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July 16, 2002

Honorable Richard Polanco
313 State Capitol

MENTAL HEALTH SERVICES - #24877

Dear Senator Polanco:

You have asked, if a county uses funds received by the county pursuant to the Bronzan-McCorquodale Act (Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code) to fund mental health services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code because the state has not appropriated sufficient funds to fully fund those services provided under that chapter, whether the county is entitled to be reimbursed for the entire amount of those expenditures.

By way of background, the Education of the Handicapped Act (20 U.S.C. Sec. 1400 and following) was enacted in 1970 (P.L. 91-230, Title VI). The amendment relevant to the discussion here was enacted as the Education for All Handicapped Children Act of 1975 (P.L. 94-142). The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act and amended several more times (P. L. 101-476; P.L. 102-119; P.L. 105-17; hereafter the IDEA).

Under the IDEA, a state is eligible to receive federal financial assistance if the state meets certain conditions (20 U.S.C. Sec. 1412(a)). Among these conditions is that a free appropriate public education is available to every youth with a disability, as defined by the IDEA, who is between the ages of three and 21 years (Ibid.). Under the IDEA, special education means "... specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability..." (20 U.S.C. Sec. 1401(25)). The IDEA also requires that related services be provided to help youth with disabilities benefit from special education services (20 U.S.C. Sec. 1412(a)(12)). These related services are defined in Section 1401(22) of Title 20 of the United States Code as follows:

> "(22) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services,

physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of disabling conditions in children."

As discussed below, the court in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 (hereafter *Hayes*) concluded that the Education of the Handicapped Act, renamed the IDEA, constituted a federal mandate with respect to the state for purposes of state constitutional provisions that require the state to provide a subvention of funds to reimburse local government for the cost of a state-mandated new program or higher level of service (*Hayes*, supra, at p. 1592; Sec. 6, Art. XIII B, Cal. Const.).

In California, special education and related services are provided, in accordance with the federal mandate, for children with exceptional needs, including children with severe emotional disturbances (Pt. 30 (commencing with Sec. 56000), Div 4, Title 2, Ed. C.; Ch. 26.5 (commencing with Sec. 7570), Div. 7, Title 1, Gov. C. (hereafter Chapter 26.5); 20 U.S.C. Sec. 1401(1)). Existing law requires each school district, special education local plan area, or county office of education to initiate and conduct meetings for the purposes of developing, reviewing, and revising an individualized education program for each child with exceptional needs (Sec. 56340, Ed. C.; subd. (d), Sec. 7572 and Sec. 7573, Gov. C.). The individualized education program may include mental health services necessary for the pupil to benefit from the educational program (Sec. 56363, Ed. C.; Sec. 7576, Gov. C.). Section 56345 of the Education Code requires that an individualized education plan include, among other things, the specific special education instruction and related services required by the pupil (para. (3), subd. (a), Sec. 56345, Ed. C.).

Chapter 1747 of the Statutes of 1984, operative July 1, 1985, enacted Chapter 26.5. Chapter 26.5 governs interagency responsibilities for providing services to disabled children. Section 7570 of the Government Code provides that it is the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare (now the California Health and Human Services Agency) to ensure maximum utilization of all state and federal resources available to provide a free appropriate public education, related services, and designated instruction and services to any child with a disability, as defined in Section 1401(3) of Title 20 of the United States Code. The related services to which a disabled child

is entitled are those specified in Section 1401(22) of Title 20 of the United States Code (Sec. 7570, Gov. C.).[1]

Section 7571 of the Government Code requires the Secretary of Health and Welfare, or his or her designee, to designate a single agency in each county to coordinate the service responsibilities described in Section 7572 of the Government Code. Section 7572 of the Government Code requires that a child "be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, psychotherapy, and other mental health assessments" (subd. (a), Sec. 7572, Gov. C.). Section 7572 of the Government Code requires that this assessment be conducted in accordance with the procedures set forth in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code.

