



THE COUNTY COUNSEL
COUNTY OF ORANGE

333 W. SANTA ANA BLVD., SUITE 407
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 834-2359

James C. Harman
Assistant
(714) 834-5257

June 3, 2016

RECEIVED
June 03, 2016
Commission on
State Mandates

LEON J. PAGE
COUNTY COUNSEL
ANN E. FLETCHER
JACK W. GOLDEN
MARIANNE VAN RIPER
SENIOR ASSISTANTS

JAMES C. HARMAN
ASSISTANT

KAREN L. CHRISTENSEN
JAMES C. HARVEY
ADRIENNE SAURO HECKMAN
MARK R. HOWE
LAURA D. KNAPP
THOMAS A. "MAT" MILLER
NICOLE A. SIMS
DANA J. STITS
SUPERVISING DEPUTIES

JASON C. BROWN
DIRECTOR OF ADMINISTRATION

JANELLE B. PRICE
LAURIE A. SHADE
DANIEL H. SHEPHARD
JOYCE RILEY
STEVEN C. MILLER
CAROLYN S. FROST
ROBERT N. ERVAIS
NIKHIL G. DAFTARY
JEANNIE SU
WENDY J. PHILLIPS
TERI L. MAKSOUDIAN
ANGELICA CASTILLO DAFTARY
MICHAEL A. HAUBERT
RYAN M. F. BARON
BRAD R. POSIN
SAUL REYES
AURELIO TORRE
MARK D. SERVINO
DEBBIE TORREZ
JACQUELINE GUZMAN
ANDREA COLLER
PAUL M. ALBARIAN
D. KEVIN DUNN
LORI A. TORRISI
MASSOUD SHAMEL
SHARON VICTORIA DURBIN
REBECCA S. LEEDS
NICOLE M. WALSH
ELIZABETH A. PEJEAU
LAUREN C. KRAMER
GABRIEL J. BOWNE
JULIA C. WOO
LAUREL M. TIPPETT
MARK A. BATARSE
ADAM C. CLANTON
KRISTEN K. LECONG
ERIC A. DIVINE
JAMES D. P. STEINMANN
VANESSA D. ATKINS
SUZANNE E. SHOAI
DEBORAH B. MORSE
MATTHEW S. SPRISLER
KAYLA N. WATSON
CAROLYN M. KHOUZAM
ANNIE J. LOO
RONALD T. MAGSAYSAY
JOHN P. CLEVELAND
SAMARA BELGARDE
CHRISTOPHER S. ANDERSON
JUSTIN A. GRAHAM
BRITTANY McLEAN
JEFFREY A. STOCK
MARK N. SANCHEZ
GOLNAZ ZANDIEH
CYNTHIA G. INDA
STEPHANIE L. WATSON
DEPUTIES

Delivered via email (2 CCR § 1181.3)

Mr. Michael Cohen
Director of the Department of Finance
Chairperson, Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Incorrect Reduction Claim Nos. 11-9705-I-02 and 12-9705-I-03

Dear Chairperson Cohen:

The County of Orange hereby respectfully requests that the Commission on State Mandates decline to adopt the Proposed Decision drafted by the Commission's staff. The County acknowledges and appreciates the staff's work in reviewing the County's Incorrect Reduction Claims and in preparing the Proposed Decision. As discussed herein, we disagree with the Proposed Decision because it is in error. The Proposed Decision incorrectly concludes the County contracted with for profit entities. It also adopts an erroneous standard of review for Commission decisions on Incorrect Reduction Claims. For these reasons, as more fully discussed below, the Commission should reject the Proposed Decision and, instead, direct the Controller to approve the County's Incorrect Reduction Claims.

The County disputes the proposed conclusion that the Controller's reduction of costs is correct as a matter of law. (Draft Proposed Decision, pp. 28-37.) The Controller's position adopted in the Proposed Decision deviates from the language of the applicable Parameters and Guidelines in reaching the conclusion that a portion of the County's claims on out-of-state placements is disallowable. The Parameters and Guidelines state:

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and Title 2, California Code Regulations, [sections] 6100 and 6110.

For the audit periods at issue, the County held to the letter of the Parameters and Guidelines. The County contracted with nonprofit vendors facilities to provide all program services. These vendors (Mental Health Systems, Inc., Aspen Solutions, Inc.,

Mr. Michael Cohen
Chairperson, Commission on State Mandates
June 3, 2016
Page 2

and Kids Behavioral Health of Alaska, Inc.) were organized as nonprofit organizations. (See Item 8, Exhibits A-2, A-3 and A-4, of the County's November 9, 2011 Incorrect Reduction Claim). The Proposed Decision concedes Mental Health Systems, Inc. and Aspen Solutions, Inc. are "both California nonprofit corporations." (Proposed Decision, p. 24.) Despite this fact, the Proposed Decision disallows the costs associated with these vendors because of the corporate status of the companies that they deal with, such as Charter Provo Canyon. Nothing in the Parameters and Guidelines references subcontractors, affiliates, or partners. Rather, it references "vendors" which the Proposed Decision concedes in two instances the County's vendors were non-profit entities. In another instance, the non-profit For Kids Behavioral Health of Alaska, Inc., confirmed its non-profit status within the period subject to audit. (Proposed Decision, p. 24.)

