

**COMMISSION ON STATE MANDATES**

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June 10, 2011

Mr. David Sundstrom Auditor-Controller County of Orange P.O. Box 567 Santa Ana, CA 92702	Mr. Howard Thomas HCA Claims and Financial Reporting 515 N. Sycamore Street, 5 <sup>th</sup> Floor Santa Ana, CA 92701	Ms. Jill Kanemasu Division of Accounting and Reporting State Controller's Office 3301 C Street, Suite 700 Sacramento, CA 95816
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*And Interested Parties and Affected State Agencies (See Mailing List)*

Re: **Draft Staff Analysis, Schedule for Comments, and Hearing Date**  
Incorrect Reduction Claims  
*Handicapped and Disabled Students*, 05-4282-I-02, 09-4282-I-04  
County of Orange, Claimant  
Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274  
Fiscal Year 1997-1997, 1998-1999, 2000-2001

Dear Mr. Sundstrom, Mr. Thomas, and Ms. Kanemasu:

The draft staff analysis for the above-named incorrect reduction claims is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by Friday, **July 1, 2011**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at [http://www.csm.ca.gov/dropbox\\_procedures.shtml](http://www.csm.ca.gov/dropbox_procedures.shtml) for instructions on electronic filing. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under section 1181.2(c) or our regulations.

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Thursday, July 28, 2011**, at 9:30 a.m. in Room 447 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 14, 2011. This matter is proposed for the Consent Calendar. Please let us know in advance

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if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2), of the Commission's regulations.

Please contact Camille Shelton at (916) 323-3562 with any questions.

Sincerely,

Drew Bohan  
Executive Director

**ITEM \_\_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT STAFF ANALYSIS**

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (AB 3632)

Statutes 1985, Chapter 1274 (AB 882)

California Code of Regulations, Title 2, Sections 60000-60610  
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed  
June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28

*Handicapped and Disabled Students*

Fiscal Years 1997-1998, 1998-1999, 2000-2001  
05-4282-I-02 and 09-4282-I-04

County of Orange, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This is an incorrect reduction claim filed by the County of Orange regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in three fiscal years (1997-1998, 1998-1999, and 2000-2001), in the total amount of \$2,676,659 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program. These incorrect reduction claims are being consolidated because they raise common questions of law and fact.<sup>1</sup>

The *Handicapped and Disabled Students* program was enacted by the Legislature to implement federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

The State Controller's Office contends that medication monitoring is not a reimbursable activity during the audit period, and did not become reimbursable until fiscal year 2001-2002. The State Controller's Office also argues that the County's first incorrect reduction claim filed for fiscal years 1997-1998 and 1998-1999 was not timely filed.

The County disagrees with the State Controller's Office. The County seeks a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's

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<sup>1</sup> California Code of Regulations, title 2, section 1185.4.

Office incorrectly reduced the claim, and requests that the Controller reinstate the \$2,676,659 reduced for fiscal years 1997-1998 through 2000-2001.

For the reasons below, staff finds the County is not eligible for reimbursement for providing medication monitoring services until July 1, 2001. Thus, the State Controller's Office correctly reduced the County's reimbursement claims for medication monitoring costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001.

### **Procedural History**

The Commission received the County's incorrect reduction claim for 1997-1998 and 1998-1999 costs on May 1, 2006, and received the County's incorrect reduction claim for 2000-2001 costs on March 15, 2010. Both claims were issued for comment. The State Controller's Office filed comments addressing the substantive issues on October 6, 2009. The County filed a rebuttal on November 9, 2009.

### **Staff Analysis**

#### Merits of the incorrect reduction claims

Costs incurred for this program in fiscal years 1997-1998, 1998-1999, and 2000-2001 are eligible for reimbursement under the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282), which authorize reimbursement for mental health treatment as follows:

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 (Gov. 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.

While the County acknowledges that medication monitoring is not expressly listed as a reimbursable activity in the parameters and guidelines, the County argues that medication monitoring is a reimbursable activity and that the parameters and guidelines authorize reimbursement for "any costs related to mental health treatment services rendered ...."