As to the provision of the services specified in Section 7572 of the Government Code, Section 7573 of the Government Code requires the Superintendent of Public Instruction to ensure that local education agencies provide special education and related and other services contained in a child's individualized education program, that "are necessary for the child to benefit educationally from his or her instructional program."

In addition, Section 7572.5 of the Government Code requires that specified determinations be made in regard to the need for residential placement for a seriously emotionally disturbed child when residential placement has been recommended as part of that child's individualized education program. When any member of the child's individualized education program team recommends residential placement, Section 7572.5 of the Government Code imposes various responsibilities on the county mental health department, including determining the services that are necessary to meet the child's needs.

Pursuant to Section 7576 of the Government Code, the State Department of Mental Health (hereafter the department), or a community mental health service, as defined by Section 5602 of the Welfare and Institutions Code,[2] is responsible for providing specified mental health services when required in the child's individualized education program. A community mental health service is a mental health program established by a county in accordance with the Bronzan-McCorquodale Act (Pt. 2 (commencing with Sec. 5600), Div. 5; 2 Cal. Code Regs. 60020).

Thus, as discussed above, services provided pursuant to Sections 7572, 7575, and 7576 of the Government Code as part of a child's individualized education program are, to

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[1] The Joint Regulations for Pupils with Disabilities, which implement Chapter 26.5, are set forth in Division 9 (commencing with Section 60000) of Title 2 of the California Code of Regulations.

[2] All further section references are to the Welfare and Institutions Code, unless otherwise indicated.

the extent they are necessary for the child to benefit from a special education program, mandatory under state and federal law. That is, upon a determination that those services are necessary for a child to benefit from a special education program, both state and federal law require the services to be furnished.

Section 6 of Article XIII B of the California Constitution[3] provides that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service ... ." The constitutional rule of state subvention thus provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (hereafter *County of Los Angeles*); *Hayes*, supra, at p. 1577).[4]

Statutory provisions implementing the constitutional reimbursement requirement of Section 6 of Article XIII B, which are contained in Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, establish the procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of Section 6 of Article XIII B. Under this statutory scheme, the state is required to reimburse local agencies and school districts, pursuant to Chapter 4 (commencing with Section 17550) of Part 7 of Division 4 of Title 2 of the Government Code, for "costs mandated by the state" (Sec. 17550, Gov. C.), which is defined to mean any increased costs that a local agency or school district is required to incur after July 1, 1980, as a result of any statute, or executive order implementing any statute, enacted on or after January 1, 1975, that mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B (Sec. 17514, Gov. C.). Although the term "new program or higher level of service" is not defined by the Constitution or statute, in *County of Los Angeles*, supra, at page 56, that term was described as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."

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[3] All further article references are to the California Constitution, unless otherwise specified.

[4] Section 6 of Article XIII B lists several exclusions, not relevant to our discussion, to the requirement of the subvention of funds, as follows:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

In 1990, the Commission on State Mandates determined that the requirement that a county provide psychotherapy and other mental health treatment services to disabled students pursuant to Chapter 26.5 was a state-mandated local program that was reimbursable at the rate of 10 percent because those costs were subject to the cost-sharing formula of the former Short-Doyle Act (CSM-4282, April 26, 1990, p. 14).[5] The commission primarily relied on subdivision (g) of former Section 5651, which required each county's "annual Short-Doyle plan" to include a "description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services," and former Section 5705, which generally provided that the "net cost of all services specified in the approved county Short-Doyle plans shall be financed on a basis of 90 percent state funds and 10 percent county funds."[7] These statutes are discussed below.

In 1992, the *Hayes* court ruled that California's special education program, enacted to comply with the federal Education of the Handicapped Act, is a state-mandated local program because the state elected to shift its responsibility to provide comprehensive educational services for handicapped students to local school districts (*Hayes*, supra, at pp. 1591 and 1594).

Chapters 89 and 91 of the Statutes of 1991, referred to as "realignment" legislation, replaced the former Short-Doyle Act (formerly Pt. 2 (commencing with Sec. 5600), Div. 5) with the Bronzan-McCorquodale Act (subd. (a), Sec. 5600), which is contained in Part 2 (commencing with Section 5600) of Division 5. The purpose of the Bronzan-McCorquodale Act (hereafter the act) is to "organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs" (Sec. 5600). To carry out this purpose, the board of supervisors of every county, or the boards of supervisors of counties acting under a joint powers agreement, are required to establish a community mental health service to cover the entire area of the county or counties (Sec. 5602). A county is encouraged to maximize all available funds for the provision of services under the act (subd. (c), Sec. 5600.9).

The county board of supervisors is required to adopt and submit to the Director of Mental Health (hereafter state director) a proposed annual county mental health services performance contract for mental health services in the county or counties (Sec. 5650). This contract is required to include an assurance, among other assurances, that "the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirements of

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[5] The commission also determined that the requirement that a county provide assessment and case management services related to an individualized education program was a state-mandated local program subject to 100 percent reimbursement and not subject to cost sharing under the Short-Doyle Act (CSM-4282, supra, at pp. 13 and 14).

[6] See Chapter 1274 of the Statutes of 1985.

[7] See Chapter 1305 of the Statutes of 1988.

that chapter" (para. (2), subd. (a), Sec. 5651). The contract is also required to contain an assurance that "the county shall comply with all requirements in federal law and regulation pertaining to federally funded mental health programs" (para. (7), subd. (a), Sec. 5651).

The state director is required to review each proposed county mental health services performance contract to determine that it complies with the requirements of Division 5 (commencing with Section 5000), and is required to require modifications to the proposed contract that he or she deems necessary to bring the contract into compliance with the requirements of Division 5 (commencing with Section 5000) (subds. (a) and (b), Sec. 5666). Upon approval by both the county and the state director, the annual county performance contract is deemed to be a contractual arrangement between the state and the county (subd. (c), Sec. 5666).

The act provides for an array of program initiatives that counties may choose to provide as part of their community mental health services and also for certain services or program initiatives that counties are required to provide. The program initiatives counties may choose to provide include a community residential treatment system (Art. 1 (commencing with Sec. 5670), Ch. 2.5, Pt. 2, Div. 5), a community support system for homeless mentally disabled persons (Art. 2. (commencing with Sec. 5680), Ch. 2.5, Pt. 2, Div. 5), an older adults system of care mental health demonstration project (Art. 2.5 (commencing with Sec. 5689), Ch. 2.5, Pt. 2, Div. 5), a community vocational rehabilitation system (Art. 3 (commencing with Sec. 5690), Ch. 2.5, Pt. 2, Div. 5), a self-help program (Art. 4 (commencing with Sec. 5694), Ch. 2.5, Pt. 2, Div. 5), regional facilities for seriously emotionally disturbed wards (Art. 6 (commencing with Sec. 5695), Ch. 2.5, Pt. 2, Div. 5), and case management for children with serious emotional disturbances (Ch. 2.7 (commencing with Sec. 5699), Pt. 2, Div. 5).

Counties are also authorized to provide a system of care for seriously emotionally disturbed children and youth (Art. 7 (commencing with Sec. 5698), Ch. 2.5, Pt. 2, Div. 5). Section 5698 provides as follows:

> "5698. It is the intent of the Legislature to encourage in each county a system of care for seriously emotionally disturbed children and youth. This system of care should be based upon the following principles:
>
> "(a) A defined range of interagency services, blended programs and program standards that facilitate appropriate service delivery in the least restrictive environment as close to home as possible. The system should use available and accessible intensive home and school-based alternatives.
>
> "(b) A defined mechanism to ensure that services are child centered and family focused with parental participation in all aspects of the planning and delivery of service.
>
> "(c) A formalized multiagency policy making council and an interagency case management services council. The roles and responsibilities of these councils should be specified in existing interagency agreements or memoranda of understanding, or both.

