COUNTY OF SAN MATEO
OFFICE OF THE CONTROLLER

RECEIVED
June 17, 2015
Commission on
State Mandates

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June 17, 2015

Heather Halsey, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Subject: **County of San Mateo, Handicapped & Disabled Students**
Incorrect Reduction Claim, File# 05-4282-I-03

Dear Ms. Halsey:

The County of San Mateo ("County") requests that the Commission on State Mandates ("Commission") continue its consideration of the above-referenced Incorrect Reduction Claim ("IRC") and thereafter revise its proposed decision for the above-entitled matter because the decision erroneously concludes that the above-referenced IRC was not timely filed.

Specifically, the proposed decision is contrary to the record in this matter, as well as decisions of this Commission in factually similar cases, including, in particular, the Commission's Statement of Decision, dated August 1, 2011, in Case Nos. 05-4282-I-02 and 09-4282-I-04 (the "Orange County Decision"). A copy of the Orange County Decision is attached hereto for convenience.

Background

The County submitted claims for the fiscal years at issue throughout 1997, 1998, 1999 and 2000. On September 20, 2002, the State Controller's Office ("SCO") issued a draft audit report regarding these claims. The County submitted a rebuttal to the SCO audit on September 24, 2002, and the SCO issued an audit final report on December 26, 2002. The County submitted a Final County Rebuttal to the SCO on February 20, 2003, and the SCO issued its remittance advice on April 28, 2003.

The County filed the instant IRC on April 27, 2006.

The Commission now argues, contrary to its prior holdings and the generally held understanding regarding the time lines for filing IRCs, that the County's IRC is untimely because it should have been filed within three years of the issuance of the SCO's final audit report, rather than the SCO's remittance advice.

Relevant Authority

Former Section 1185 of the Commission's regulations, which applied during the relevant time period, required that an IRC "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." Cal. Code of Regs., title 2, § 1185 (Register 2003, No. 17).

Analysis

As noted, the County filed its IRC on April 27, 2006, within three years of issuance of the SCO's remittance advice. The Commission now asserts, though, that the IRC should have been filed within three years of the issuance of the SCO's final audit report because, based on the Commission's *present* interpretation, the final audit report constitutes "other notice of adjustment" notifying the County of a reduction of its claim.

This, however, is contrary to both well-settled practice and understanding and the Commission's own precedents. First, it should be noted that both the SCO and the County have agreed that the three year time period for filing the instant IRC began to run from the date that the SCO issued its remittance advice. Neither of these two parties is arguing that the IRC was untimely.

Moreover, the administrative appeal system described above makes clear that, even after issuance of the SCO's final audit report, the County may submit further materials and argument to the SCO with respect to its claim, including, for example, the submission of a rebuttal to the final audit report. Given the ongoing administrative process after the preparation of the SCO's final audit report, it is inappropriate to conclude that the report constitutes a "notice of adjustment" as that term is used in Section 1185.

Indeed, the Commission's own *Guide to the State Mandate Process*, which remains accessible on the Commission's website, specifically states that "[a] local agency or school district filing an incorrect reduction claim must do so no later than three years after receiving the *State Controller's Office remittance advice* that provided notice of reduction." *Guide to State Mandate Process*, California Commission on State Mandates, at 7-1 (emphasis added and citing Cal Code of Regs., Title 2, § 1185).

Importantly, the version of section 1185 of Title 2 relied on by the Commission to find the County's IRC untimely became operative on *April 21, 2003* (*see* Commission Draft Proposed Decision 05-4282-I-03 at page 16). The Commission's *Guide to the State Mandates Process*, which cites and construes section 1185 as triggering the running of the statute of limitations for filing an IRC only upon "receiving the State Controller's Office remittance advice," was published in *December 2003*, several months after the version on section 1185 applicable to the County's IRC at issue in this case came into effect. (For your convenience, I have attached copied of relevant pages of the *Guide to the State Mandates Process.*)

On these facts, it would be illogical and patently unjust to apply a new interpretation of section 1185 to claims submitted in 2006 in reliance on the Commission's clear and established construction of that

regulation. Rather, local agencies should be entitled to rely on, and defer to, the Commission's reasonable construction of its regulations unless and until they have clear notice of a change in interpretation.

