



State of California—Health and Human Services Agency
Department of Health Care Services

Received
October 27 2010
Commission on
State Mandates
ARNOLD SCHWARZENEGGER
Governor

January 6, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
800 Ninth Street, Suite 300
Sacramento, CA 95814

**Re: Department of Health Care Service Comment on Test Claim 08-TC-04
Medi-Cal Eligibility of Juvenile Offenders**

Dear Ms. Higashi:

The Department of Health Care Services (DHCS) has reviewed the comments filed by the Department of Finance (Finance) and would like to clarify some statements made therein.

DHCS disagrees with Finance with regard to paragraphs 4 to 6 (p. 2) of its letter which reads:

“Federal funds are appropriated in Item 4260-101-0890. The DHCS combines the reports on the CMS-64 certification of public expenditures quarterly. An estimated claim is then submitted to draw down federal financial participation funds from the Center for Medicare & Medicaid Services, Department of Health and Human Services, a federal agency. Payment is based on the Federal Medical Assistance Percentage, which ranges between 50 and 85 cents reimbursement for every dollar.

“In cases where a deficiency may occur, the DHCS may request approval from Finance to transfer funds between schedules or from other specified items within the Budget. The authority for transfers is in the annual Budget Act as provisional language under Item 4260-101-0001.

“As a result of our review, Finance believes partial approval of the test claim may be appropriate for the sole requirement

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on the County Probation Department to provide specified information of a ward to the CWD, if additional costs have been incurred....”

Activities by County Probation Officers Do Not Draw Down Federal Financial Participation (FFP) Funds.

Contrary to the above paragraph, DHCS cannot draw down FFP funds from the federal government for services provided by County Probation Officers.

In a letter of disallowance from the federal Health Care Finance Administration (HCFA), California was denied FFP funds for Medi-Cal Administrative Claiming (MAC) System. The letter disallowed FFP funds for activities of probation or correctional officers in penal institutions. The letter states that such activities cannot be attributed to Medi-Cal (See p. 1, 1st par. of the letter.) The letter specifically states that:

“Activities being performed by probation or correctional officers in various juvenile or adult detention facilities were being coded as allowable MAC activities. However, such detention facilities are public penal institutions, and any medical services or MAC administrative activities provided to the inmates of such institutions are not allowable Federal Medicaid expenditures.”

As discussed extensively in DHCS initial comment to this test case, activities by County Probation Officers are not state reimbursable mandates under SB 1469. The implication of the above MAC federal disallowance is that contrary to the assessment of Finance, DHCS cannot draw down FFP funds in the amount of “50 to 85 cents reimbursement fore every dollar”. Consequently, should the activities of the County Probation Department be found to be a reimbursable state mandate, there are no funds allocated for its reimbursement.

The County Probation Department Is Already Reimbursed Under Existing Law for All Its Intake and Investigation Activities and Other Case Management Activities Related to Juvenile Incarceration.

Finance in their comment believes that “partial approval of the test claim may be appropriate for the sole requirement on the County Probation Department to provide specified information of a ward to the CWD, if additional costs have been incurred...”

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DHCS restates its position that no additional costs will be incurred by the County Probation Department. Counties are already being reimbursed for their intake, investigation, and other services incidental to juvenile incarceration. Counties are responsible for the case management of juveniles who have been incarcerated in the juvenile justice system. According to the Alameda County Probation Department website,

“Deputy Probation Officers fulfill the roles of Peace Officer, Case Manager, and Advocate for youths involved in delinquent behavior. Probation Officers serve in various functions, including Intake, Investigations, Supervision of High Risk Youths and Gender Specific Girl’s Caseloads, Community Probation Program, Out-of-Home Placement, Family Preservation Program, Home Supervision and Court Officers.” (See www.co.alameda.ca.us/probation/jfs.htm)