"(d) A defined interagency case management system designed to facilitate services to the defined target population.

"(e) A defined mechanism to ensure that services are culturally competent."

Thus, Section 5698 encourages a system of care in each county for seriously emotionally disturbed children and youth involving interagency services and blended programs, including school-based services, as part of the act.

The act requires counties to provide certain services. For example, counties are required to perform certain duties in relation to seriously emotionally disturbed children (Art. 5 (commencing with Sec. 5694.7), Ch. 2.5, Pt. 2, Div. 5). Section 5694.7 provides as follows:

"5694.7. When the director of mental health in a county is notified pursuant to Section 319.1 or 635.1, or Section 7572.5 of the Government Code about a specific case, the county mental health director shall assign the responsibility either directly or through contract with a private provider, to review the information and assess whether or not the child is seriously emotionally disturbed as well as to determine the level of involvement in the case needed to assure access to appropriate mental health treatment services and whether appropriate treatment is available through the minor's own resources, those of the family or another private party, including a third-party payer, or through another agency, and to ensure access to services available within the county's program. This determination shall be submitted in writing to the notifying agency within 30 days. If in the course of evaluating the minor, the county mental health director determines that the minor may be dangerous, the county mental health director may request the court to direct counsel not to reveal information to the minor relating to the name and address of the person who prepared the subject report. If appropriate treatment is not available within the county's Bronzan-McCorquodale program, nothing in this section shall prevent the court from ordering treatment directly or through a family's private resources." (Emphasis added.)

Thus, Section 5694.7 requires the county mental health director to cause an assessment to be made of a child when, pursuant to Section 7572.5 of the Government Code, residential placement is recommended for a seriously emotionally disturbed pupil, and to ensure access to services available within the county's program.

Provisions of the act also require counties to provide certain services to Medi-Cal beneficiaries. Section 5718 requires counties to "provide services to Medi-Cal beneficiaries and seek the maximum federal reimbursement possible for services rendered to the mentally ill" (para. (1), subd. (a), Sec. 5718). That section requires counties to certify to the state that required matching funds are available prior to the reimbursement of federal funds (subd. (d), Sec. 5718).

Other programs were included in Chapter 89 of the Statutes of 1991, as part of the realignment legislation, that are optional to counties. Part 4 (commencing with Section 5850) of Division 5 (hereafter Part 4) establishes the Children's Mental Health Services Act, which is an interagency system of care, by participating counties, for children with serious emotional and behavioral disturbances that provides comprehensive, coordinated care (Sec. 5852; Sec. 197, Ch. 89, Stats. 1991). One of the purposes of Part 4 is to expand interagency collaboration and shared responsibility in order to enable special education pupils to attend public school and make academic progress (subpara. (C), para. (3), subd. (c), Sec. 5851). County participation under Part 4 is voluntary (Sec. 5853). Part 4 requires the department to issue a request for applications for funding for new children's system of care programs to nonparticipating counties in each year that additional funds are provided for expansion (subd. (a), Sec. 5857; see Schedule (c), Item 4440-101-0001, Sec. 2.00, annual Budget Act). Part 4 authorizes the department to contract with counties whose programs have been approved by the department and selected pursuant to Article 4 (commencing with Section 5857) of Part 4 (Sec. 5854). For purposes of Part 4, "seriously emotionally disturbed children" means those minors under 18 years of age described in paragraph (2) of subdivision (a) of Section 5600.3[8] (Sec. 5856). Children eligible for the program include "seriously disturbed children" who meet the requirements of Section 5856, and who are referred by collaborating programs (subd. (a), Sec. 5856.2). Counties are required to "ensure within available resources, that programs are designed to serve young children from zero to five years of age, inclusive, their families, and adolescents in transition from 15 to 21 years of age, inclusive" (subd. (b), Sec. 5856.2).