Given the fact the County used nonprofit vendors for the provision of out-of-state placements as required under the Parameters and Guidelines, the Proposed Decision is in error when it proclaimed the Controller was correct as a matter of law in reducing the County's claim. Indeed, as a matter of law, the County's claims related to its three nonprofit vendors were correct as a matter of law because the County filed the claims as provided in the Parameters and Guidelines. Accordingly, the Commission should reject the Proposed Decision and direct a new Proposed Decision should be prepared allowing the County's claims in full consistent with the Parameters and Guidelines.

We also join in the argument presented by the County of San Diego in its reply to the proposed decision in Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services, 10-97050-I-01 & 13-9705-I-05 that the proposed decision adopts an inappropriate standard for this Commission's review of the Controller's reduction of claims. In our case, the Proposed Decision says, "[w]ith regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support." (Proposed Decision, p. 27.) The Proposed Decision provides no legal authority for this proposition.

The Proposed Decision tries to find support for the idea that the Commission reviews the Controller's work on an abuse of discretion standard by analogizing the Commission's role in an Incorrect Reduction Claim hearing to that of court weighing a petition of ordinary mandamus. (Proposed Decision, at p. 28; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-248.) This analogy is misplaced. The Commission does not review whether the Controller's decisions were "arbitrary, capricious, or entirely lacking in evidentiary support." The Commission's job is to make a determination on whether the Controller's reduction of the claim was *incorrect*. (2 CCR § 1185.1, subd. (a) "To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an 'incorrect reduction claim with the Commission. . .".)

Mr. Michael Cohen
Chairperson, Commission on State Mandates
June 3, 2016
Page 3

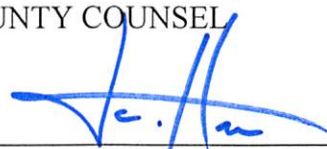
In making the determination of whether the Controller incorrectly reduced the County's claim, the Commission acts more like a trial court than, as the Proposed Decision suggests, an appellate court. Article 7 of the Commission's regulations provide the Commission sits as a quasi-judicial body vested with the authority to have evidence and witnesses presented at a hearing. (2 CCR §§ 1187-1188.) Trial courts that make factual findings and determinations hear witnesses and accept evidence. Appellate courts don't. Under the Commission's regulations it is the Commission's job to determine whether the Controller incorrectly reduced the County's claim. The Commission is given plenary authority to make this determination. The Proposed Decision cannot cite any legal authority to support restricting the Commission's authority to correct erroneous claim reductions by the Controller because none exists. The Commission is free to do its job and make a determination that the Controller incorrectly reduced the County's claims for the reasons stated in the claims and in this letter.

For these reasons, the County respectfully requests the Commission determine the Controller incorrectly reduced the County's claims. The Commission should adopt a decision consistent with that determination and order the County's claims be allowed in full.

Again, please accept our thanks to you, your fellow Commissioners, and the Commission's staff for the consideration provided to the County and its claims.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 
James C. Harman, Assistant

JCH:po

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 6, 2016, I served the:

Claimant Comments on the Draft Proposed Decision

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services, 11-9705-I-02

Government Code Section 7576, as amended by Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60100 and 60110
Fiscal Years: 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006

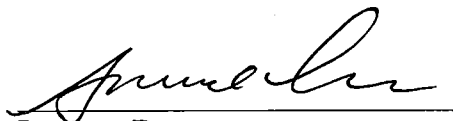
And

Handicapped and Disabled Students; Handicapped and Disabled Students II; and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services, 12-9705-I-03

Government Code Sections 7570-7588 as added by Statutes 1984, Chapter 1747 (AB 3632); and as amended by Statutes 1985, Chapter 1274 (AB 882); Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726); California Code of Regulations, Title 2, Division 9, Chapter 1, 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]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
Fiscal Years: 2006-2007, 2007-2008, and 2008-2009
County of Orange, 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 6, 2016 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 11-9705-I-02 Consolidated with 12-9705-I-03

Matter: Handicapped and Disabled Students; Handicapped and Disabled Students;
Seriously Emotionally Disturbed Pupils (SEDS): Out-of-State Mental
Health Services

Claimant: County of Orange

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.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Julia Blair, Senior Commission Counsel, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

julia.blair@csm.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

danielle.brandon@dof.ca.gov

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, *Legislative Representative, California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@cstda.net

Mary Hale, *County of Orange Health Care Agency*
Behavioral Health Services, 405 W. 5th Street, 7th Floor, Santa Ana, CA 92701
Phone: (714) 834-6032
mhale@ochca.com

Mary Halterman, *Principal Program Budget Analyst, Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@dof.ca.gov

James Harman, *Supervision Deputy, County of Orange*
County Counsel, 333 W. Santa Ana Blvd, Suite 407, Santa Ana, CA 92701
Phone: (714) 834-5257
james.harman@coco.ocgov.com

Justyn Howard, *Program Budget Manager, Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Salvador Lopez, *Administrative Manager III, Orange County Health Care Agency*
Claimant Representative

AC/HCA Accounting Administrative Services, 405 West 5th Street, Santa Ana, CA 92701
Phone: (714) 834-5264
SalLopez@ochca.com

Geoffrey Neill, *Senior Legislative Analyst, Revenue & Taxation, California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*

915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Artiano Shinoff & Holtz, APC*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*

P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

Jai Prasad, *County of San Bernardino*

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Refowitz, *Orange County Health Care Agency*

405 W. 5th St., Suite 721, Santa Ana, CA 92701

Phone: (714) 834-6254
mrefowitz@ochca.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov