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**RECEIVED**  
May 07, 2025  
**Commission on  
State Mandates**

May 7, 2025

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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Rebuttal to the Department of Finance**  
*Child Physical Abuse and Neglect Exams, 24-TC-05*  
Statutes 2023, Chapter 841, Section 1 (AB 1402); Penal Code Section  
11171, subd. (f)  
County of Santa Clara, Claimant

Dear Director Gmur:

The County of Santa Clara ("County") files the following rebuttal to the Commission on State Mandates ("Commission") in response to the Department of Finance ("DOF"), which commented on test claim 24-TC-05 ("Test Claim"), concerning child physical abuse and neglect exams. The Test Claim asserts that the AB 1402, which added subdivision (f) to section 11171 of the Penal Code ("Test Claim Statute"), imposes an unfunded mandate on counties and thus requires subvention pursuant to article XIII B, section 6 of the California Constitution ("Section 6").

**DISCUSSION**

Section 6 "requires the state to provide a subvention of funds to compensate local governments for the cost of a new program or higher level of service mandated by the state." (*Department of Fin. v. Comm'n on State Mandates* (2022) 85 Cal.App.5th 535, 549.) A mandate imposes a new program or higher level of service when "the

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requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment” of the mandate and “the requirements were intended to provide an enhanced service to the public.” (*San Diego Unified Sch. Dist. v. Comm’n on State Mandates* (2004) 33 Cal.4th 859, 878.)

DOF argues that the Test Claim Statute is not reimbursable because the statute’s requirements do not increase the actual level or quality of governmental service provided to the public, and that the Test Claim Statute instead requires the Claimant to “absorb the costs of medical evidentiary exams that the county was already required to perform under existing law, instead of passing those costs along to a third party.” (DOF, *supra*, at p. 1.) DOF also argues that the reasoning for a previously denied test claim, 00-TC-20/02-TC-02, should apply here. The County respectfully disagrees with DOF and asks the Commission to approve the Test Claim.

**A. By Increasing Access to Child Physical Abuse and Neglect Exams, the Test Claim Statute Enhances a Governmental Service.**

Although DOF characterizes the Test Claim Statute as a mere cost-shifting device, it unambiguously increases the quality of governmental service provided to the public. Courts have repeatedly found that state laws aimed at providing beneficial and protective public services create programs or higher levels of service under this prong. (See, e.g., *Department of Fin.*, *supra*, 85 Cal. App. 5th at pp. 555-56; *Lucia Mar Unified Sch. Dist. v. Honig* (1988) 44 Cal. 3d 830, 835; *San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 879.) In enacting Section 11171, the Legislature found and declared “that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.” (Pen. Code, § 11171, subd. (a)(1).) The legislative intent establishes that the Test Claim Statute makes these exams free of charge to make them more accessible to the public. (See Sen. Comm. on Approps., Analysis of Assem. Bill No. 1402 (2023-2024 Reg. Sess.), pp. 2-3.) The Test Claim Statute also promotes child welfare, as these exams are often necessary to investigate potential child abuse. (See, e.g., Welf. & Inst. Code, §§ 328, 329; Fam. Code, § 3027; Prob. Code, § 1513; Pen. Code, §§ 11166.3, 11169.)

**B. The California Supreme Court Previously Rejected the Very Argument DOF Raises Here in *County of San Diego v. State of California*.**

The California Supreme Court’s decision in *County of San Diego v. State of California* (1997) 15 Cal.4th 68, explains why the State cannot simply have counties “absorb the costs of medical evidentiary exams that the county was already required to perform under existing law.” (DOF, *supra*, at p. 1.) That decision concerned the State’s attempt to pass onto San Diego healthcare costs for medically indigent people (“MIP”) by excluding MIP from Medi-Cal, offering reimbursement for these costs to San Diego, and then decreasing reimbursement to San Diego. There, the State likewise argued

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that the “counties have always borne legal and financial responsibility” for the medical care of MIPs under Welfare and Institutions Code section 17000 (“Section 17000”). (*County of San Diego*, at p. 91.) However, the Court explained that Section 17000 only required the County to support indigent people when other sources—including State institutions—fell short. (*Id.*, at p. 92.) And by the time the voters adopted Section 6, the State became “primarily responsible for the costs of the program.” (*Id.*, at p. 93.)

The Court continued that the MIP care did not operate merely as a State reimbursement program for counties. (*Id.*, at pp. 96-98.) Although MIPs could seek medical care at private and county providers alike, the “administration of Medi-Cal over the years has been the responsibility of various state departments and agencies.” (*Id.*, at p. 96.) That rationale applies with greater force here. Ever since it enacted Penal Code section 11171, the Legislature has played a central role in defining child physical abuse and neglect exams by developing rules and standards, issuing a form for notating the exam, and creating an exam protocol to ensure consistent and comprehensive exams. (See Stats. 2003, ch. 249, § 4 [adding Section 11171].)