A review of Commission decisions makes clear that the Commission provided no such notice of a change in regulatory interpretation at the time the County filed its IRC. In fact, if anything, Commission precedents show that the County was fully in compliance with the Commission's own interpretation of section 1185 when it filed the IRC in April 2006.

For example, the Commission, construing the same regulatory text at issue here, under remarkably similar circumstances, rejected a claim that a county's IRC was untimely. In the Orange County Decision, cited above, the SCO argued that Orange County failed to file its IRC within the time required by the Commission's regulations. (Orange County Decision p. 8.) As San Mateo County did here, Orange County had used the date three years from the date of issuance of the remittance advice as the last date to file its IRC.

Orange County's remittance advice and accompanying letter were dated April 28, 2003. (Orange County Decision p. 8.) The SCO referenced Section 1185, subdivision (b), that stated "[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 claimant of a reduction" and concluded that the last date to file an IRC was April 28, 2003. (*Id.*) However, Orange County did not file its claim until May 1, 2006, and the SCO asserted that Orange County's IRC was "precluded by the limitations provision of Section 1185."[1] (*Id.*)

In that case, the Commission noted that Orange County had received an audit report for the fiscal years at issue that identified the Controller's intention to reduce the County's claims and was dated December 26, 2002, "four months earlier than the remittance advice." (Orange County Decision p. 9.) It further observed that three years from the date of the audit report would be December 26, 2005, or, as the decision noted parenthetically, "more than four months before [Orange] County filed its claim." (*Id.*)

In this context the Orange County Decision repeated that "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.*'" (*Id.,* italics part of the Decision.) After noting that the Controller's Office did not base its statute of limitations argument on the date of the audit report, the Orange County Decision states: "[m]oreover, 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." (*Id.,* italics part of the Decision.)

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[1] The Commission received Orange County's filing on May 1, 2006, but the filing was sent by express mail with a postmark of April 28, 2008. The Orange County Decision held County's filing was timely pursuant to Section 1181.1 (g). (Orange County Decision pp. 8-9.)

The Orange County Decision concluded: "[t]hus, 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, staff finds that the County timely filed the incorrect reduction claim . . . ." (Orange County Decision p. 9.) The same result should apply in this case.

Reliance on the Commission's formal decisions is well established. "Once the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions. An administrative agency's quasi-judicial decision is binding in later civil actions. Unless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding . . . those findings are binding in later civil actions. . . . Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure. (Gov. Code § 17559, subd. (b).)" (*California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, citations and quotation omitted.) There is no reason that the Commission should reach a different result in this case from the Orange County Decision and, in fact, neither the County nor the SCO has asked that the Commission do so.

Moreover, with respect to statutes of limitations, "[t]here are several policies underlying such statutes. One purpose is to give defendants reasonable repose . . . [and another purpose] stimulates plaintiffs to pursue their claims diligently. A countervailing factor . . . is the policy favoring disposition of cases on the merits rather than on procedural grounds." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806, citations omitted.) "[A]nd, in a given case, may buy [repose] at the price of procedurally barring a cause of action that is in fact meritorious." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 396.)

In terms of the limitations provision of Section 1185, there is no material factual distinction between Orange County's IRC and San Mateo County's IRC. The matters discussed above, and the Orange County Decision compel a reversal of the Commission's draft decision in this case, as well as a finding that the regulatory period of limitation applies from the date of the admittance advice, and that, therefore, this IRC is timely filed.

We respectfully request that the Commission continue this item from the July hearing, accept the merits outlined in the IRC regarding findings 2, 3 and 4 of the SCO audit and reissue a staff analysis that speaks to those items. The County is prepared to provide any additional documentation to support the points outlined in this letter. Do not hesitate to contact Harshil Kanakia (hkanakia@smgov.org) at 650-599-1080 or Patrick Dyer (pdyer@mgtamer.com) at 916-502-5243.