The County's interpretation of the issue, however, conflicts with prior final decisions of the Commission on the issue of medication monitoring.

The Commission has determined that counties are not eligible for reimbursement for providing medication monitoring services until July 1, 2001. The Commission's findings on this issue are bulleted below:

1. The Commission did not approve reimbursement for medication monitoring in the original *Handicapped and Disabled Students* program (CSM 4282) or on reconsideration of that program (04-RL-4282-10). On reconsideration of the *Handicapped and Disabled Students* program (04-RL-4282-10), the Commission stated that "medication monitoring" is part of the new regulatory definition of "mental health services" adopted in 1998. The 1998 regulations were not included in the test claim for *Handicapped and Disabled Students* (CSM 4282). The Commission stated the following:

"Medication monitoring" is part of the new, and current, definition of "mental health services" that was adopted by the Departments of Mental Health and Education in 1998. The current definition of "mental health services" and "medication monitoring" is the subject of the pending test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and will not be specifically analyzed here.
2. The Commission adopted a statement of decision in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49) on May 26, 2005, and found that the activity of "medication monitoring," as defined in the 1998 amendment of section 60020, did not simply clarify existing law, but constituted a new program or higher level of service beginning July 1, 2001.
3. In 2006, the Commission considered two requests to amend the parameters and guidelines for the original program in *Handicapped and Disabled Students* (CSM 4282) filed by the Counties of Los Angeles and Stanislaus. (00-PGA-03/04). As part of the requests, the Counties wanted the Commission to apply the 1998 regulations, including the provision of medication monitoring services, to the original parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282). On December 4, 2006, the Commission denied the request, finding that the 1998 regulations were not pled in the original test claim, and cannot by law be applied retroactively to the original parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282).

These decisions of the Commission are final, binding decisions and were never challenged by the parties. Once "the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as judicial decisions."<sup>2</sup> Accordingly, based on these decisions, counties are not eligible for reimbursement for medication monitoring until July 1, 2001.

Therefore, the State Controller's Office correctly reduced the reimbursement claims of the County of Orange for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

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<sup>2</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

### Statute of limitations issue

Staff further finds the County timely filed the first incorrect reduction claim for the 1997-1998 and 1998-1999 fiscal year costs (05-4282-I-02).

Under the Commission's regulations, an incorrect reduction claim must be filed within three years of the date of the remittance advice or other notice of reduction. A document is timely filed with the Commission if the time for filing has not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark.

In this case, the remittance advice is dated April 28, 2003. The County mailed the incorrect reduction claim (05-4282-I-02) by express mail with a postmark of April 28, 2006, three years to the day of the remittance advice. Although the Commission received the filing on May 1, 2006, the claim is considered timely when using the date of the remittance advice. The time for filing had not expired when the claim was deposited in the mail on April 28, 2006.

### **Conclusion**

Staff concludes that the State Controller's Office correctly reduced the County's reimbursement claims for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001, for providing medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

### **Staff Recommendation**

Staff recommends that the Commission adopt this analysis and deny the incorrect reduction claims filed by the County of Orange (05-4282-I-02, 09-4282-I-04).

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## STAFF ANALYSIS

### Claimant

County of Orange

### Chronology

- 12/26/2002 State Controller's Office issues audit report for costs incurred in fiscal years 1997-1998 and 1998-1999 by the County of Orange and reduces costs for "medication monitoring" (Audit Finding 1)
- 04/28/2006 State Controller's Office issues remittance advice to County of Orange
- 05/01/2006 Commission receives incorrect reduction claim filed by County of Orange for reductions made to fiscal year 1997-1998 and 1998-1999 costs for "medication monitoring" (05-4282-I-02)
- 05/12/2006 Incorrect reduction claim deemed complete and issued for comment (05-4282-I-02)
- 03/30/2007 State Controller's Office issues audit report for costs incurred in fiscal year 2000-2001 by the County of Orange and reduces costs for "medication monitoring" (Audit Finding 3)
- 10/06/2009 State Controller's Office files response to incorrect reduction claim (05-4282-I-02)
- 11/09/2009 County of Orange files rebuttal (05-4282-I-02)
- 03/15/2010 County of Orange files incorrect reduction claim for reductions made to fiscal year 2000-2001 costs for "medication monitoring" (09-4282-I-04)
- 03/17/2010 Incorrect reduction claim deemed complete and issued for comment (09-4282-I-04)