Further, the State’s own protocol makes clear that counties did not ever assume the financial responsibility for these exams, and instead billed Medi-Cal or private insurance. (See California Medical Protocol for Examination of Child Physical Abuse and Neglect Victims (“Protocol”), Governor’s Office of Emergency Services, State of California, 9.) By prohibiting counties from billing any insurance program for the costs of child physical abuse and neglect exams, assuming full financial responsibility for those exams, and then saddling counties with those very costs by declining to appropriate reimbursement funds, the Test Claim Statute did exactly what the Supreme Court admonished in *County of San Diego*: “*knowing and intending* that [its actions] would trigger the counties’ responsibility to provide medical care . . . the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: ‘transfer[ ] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public.’” (*County of San Diego, supra*, 15 Cal.4th at p. 98.) The Commission should apply *County of San Diego* and approve the Test Claim.

### **C. Test Claim 00-TC-20/02-TC-02 is Not Akin to This Test Claim.**

DOF argues that the same reasoning adopted in Test Claim 00-TC-20/02-TC-02, Workers’ Compensation Disability Benefits for Government Employees (“Workers’ Compensation Test Claim”), is applicable to this test claim. It summarizes the Commission findings that “extending the workers’ compensation leave benefits to additional employees does not mandate a new program or higher level of service within an existing program,” and “that additional costs for increased employee benefits, without an increase in the actual level or quality of governmental service provided to the public, do not constitute a new program or higher level of service.”

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The Workers' Compensation Test Claim is not an apt comparison. The Workers' Compensation Test Claim addressed modifications to Labor Code section 4850, which expanded a preexisting leave benefit to additional categories of employees. (Statement of Decision, Workers' Compensation Disability Benefits for Government Employees, 00-TC-20/02-TC-02 (May 31, 2007), at p. 1.) The Test Claim Statute does not extend a benefit to an additional category of beneficiaries within an existing program without increasing the actual level or quality of governmental service. As detailed above, the Test Claim Statute extends a benefit to the public for the first time—free child physical abuse and neglect exams—with the clear intent to make those exams more accessible, thus promoting child welfare and public safety. By shifting full financial responsibility from the State to counties, the Test Claim Statute and legislative action use county resources to finance this enhanced public service.

The Statement of Decision for the Workers' Compensation Test Claim differs in other respects as well. There, the Commission applied *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and its progeny for the narrow principle “that statutes that increase the cost of employee benefits do not mandate a new program or higher level of service in an existing program.” (Statement of Decision, *supra*, at p. 8.) In *County of Los Angeles*, the California Supreme Court emphasized that “the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.” (*County of Los Angeles, supra*, 43 Cal.3d at pp. 57-58.)

The Test Claim Statute at issue does not impose the same generally applicable burden akin to workers' compensation. Even though private hospitals are likewise prohibited from billing patients for child physical abuse and neglect exams, private hospitals are not practically compelled like counties to provide such exams. And indeed, the County's physician overseeing child physical abuse and neglect exams confirms that pro bono child abuse evaluations do not happen in Santa Clara County or anywhere else to her knowledge. (Test Claim, Child Physical Abuse and Neglect Exams, 24-TC-05, at p. 39.) Thus, private hospitals needn't and likely wouldn't offer child physical abuse and neglect exams when the Legislature declines to appropriate reimbursement for them. In contrast, counties have no practical alternative but to provide these exams, which are necessary to child welfare and public safety.

The Statement of Decision denying the Workers' Compensation Test Claim distinguishes *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, which serves as a more apt comparison to the Test Claim. There, the State issued executive orders requiring counties to purchase protective clothing and equipment. (*Carmel Valley*, at p. 530.) First, it found that “fire protection is a peculiarly governmental function”—one “not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders.” (*Id.*, at p. 537.)

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Second, the Court found that even with the existence of private fire brigades, the “requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies.” (*Id.*, at p. 538.) Later decisions applying *Carmel Valley* have emphasized that “[b]ecause this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public.” (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pp. 876-877.) By enhancing a public safety service through increased local expenditures, the Test Claim Statute here is much closer in comparison to *Carmel Valley* than it is to a scheme to increase workers’ compensation, which was not found to enhance a governmental service.

### **CONCLUSION**

With this rebuttal comment, the County respectfully disagrees with DOF and urges the Commission to adopt a decision approving the Test Claim. As the Claimant demonstrates, implementing the Test Claim Statute will require significant local government resources that require subvention pursuant to Section 6. These resources are crucial to realizing the core mission of the Test Claim Statute, which is to make more accessible an indispensable tool to child welfare and public safety.

### **Certification**

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Very truly yours,  
TONY LOPRESTI  
County Counsel

A handwritten signature in black ink, appearing to read "Rajiv Narayan", is written over a horizontal line.

RAJIV NARAYAN  
Deputy County Counsel

## **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 May 7, 2025, I served the:

- **Current Mailing List dated April 23, 2025**
- **Claimant's Rebuttal Comments filed May 7, 2025**

*Child Physical Abuse and Neglect Exams, 24-TC-05*

Statutes 2023, Chapter 841, (AB 1402); Penal Code Section 11171(f)

County of Santa Clara, 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 May 7, 2025 at Sacramento, California.



David Chavez

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**Claim  
Number:** 24-TC-05

**Matter:** Child Physical Abuse and Neglect Exams

**Claimant:** County of Santa Clara

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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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