The department is required to enter into annual performance contracts with the selected counties and to enter into training and consultation contracts as necessary to fulfill its obligations under Part 4 (subd. (c), Sec. 5860). These annual performance contracts are required to be in addition to the county mental health services performance contracts submitted to the department under Section 5650 (Ibid.). Each county program proposal is required to include appropriate written interagency protocols and agreements with all other programs in the county that serve similar populations of children (subd. (d), Sec. 5863). The department is required to establish service standards that ensure that children in the target population are identified and receive needed and appropriate services from qualified staff in the least restrictive environment (subd. (a), Sec. 5868). These service standards include, among other things, providing a comprehensive assessment and treatment plan for each target population client to be served (para. (1), subd. (b), Sec. 5868). The responsibility of the case managers is to ensure that each child receives services, including a comprehensive mental health assessment, case planning with all appropriate interagency participation, linkage with all appropriate mental health services, service plan monitoring, and client

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[8] Paragraph (2) of subdivision (a) of Section 5600.3 includes certain minors who meet special education eligibility requirements under Chapter 26.5.

advocacy to ensure the provision of needed services (subd. (c), Sec. 5868). Counties are required to demonstrate a maintenance of effort in children's mental health services and to identify and justify any reduction of existing Bronzan-McCorquodale children's services provided under Part 2 (commencing with Section 5600) of Division 5 in the program proposal (Sec. 5867). Under specified circumstances, the department is required to determine that a county that has been awarded funding has achieved substantial compliance with specified goals, which include a "25-percent reduction in the rate of state hospitalization of minors from placements of special education pupils" (para. (4), subd. (b), Sec. 5852.5) and "[s]tatistically significant improvement in school attendance and academic performance of seriously emotionally disturbed special education pupils treated in day treatment programs which are wholly or partially funded by applications for funding award moneys" (para. (7), subd. (b), Sec. 5852.5).

Under Part 4, for each participating county, the department is required to define and establish client and cost outcome and other system performance goals, and to negotiate the expected levels of attainment for each year of participation (Sec. 5880). The goals are required to include, among other things, client improvement and cost avoidance outcome measures "[t]o reduce the number of child months in group homes, residential placements pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and state hospital placements." (para. (1), subd. (a), Sec. 5880). The goals are also required to include expanded treatment services at schoolsites (para. (4), subd. (b), Sec. 5880).

In regard to county programs, subdivision (c) of Section 5600.9 provides as follows:

"5600.9. . . .

* * *

"(c) To the extent permitted by law, counties should maximize all available funds for the provision of services to the target populations. Counties are expressly encouraged to develop interagency programs and to blend services and funds for individuals with multiple problems, such as those with mental illness and substance abuse, and children, who are served by multiple agencies. State departments are directed to assist counties in the development of mechanisms to blend funds and to seek any necessary waivers which may be appropriate."

It is apparent from the foregoing description of programs included in the realignment legislation that interagency and "blended" programs are authorized in regard to providing services to seriously emotionally disturbed children (Secs. 5600.9 and 5698, and Part 4). Chapter 26.5 is an interagency program that involves the county mental health department as well as other state and local agencies (Secs. 7572.5 and 7576, Gov. C.). Section 5694.7 expressly contemplates mental health treatment services required by Chapter 26.5 being provided within the "county's Bronzan-McCorquodale program."

Chapter 89 of the Statutes of 1991 also added Chapter 6 (commencing with Section 17600) to Part 5 of Division 9. Section 17600 establishes the Local Revenue Fund for the purpose of allocating to counties funds that replaced state funds formerly appropriated in the annual Budget Act for various programs.