### I. Background

This is an incorrect reduction claim filed by the County of Orange for costs incurred in three fiscal years (1997-1998, 1998-1999, and 2000-2001) to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.<sup>3</sup> The State Controller's Office reduced the County's reimbursement claims in the amount of \$2,676,659, arguing that medication monitoring is not a reimbursable activity during the audit period, and did not become reimbursable until fiscal year 2001-2002.

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<sup>3</sup> The reduction of costs for medication monitoring for these fiscal years are as follows:

<u>Fiscal year</u>	<u>Amount of Reduction</u>
1997-1998	\$ 759,114
1998-1999	\$ 870,701
<u>2000-2001</u>	<u>\$1,046,844</u>
Total	\$2,676,659

The *Handicapped and Disabled Students* program was enacted by the Legislature in 1986 to implement federal law (the Individuals with Disabilities Education Act, IDEA) that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

The *Handicapped and Disabled Students* program has a long and complicated history. However, the substantive issue presented in this claim relates to the sole issue of whether providing medication monitoring services is reimbursable in fiscal years 1997-1998, 1998-1999, and 2000-2001. As described in the analysis, the Commission has previously addressed the issue of medication monitoring and decisions have been adopted on the issue. These decisions are now final and must be followed here.

## **II. Positions of the Parties**

### Position of the State Controller's Office

The State Controller's Office contends that medication monitoring is not a reimbursable activity under the parameters and guidelines in effect during the audited years. The State Controller's Office further argues that the County's incorrect reduction claim filed for the fiscal year 1997-1998 and 1998-1999 costs (05-4282-I-02) was filed after the time required in the Commission's regulations, and should therefore not be considered by the Commission.

### Claimant's Position

The County disagrees with the reduction of costs by the State Controller's Office and contends that medication monitoring is a reimbursable activity during the audit period in question. The County argues that the parameters and guidelines state that "any" costs related to the mental health treatment services rendered under the Short-Doyle Act are reimbursable and, while "medication monitoring" is not specifically identified, it is not excluded either. The County asserts that "medication monitoring" has always been part of the treatment services rendered under the Short-Doyle Act. The County further asserts that the Commission clarified this point when it adopted the parameters and guidelines in *Handicapped and Disabled Students II*, specifically listing "medication monitoring" as a reimbursable activity.

The County further argues that its first incorrect reduction claim on this issue (05-4282-I-02) was filed within the statute of limitations.

The County seeks a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's Office incorrectly reduced the claim, and requests that the Controller reinstate the \$2,676,659 reduced for fiscal years 1997-1998, 1998-1999, and 2000-2001.

## **III. Discussion**

Government Code section 17561(b) authorizes the State Controller's Office to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the State Controller's Office determines is excessive or unreasonable.



Government Code Section 17551(d) requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the State Controller's Office and request that the costs in the claim be reinstated.

**A. The State Controller's Office correctly reduced the County's reimbursement claims for the costs incurred to provide medication monitoring services in fiscal years 1997-1998, 1998-1999, and 2000-2001.**

Costs incurred for this program in fiscal years 1997-1998, 1998-1999, and 2000-2001 are eligible for reimbursement under the parameters and guidelines for *Handicapped and Disabled Students* (CSM 4282). The test claim in *Handicapped and Disabled Students* was filed on Government Code section 7570 et seq., as added and amended by Statutes 1984 and 1985, and on the initial emergency regulations adopted in 1986 by the Departments of Mental Health and Education to implement this program.<sup>4</sup> In 1990 and 1991, the Commission approved the test claim and adopted parameters and guidelines, authorizing reimbursement for mental health treatment services as follows:

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 (Gov. 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.