Counties are responsible for the case management of juveniles who have been incarcerated in the juvenile justice system (See Welf. & Inst. Code, § 650 et seq., 850 et seq., and 207.1 (e) (1).) Senate Bill 81 (2007) section 25 which codified Welfare and Institutions Code section 1766 states that if a person has been committed to the Department of Corrections and Rehabilitations, Division of Juvenile Facilities, the county of commitment shall supervise the parole and within 60 days of intake, the Division of Juvenile Facilities shall provide the County Probation Department with a treatment plan for the ward. Additionally, SB 81 (2007) section 31 also clearly provides that it is the intent of the Legislature that the authority for counties to receive wards who otherwise would be committed to the custody and supervision of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall not constitute a higher level of service or new program in excess of the programmatic funding included under SB 81. It also adds that it is the intent of the Legislature that the state has provided funding from an adequate level of care for youthful offenders received by the county pursuant to SB 81 and that each county shall be limited in its expenditures to funds specifically made available for such purposes.

Given the above statutes, it can be clearly seen that no finding of a reimbursable mandate can be found in the present test case since any reimbursement would be duplicative.

The purpose of SB 1469 is merely to enable the County Probation Officer to share the information with the County Welfare Department, who would in turn determine eligibility. The confidentiality of records of juveniles is paramount and protected by statute (See

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West's Ann.; Cal.Welf. & Inst.Code, § 204) and SB 1469 merely creates and allows the sharing of the data with the County Welfare Department strictly for eligibility screenings.

Welfare and Institutions Code section 204 states:

“204. Information available for juvenile court proceedings regarding best interest of child; confidentiality.

“Notwithstanding any other provision of law, except provisions of law governing the retention and storage of data, a family law court and a court hearing a probate guardianship matter shall, upon request from the juvenile court in any county, provide to the court all available information the court deems necessary to make a determination regarding the best interest of a child, as described in Section 202, who is the subject of a proceeding before the juvenile court pursuant to this division. The information shall also be released to a child protective services worker or juvenile probation officer acting within the scope of his or her duties in that proceeding. Any information released pursuant to this section that is confidential pursuant to any other provision of law shall remain confidential and may not be released, except to the extent necessary to comply with this section. No records shared pursuant to this section may be disclosed to any party in a case unless the party requests the agency or court that originates the record to release these records and the request is granted. In counties that provide confidential family law mediation, or confidential dependency mediation, those mediations are not covered by this section.”

SB 1469 taken together with existing statutes sought to clearly and expressly enable the County Probation Officers to share information that they already have to the County Welfare Department to for the purpose of Medi-Cal eligibility determination. It is not the intention of the Legislature to create a reimbursable state mandate.

SB 1147, Enacting Welfare and Institutions Code Section 14011.10 Effective January 2010 Amends and Supplements SB 1469.

SB 1469 which enacted Welfare and Institutions Code section 14029.5 was amended by SB 1147 in 2008. Welfare and Institutions Code section 14029.5 must be read in concert with Welfare and Institutions Code section 14011.10, which provides for the suspension rather than termination of eligibility for juvenile inmates and specifically states that no state general fund program shall be created.

Welfare and Institutions Code section 14011.10 (d) states that “Nothing in this section shall create a state-funded benefit or program...”

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In guiding the Commission of Mandates in determining whether a state mandate exists, Government Code section 17556 provides that:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

“xxx-xxx-xxx

“(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.”

In this case, SB 1147 provides for cost savings and amends Welfare and Institutions Code section 14029.5 to work in conjunction with Welfare and Institutions Code section 14011.10. In the case of *LifeCare v. CalOptima*, the court held:

“The passage of section 14081.5 demonstrates the Legislature's disapproval of judicial efforts to circumvent management controls on Medi-Cal reimbursement.” (See *LifeCare v. CalOptima* at p. 1181, 133 Cal.App. 4th 1169.)

With the passage of Welfare and Institutions Code section 14011.10 any juvenile already on Medi-Cal prior to incarceration is automatically reinstated as eligible for Medi-Cal on the date of release. Hence, with the passage of SB1147, the present test claim becomes moot (for claims after Jan. 2010). Since the juvenile's eligibility is automatically reinstated as eligible, there will be no need for re-determinations by the County Welfare Department. Any re-determination at most will be minimal and would only entail asking when the juvenile's incarceration ends.

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If you have any questions concerning this submission, please contact Mr. Jannsen Tan at (916) 440-7715 or via email at jtan@dhcs.ca.gov.

Sincerely,

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