted: March 28, 2008

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AMENDMENT TO PARAMETERS AND GUIDELINES

Health and Safety Code Section 13235(a)

Statutes 1989, Chapter 993 As Modified by:

Statutes 2009-2010, Chapter 12 (ABX 4 12)

Fire Safety Inspections of Care Facilities, 01-TC-16 (13-MR-01)

The reimbursement period for this program ends June 30, 2012

I. SUMMARY OF THE MANDATE

Health and Safety Code section 13235, subdivision (a), requires local fire departments to perform fire safety inspections of all community care facilities, residential care facilities for the elderly, and child daycare facilities. Upon receipt of a request from a prospective licensee, the local fire department, or State Fire Marshal, whichever has primary jurisdiction, is required to conduct a preinspection of the facility prior to the fire clearance approval. At the time of the preinspection, the applicable fire enforcing agency will provide consultation and interpretation of the fire safety regulations that are to be enforced in order to obtain the clearances necessary to obtain a license.

On March 29, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Fire Safety Inspections of Care Facilities* test claim. The Commission found that Health and Safety Code section 13235, subdivision (a), constitutes a new program or higher level of service and imposes a state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission approved this test claim for the following reimbursable activities relating to the preinspection of the facility:

1. the preinspection of community care facilities, residential care facilities for the elderly, and child day care facilities;
2. the consultation and interpretation of applicable fire safety regulations for the prospective facility licensee; and
3. written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

Inspection activities relating to the final fire clearance approval are not reimbursable.

On July 29, 2013, the Department of Finance (Finance) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570. On September 26, 2014, the Commission adopted a new test claim decision, finding that Statutes 2009-2010, chapter 12 (ABX 4 12), amended Health and Safety Code, section 13235(a) to provide fee authority sufficient to cover the full costs attributable to the mandated inspection activities required by section 13235(a). Thus, pursuant to Government Code section 17556(d), a subsequent statutory

change has eliminated the state's obligation to reimburse this program as of June 30, 2012. These parameters and guidelines have been amended in accordance with that decision.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, and any fire protection district or other district performing fire protection services at the local level, formed pursuant to Health and Safety Code sections 13800 et seq., that is subject to the tax and spend limitations of articles XIII A and XIII B, and that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of San Jose filed the test claim on June 3, 2002. Therefore, costs incurred on or after July 1, 2000, in compliance with Health and Safety Code section 13235, subdivision (a) (Stats. 1989, ch. 993), are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (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.

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, subdivision (a).

Statutes 2009-2010, chapter 12 (ABX 4 12) provided fee authority sufficient to fund this program. Since the request to redetermine the prior test claim decision was filed on July 29, 2013, reimbursement for this program ends as of June 30, 2012.

IV. REIMBURSABLE ACTIVITIES

The activities of this program are no longer reimbursable as of June 30, 2012.

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, calendars, 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," 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.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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.

For each eligible claimant, the following activities related to the preinspection are reimbursable:

A. One-Time Activity (one time per employee)

Training for each new fire inspector assigned to the preinspection of care facilities, pursuant to Health and Safety Code section 13235, subdivision (a). A maximum of four hours of training is allowable per employee.

B. Ongoing Activities

1. Conduct preinspections of community care facilities, residential care facilities for the elderly, and child day care facilities upon receipt of a request from a prospective licensee of such a facility, before the final fire clearance approval. More than one preinspection per facility as deemed necessary by the local fire agency is reimbursable.
2. Provide consultation and interpretation of applicable fire safety regulations for the prospective facility licensee.
3. Providing a written notice to the prospective facility licensee of the specific fire safety regulations that shall be enforced in order to obtain the final fire clearance approval.
4. Maintain files relating solely to preinspection activities pursuant to Health and Safety Code section 13235, subdivision (a).

V. CLAIM PREPARATION AND SUBMISSION

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

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

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

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 and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment 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

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, 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

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 Cost Rates

Indirect costs are costs that 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 the central government services distributed to the 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 the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and 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 and 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 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 and 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 allowable indirect costs bears to the base selected.

The activities of this program are no longer reimbursable beginning July 1, 2012.

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 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 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 an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate 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.

Pursuant to Health and Safety Code section 13235, subdivision (a), fee recovery for the preinspection activity is limited to: 1) \$0 for facilities which serve six or fewer persons; 2) \$50 for facilities with a capacity to serve seven to 25 persons; and 3) \$100 for facilities with a capacity to serve 26 or more persons. This revenue shall be identified and deducted from total costs claimed. In the event that the Legislature enacts legislation which either increases or decreases the fee authority, such legislation shall control and will not necessitate an amendment to these parameters and guidelines unless the activities to be performed are also amended.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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 derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (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 Controller to modify the claiming instructions and

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

the 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, subdivision (d), and California Code of Regulations, title 2, section ~~1183.2~~ 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The ~~Statement of Decision~~ new test claim and parameters and guidelines decisions are legally binding on all parties and provide the legal and factual basis for this amendment to parameters and guidelines. The support for the legal and factual findings is found in the administrative record ~~for the test claim~~. The administrative record, ~~including the Statement of Decision~~, is on file with the Commission.