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<sup>4</sup> California Code of Regulations, title 2, division 9, sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28)).

While the County acknowledges that medication monitoring is not expressly listed as a reimbursable activity in the parameters and guidelines, the County argues that medication monitoring is a reimbursable activity and that the parameters and guidelines authorize reimbursement for “any costs related to mental health treatment services rendered ....”

The County’s interpretation of the issue, however, conflicts with prior final decisions of the Commission on the issue of medication monitoring.

The *Handicapped and Disabled Students* (CSM 4282) decision addressed Government Code section 7576 and the implementing regulations as they were originally adopted in 1986. Government Code section 7576 required the county to provide psychotherapy or other mental health services when required by a pupil’s IEP. Former section 60020 of the Title 2 regulations defined “mental health services” to include the day services and outpatient services identified in sections 542 and 543 of the Department of Mental Health’s Title 9 regulations. (Former Cal. Code Regs., tit. 2, § 60020(a).) Section 543 defined outpatient services to include “medication.” “Medication” was defined to include “prescribing, administration, or dispensing of medications necessary to maintain individual psychiatric stability during the treatment process,” and “shall include the evaluation of side effects and results of medication.”

In 2004, the Commission was directed by the Legislature to reconsider its decision in *Handicapped and Disabled Students*. On reconsideration of the program in *Handicapped and Disabled Students* (04-RL-4282-10), the Commission found that the phrase “medication monitoring” was not included in the original test claim legislation. “Medication monitoring” was added to the regulations for this program in 1998 (Cal. Code Regs. tit. 2, § 60020). The Commission determined that:

“Medication monitoring” is part of the new, and current, definition of “mental health services” that was adopted by the Departments of Mental Health and Education in 1998. The current definition of “mental health services” and “medication monitoring” is the subject of the pending test claim, *Handicapped and Disabled Students II* (02-TC-40 and 02-TC-49), and will not be specifically analyzed here.<sup>5</sup>

Thus, the Commission did not approve reimbursement for medication monitoring in *Handicapped and Disabled Students* (CSM 4282) or on reconsideration of that program (04-RL-4282-10).

The 1998 regulations were pled in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), however. *Handicapped and Disabled Students II* was filed in 2003 on subsequent statutory and regulatory changes to the program, including the 1998 amendments to the regulation that defined “mental health services.” On May 26, 2005, the Commission adopted a statement of decision finding that the activity of “medication monitoring,” as defined in the 1998 amendment of section 60020, constituted a new program or higher level of service *beginning July 1, 2001*. The Commission’s decision in *Handicapped and Disabled Students II* states the following:

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<sup>5</sup> Statement of decision, Reconsideration of Handicapped and Disabled Students (04-RL-4282-10), page 42.

The Department of Finance argues that “medication monitoring” does not increase the level of service provided by counties. The Department states the following:

It is our interpretation that there is no meaningful difference between the medication requirements under the prior regulations and the new regulations of the test claim. The existing activities of “dispensing of medications, and the evaluation of side effects and results of medication” are in fact activities of medication monitoring and seem representative of all aspects of medication monitoring. To the extent that counties are already required to evaluate the “side effects and results of medication,” it is not clear that the new requirement of “medication monitoring” imposes a new or higher level of service.  
[footnote omitted.]

The Commission disagrees with the Department’s interpretation of section 60020, subdivisions (i) and (f), of the regulations, and finds that “medication monitoring” as defined in the regulation increases the level of service required of counties.

The same rules of construction applicable to statutes govern the interpretation of administrative regulations. [Footnote omitted.] Under the rules of statutory construction, it is presumed that the Legislature or the administrative agency intends to change the meaning of a law or regulation when it materially alters the language used. [Footnote omitted.] The courts will not infer that the intent was only to clarify the law when a statute or regulation is amended unless the nature of the amendment clearly demonstrates the case. [Footnote omitted.]