Sincerely,

Juan Raigoza
Auditor-Controller
San Mateo County

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: 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 Fiscal Years 1997-1998, 1998-1999, 2000-2001 County of Orange, Claimant.	Case Nos.: 05-4282-I-02 and 09-4282-I-04 *Handicapped and Disabled Students* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted July 28, 2011)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Dated: August 1, 2011

DREW BOHAN
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: 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 Fiscal Years 1997-1998, 1998-1999, 2000-2001 County of Orange, Claimant.	Case Nos.: 05-4282-I-02 and 09-4282-I-04 *Handicapped and Disabled Students* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted July 28, 2011)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim during a regularly scheduled hearing on July 28, 2011. The claimant did not make an appearance and submitted the case on the record. Mr. Jim Spano appeared for the State Controller's Office.

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 staff analysis at the hearing by a vote of 6 to 0 to deny this incorrect reduction claim.

Summary of Findings

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.

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

The Commission finds that the County timely filed the first incorrect reduction claim for the 1997-1998 and 1998-1999 fiscal year costs.

The Commission further finds that 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. 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. Thus, the Commission finds that the County is not eligible for reimbursement for providing medication monitoring services until July 1, 2001.

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.[1] 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.

Position 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

[1] The reduction of costs for medication monitoring for these fiscal years are as follows:

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

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.

II. COMMISSION FINDINGS

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.[2] 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.

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

[2] 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)).

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.[3]

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:

> 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

[3] Statement of decision, *Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10), page 42.

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."[4] To "monitor" means to "to keep watch over; supervise."[5] 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 that is provided pursuant to an IEP, rather than a medical service that is not allowable under the program.[6]

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.[7]

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:

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[4] Webster's II New College Dictionary (1999) page 388.

[5] *Id.* at page 708.

[6] Final Statement of Reasons, page 7.

[7] Statement of decision, *Handicapped and Disabled Students II* (02-TC-40/02-TC-49), pages 37-39.

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.]

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).[8]

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."[9] 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.

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

[8] Analysis adopted by Commission on December 4, 2006, in 00-PGA-03/04.

[9] *California School Boards Assoc. v. State of California (*2009) 171 Cal.App.4th 1183, 1200.

(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,[10] staff finds that the County timely filed the incorrect reduction claim for the fiscal year 1997-1998 and 1998-1999 costs.

III. CONCLUSION

The Commission 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.

[10] *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.

INCORRECT REDUCTION CLAIMS

THE STATE CONTROLLER'S OFFICE may reduce the amount of any reimbursement claim that it determines to be excessive or unreasonable.[1] If the Controller takes such an action and the claimant disputes it, the claimant may file an incorrect reduction claim with the Commission. An incorrect reduction claim alleges that the Controller incorrectly reduced the amount paid on a reimbursement claim for a state-mandated program. The Commission hears and decides whether the State Controller's reduction was correct.[2]

Process Overview

Filing an incorrect reduction claim is the first step towards determining if the State Controller incorrectly reduced a reimbursement claim. After the Commission determines an incorrect reduction claim to be complete, a copy of the claim is sent to the State Controller's Office, which has no more than 90 days to file comments.[3] The claimant may file a rebuttal to the Controller's comments within 30 days after receipt of the Controller's comments. Once responses and rebuttals are received, staff completes an analysis to assist the Commission in determining whether to approve or deny the incorrect reduction claim. If, after a hearing, the Commission determines that the reimbursement claim was incorrectly reduced, it outlines its reasons and sends a statement of decision to the Controller. If the Commission determines that the reimbursement claim was not incorrectly reduced, claimants may file action in court to overturn the Commission's determination.

Local agencies and school districts may file an incorrect reduction claim with the Commission to obtain a determination on whether the State Controller incorrectly reduced a reimbursement claim.