In the present case, the test claim regulations, as replaced in 1998, materially altered the language regarding the provision of medication. The activity of “dispensing” medications was deleted from the definition of mental health services. In addition, the test claim regulations deleted the phrase “evaluating the side effects and results of the medication,” and replaced the phrase with “monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness.” The definitions of “evaluating” and “monitoring” are different. To “evaluate” means to “to examine carefully; appraise.”<sup>6</sup> To “monitor” means to “to keep watch over; supervise.”<sup>7</sup> The definition of “monitor” and the regulatory language to monitor the “psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness” indicate that the activity of “monitoring” is an ongoing activity necessary to ensure that the pupil receives a free and appropriate education under federal law. This interpretation is supported by the final statement of reasons for the adoption of the language in section 60020, subdivision (f), which state that the regulation was intended to make it clear that “medication monitoring” is an educational service

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<sup>6</sup> Webster’s II New College Dictionary (1999) page 388.

<sup>7</sup> *Id.* at page 708.

that is provided pursuant to an IEP, rather than a medical service that is not allowable under the program.<sup>8</sup>

Neither the Department of Mental Health nor the Department of Education, agencies that adopted the regulations, filed substantive comments on this test claim. Thus, there is no evidence in the record to contradict the finding, based on the rules of statutory construction, that “medication monitoring” increases the level of service on counties.

Therefore, the Commission finds that the activity of “medication monitoring,” as defined in section 60020, subdivisions (f) and (i), constitutes a new program or higher level of service.<sup>9</sup>

In 2001, the Counties of Los Angeles and Stanislaus filed separate requests to amend the parameters and guidelines for the original program in *Handicapped and Disabled Students* (CSM 4282). As part of the requests, the Counties wanted the Commission to apply the 1998 regulations, including the provision of medication monitoring services, to the original parameters and guidelines. On December 4, 2006, the Commission denied the request, finding that the 1998 regulations were not pled in original test claim, and cannot by law be applied retroactively to the original parameters and guidelines in *Handicapped and Disabled Students* (CSM 4282). The analysis adopted by the Commission on the issue states the following:

The counties request that the Commission amend the provision in the parameters and guidelines for mental health services to include the current regulatory definition of “mental health services,” medication monitoring, and crisis intervention. The counties request the following language be added to the parameters and guidelines:

For each eligible claimant, the following cost items, for the provision of services when required by a child’s individualized education program in accordance with Section 7572(d) of the Government Code: psychotherapy (including outpatient crisis-intervention psychotherapy provided in the normal course of IEP services when a pupil exhibits acute psychiatric symptoms, which, if untreated, presents an imminent threat to the pupil) as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management are reimbursable (Government Code 7576). “Medication monitoring” includes medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness. [Footnote omitted.]

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<sup>8</sup> Final Statement of Reasons, page 7.

<sup>9</sup> Statement of decision, *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), pages 37-39.

The counties' proposed language, however, is based on regulations amended by the Departments of Mental Health and Education effective July 1, 1998. (Cal. Code Regs., tit. 2, § 60020, subds. (i) and (f).) The 1998 regulations were considered by the Commission in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), and approved for the following activities beginning July 1, 2001:

- Provide individual or group psychotherapy services, as defined in Business and Professions Code section 2903, when required by the pupil's IEP. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)
- Provide medication monitoring services when required by the pupil's IEP. "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, and monitoring of psychiatric medications or biologicals as necessary to alleviate the symptoms of mental illness. This service shall be provided directly or by contract at the discretion of the county of origin. (Cal. Code Regs., tit. 2, § 60020, subds. (f) and (i).)

The Commission's findings in *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), approving reimbursement for medication monitoring and psychotherapy services as currently defined in the regulations were not included in the original test claim (CSM 4282) and, thus, cannot be applied retroactively to the original parameters and guidelines. Based on Government Code section 17557, subdivision (e), the reimbursement period for the activities approved by the Commission in *Handicapped and Disabled II* begins July 1, 2001.