Who Can File an Incorrect Reduction Claim

Commission regulations allow local agencies and school districts to file an incorrect reduction claim with the Commission to obtain a determination on whether the State Controller incorrectly reduced a reimbursement claim. A local agency or school district filing an incorrect reduction claim must do so no later than three years after receiving the State Controller's Office remittance advice that provided notice of reduction.[4] Incorrect reduction claims must pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one local entity. An incorrect reduction claim may apply to more than one fiscal year.[5]

Incorrect Reduction Claim Content

Each incorrect reduction claim must be filed on a form provided by the Commission and must include one original and two copies. An incorrect reduction claim must contain at least the following elements and documents:

- A copy of the State Controller's claiming instructions, (if available) in effect during the fiscal year(s) of the reimbursement claim(s).
- A detailed written narrative that describes the alleged incorrect reduction(s). The narrative should include, if known, a comprehensive description of the reduced or disallowed area(s) of cost(s).
- If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes, regulations or legal argument, and relies on assertions or representations of fact, such assertions or representations must be supported by testimonial or documentary evidence submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by individuals who are authorized and competent to do so. Declarations must also be based on the declarant's personal knowledge, information or belief.
- If available, a copy of the final state audit report or letter or the remittance advice or other notice of adjustment from the Controller, which explains the reason(s) for the reduction or disallowance.
- A copy of the letter sent by the claimant or the claimant's representative to the State Controller explaining why the disputed reduction should be restored.
- A copy of the subject reimbursement claims the claimant submitted to the Controller. [6]

The Commission must determine whether an incorrect reduction claim is complete within 10 days after it is filed.[7] If any of the preceding elements or documents are missing, illegible, insufficient, or without appropriate declarations, Commission staff deems the incorrect reduction claim "incomplete" and returns it to the claimant for completion.[8] The local agency or school district has 30 days to complete the claim.[9] If a complete incorrect reduction claim is not received by the commission with thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.[10]

What Happens After an Incorrect Reduction Claim is Received?

Agency Response

Within ten days of receiving a complete incorrect reduction claim, Commission staff forwards a copy of the claim to the State Controller's Office. The Controller has no more than 90 days to file written oppositions or recommendations on the incorrect reduction claim.[11] Any written opposition or recommendation filed with the Commission must simultaneously be served on the claimant and their designated representatives. All filings must include proof of service.[12]

If written oppositions or recommendations involve more than a discussion of statutes, regulations or legal argument, and use assertions or representations of fact, such assertions or representations must be supported by documentary evidence submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by individuals authorized and competent to do so. In addition, declarations must be based on the declarant's personal knowledge, information or belief.[13]

Claimant Rebuttal

Upon receipt of the Controller's response, the claimant may file a rebuttal and any supporting documentation with the Commission. Rebuttals are due 30 days after receipt of the Controller's comments. Assertions or representations of fact must be supported by documentary evidence submitted with the rebuttal. Documentary evidence must be authenticated by declarations under penalty of perjury and signed by individuals who are authorized and competent to do so, based on the declarant's personal knowledge, information or belief.[14]

Development of Staff Analysis

Staff analyzes an incorrect reduction claim after responses and rebuttals are received and reviewed. At least eight weeks before the scheduled hearing on the claim, staff completes an analysis and circulates it to the parties. It includes, but is not limited to, a review of written responses, opposition, recommendations, comments, and rebuttals filed by the State Controller and the claimant. This analysis aids Commission members in deciding the claim. The Commission may combine analyses of incorrect reduction claims from different local entities if staff determines the claims contain similar issues.

Any comments on the analysis and supporting documents must be filed and received in the Commission's office at least five weeks, or by the due date specified, before the scheduled hearing. Staff includes timely-filed comments in the record of the incorrect reduction claim that is presented to the Commission.

Commission Meeting and Hearing

Notice and Agenda

At least 10 days before the Commission meeting, the executive director issues a notice and agenda for the meeting to all parties, interested parties and interested persons.[15] The notice and agenda are also available on the Commission's web site (www.csm.ca.gov).[16]

Commission Meeting

The Commission is required to meet to carry out Commission business. Although different items may be heard at the same Commission meeting, the hearing on incorrect reduction claims is governed by article 7 of the Commission regulations. The hearing and evidentiary procedures may be different for each item on the meeting agenda.