Therefore, the proposed amendment to add language based on the current definition of "mental health services," including medication monitoring, is inconsistent with, and not supported by the Commission's original 1990 Statement of Decision in *Handicapped and Disabled Students* (CSM 4282).<sup>10</sup>

These decisions of the Commission are final, binding decisions and were never challenged by the parties. Once "the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as judicial decisions."<sup>11</sup> Accordingly, based on these decisions, counties are not eligible for reimbursement for medication monitoring until July 1, 2001.

Therefore, the State Controller's Office correctly reduced the reimbursement claims of the County of Orange for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

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<sup>10</sup> Analysis adopted by Commission on December 4, 2006, in 00-PGA-03/04.

<sup>11</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

**B. The County's first incorrect reduction claim (05-4282-I-02) was filed within the time required by the Commission's regulations and, thus, the Commission has jurisdiction to determine the claim.**

The State Controller's Office argues that the County failed to file the incorrect reduction claim for fiscal years 1997-1998 and 1998-1999 (05-4282-I-02) within the time required by the Commission's regulations. The Controller's Office states the following:

Section 1185, subdivision (b) states that "[a]ll incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction." In this case, the remittance advice and accompanying letter were dated April 28, 2003 (See pages 2-5 of Exhibit C of the Claimant's IRC). Therefore, the last date to file an IRC was April 28, 2003. However, the Claimant did not file its claim until May 1, 2003, outside the time frame provided, and thus, the IRC is precluded by the limitations provision of Section 1185.

Using the date of the remittance advice, the County's filing is timely. Section 1181.1(g) of the Commission's regulations defines "filing date" as follows:

. . . the date of delivery to the commission office during normal business hours. For purposes of meeting the filing deadlines required by statute, the filing is timely if:

- (1) The filing is submitted by certified or express mail or a common carrier promising overnight delivery, and
- (2) The time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight deliver as shown on the carrier's receipt.

Section 1181.2 further states that "service by mail is complete when the document is deposited in the mail."

In this case, the County mailed the incorrect reduction claim (05-4282-I-02) by express mail with a postmark of April 28, 2006, three years to the day of the remittance advice. Although the Commission received the filing on May 1, 2006, the claim would still be considered timely, when using the date of the remittance advice. The time for filing had not expired when the claim was deposited in the mail on April 28, 2006.

However, at the time the County filed its incorrect reduction claim, section 1185 of the Commission's regulations provided that the three year deadline to file an incorrect reduction claim starts to run from "the date of the Office of State Controller's remittance advice *or other notice of adjustment notifying the claimant of a reduction.*" The audit report for the County's reimbursement claims filed for fiscal years 1997-1998 and 1998-1999 identifies the Controller's intention to reduce the County's claims for medication monitoring and is dated December 26, 2002, four months earlier than the remittance advice. Three years from the date of the audit report would be December 26, 2005 (more than four months before the County filed its claim).

The Controller's Office does not base its statute of limitations argument on the date of the audit report, however. Moreover, section 1185 of the Commission's regulations does not require the running of the time period from when a claimant *first* receives notice; but simply states that the time runs from either the remittance advice *or* other notice of adjustment.

Thus, when viewed in a light most favorable to the County, and based on the policy determined by the courts favoring the disposition of cases on their merits rather than on procedural grounds,<sup>12</sup> staff finds that the County timely filed the incorrect reduction claim for the fiscal year 1997-1998 and 1998-1999 costs.

#### **IV. Conclusion**

Staff concludes that the State Controller's Office correctly reduced the County's reimbursement claims for costs incurred in fiscal years 1997-1998, 1998-1999, and 2000-2001, for providing medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

#### **V. Staff Recommendation**

Staff recommends that the Commission adopt this analysis and deny the incorrect reduction claims filed by the County of Orange (05-4282-I-02, 09-4282-I-04).

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<sup>12</sup> *O'Riordan v. Federal Kemper Life Assurance* (2005) 36 Cal.4th 281, 284; *California Department of Corrections and Rehabilitation v. State Personnel Board* (2007) 147 Cal.App.4th 797, 805.