The chairperson may cancel, reschedule or modify the starting time or place of any meeting for good cause. All meetings are open to the public and subject to the Bagley-Keene Open Meeting Act.[17] However, the Commission may meet in closed executive session to consider certain personnel matters and litigation.[18]

In all cases not covered by section 17500 et seq. of the Government Code, the Open Meeting Act and Commission regulations, the authority for Commission meetings defaults to the revised Robert's Rules of Order.[19]

Hearing on Incorrect Reduction Claims

At the hearing, the Commission may adopt, continue or deny a claim. Each incorrect reduction claim hearing takes place during the Commission's regularly scheduled meeting, which is conducted according to article 7 of Commission regulations. Prior to an incorrect reduction claim hearing, the claimant may submit a statement to the Commission indicating its preference for the claim to be heard by the Commission itself, a hearing panel or a hearing officer.[20]

If heard by the Commission, the incorrect reduction claim hearing begins with staff summarizing the undisputed facts and issues of the claim. The claimant then states its position and presents evidence. Thereafter, the State Controller's Office can do the same.

The claimant is given an opportunity to reply. At any time during the hearing, Commission members and the executive director may ask questions of any party or witness.[21] When the presentations and questioning are complete, the Commission makes a motion and votes on the claim. If the Commission determines the Controller incorrectly reduced a reimbursement claim, it outlines the reasons for the decision and sends this statement of decision to the State Controller. The statement of decision communicates the Commission's action on the incorrect reduction claim, and requests that the Controller reinstate the costs that were incorrectly reduced.[23] If the Commission determines that the reimbursment claim was not incorrectly reduced, claimants may file action in court to overturn the Commission's determination.

If the Commission determines the Controller incorrectly reduced a reimbursement claim, it outlines the reasons for the decision and sends this statement of decision to the State Controller.

Withdrawal of Incorrect Reduction Claims

The claimant may withdraw an incorrect reduction claim by written application any time before the Commission adopts a decision, or by oral application at the hearing on the claim. If such action is taken, the Commission may issue a decision dismissing the claim.[22]

1 Gov. Code, § 17561, subd. (d)(2).
2 Gov. Code, §17551, subd. (d).
3 Gov. Code, § 17553, subd. (d).
4 Cal. Code Regs., tit. 2, § 1185, subd. (b).
5 Cal. Code Regs., tit. 2, § 1185, subd. (c).
6 Cal. Code Regs., tit. 2, § 1185, subd. (e).
7 Gov. Code, § 17553, subd. (d); Cal. Code Regs., tit. 2, § 1185, subd. (f).
8 Cal. Code Regs., tit. 2, § 1185, subd. (f).
9 Gov. Code, § 17553, subd. (d).
10 Cal. Code Regs., tit. 2, § 1185, subd. (f).
11 Gov. Code, § 17553, subd. (d).
12 Cal. Code Regs., tit. 2, § 1185.01, subd. (b).
13 Cal. Code Regs., tit. 2, § 1185.01, subd. (b).
14 Cal. Code Regs., tit. 2, § 1185.01, subd. (c).
15 Cal. Code Regs., tit. 2, § 1182.1, subd. (b).
16 Gov. Code, § 11125.
17 Gov. Code, §§ 11123, and 17526, subd. (a).
18 Gov. Code, §§ 11123, and 17526, subd. (a).
19 Cal. Code Regs., tit. 2, § 1182.4.
20 Cal. Code Regs., tit. 2, § 1187.3, subd. (a).
21 Cal. Code Regs., tit. 2, § 1187.6, subd. (d).
22 Cal. Code Regs., tit. 2, § 1185.03.
23 Cal. Code Regs., tit. 2, § 1185.1.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 19, 2015, I served the:

> **Claimant Comments on Draft Proposed Decision and Request for Postponement;** and **Denial of Postponement of Hearing**
> *Handicapped and Disabled Students,* 05-4282-I-03
> Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274
> Fiscal Years 1996-1997, 1997-1998, and 1998-1999
> County of San Mateo, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 19, 2015 at Sacramento, California.

Imran Majid

Imran Majid
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/18/15

Claim Number: 05-4282-I-03

Matter: Handicapped and Disabled Students

Claimant: County of San Mateo

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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