The Local Revenue Fund contains a portion of the revenue derived from the state sales and use tax and the vehicle license fee (Secs. 17600.15 and 17604). The Local Revenue Fund is continuously appropriated, without regard to fiscal years, for the purposes of Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 (Sec. 17600). The Controller allocates money from accounts in the Local Revenue Fund to the counties (Secs. 17601, 17602, 17603, and 17604). Each county receiving funds from the Local Revenue Fund is required to establish a local health and welfare trust fund, to be comprised of a mental health account, a social services account, and a health account (Sec. 17600.10). Section 5600.3 provides that, to the extent resources are available, the primary goal of the use of funds deposited in the mental health account of the local health and welfare trust fund is to serve the target populations identified in specified categories, including seriously emotionally disturbed children or adolescents, as defined to mean a minor who has a mental disorder and satisfies other criteria, one of which is that he or she meets special education eligibility requirements under Chapter 26.5. Article 9 (commencing with Section 17608.05) of Chapter 6 of Part 5 of Division 9 establishes the requirements and schedule for county matching funds as a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's local health and welfare trust fund accounts.

Section 17609 provides that funds "deposited into a county's health and welfare trust fund accounts may be expended only for the purposes of providing those mental health, public health, indigent health care, social services, and juvenile justice programs transferred or otherwise financed pursuant to the realignment established under Chapters 89 and 91 of the Statutes of 1991." As stated above, the realignment legislation authorizes interagency programs that provide mental health treatment services to seriously emotionally disturbed children, including pupils (Secs. 5600.9 and 5698, and Part 4), and authorizes a county to provide mental health treatment services required by Chapter 26.5 within realignment programs (Sec. 5694.7). Consequently, in our view, the provision of mental health treatment services to seriously emotionally disturbed children pursuant to Chapter 26.5 is a program that was transferred or otherwise financed pursuant to the realignment legislation. Therefore, except as discussed below, moneys in a county's health and welfare trust fund accounts may generally be expended for the purpose of providing these mental health treatment services pursuant to Chapter 26.5.

Chapter 3 (commencing with Section 5700) of Part 2 of Division 5 (hereafter Chapter 3) sets forth other financial provisions of the act that are relevant to the question posed. Section 5700 states the Legislature's recognition that mental health services provided by county mental health programs are funded from several general categories or sources of public funding. Section 5700 provides as follows:

"5700. (a) The Legislature recognizes that mental health services provided by county mental health programs are funded from the following general categories or sources of public funding:

"(1) Funds received by counties from the Local Revenue Fund and county funds necessary to meet the federal maintenance of effort requirements.

"(2) Funds from appropriations made to the department or for which the department is responsible for administering, which are designated for local mental health services.

"(3) Reimbursements through the Medi-Cal program for mental health services to Medi-Cal eligible individuals receiving mental health services from county mental health programs.

"(4) Funds from county or local appropriations which are designated for local mental health services.

"(b) The Legislature further recognizes that there are procedures and requirements which are unique to each category set forth in subdivision (a), as well as procedures and requirements which apply to all four categories."

Two of the categories described in Section 5700 are funds received by counties from the Local Revenue Fund and county funds necessary to meet the federal maintenance of effort requirements (para. (1), subd. (a), Sec. 5700) and funds from appropriations made to the department or for which the department is responsible for administering, which are designated for local mental health services (para. (2), subd. (a), Sec. 5700).

Section 5701.3 makes specific reference to funding for counties for services provided pursuant to Chapter 26.5. That section provides as follows:

"5701.3. It is the intent of the Legislature that this chapter not affect the responsibilities to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Counties shall continue to receive allocations from specifically appropriated funds for psychotherapy and other mental health services provided by the counties in accordance with that chapter."

In this connection, counties have continued to receive allocations from specifically appropriated funds in the annual Budget Act for psychotherapy and other mental health services provided by counties in accordance with Chapter 26.5. Since the Legislature's enactment of Chapter 26.5, the Legislature has reimbursed counties by a specific appropriation in the Budget Act for these services (Item 4440-131-001, Sec. 2.00, Budget Acts of 1986 to 1995, inclusive; Item 4440-131-0001, Sec. 2.00, Budget Acts of 1996 to 2001, inclusive). In addition, in each year since 1995, except 1996, the Legislature specifically reimbursed counties for amounts over and above that appropriation as part of the state-mandated local program process (Item 4440-295-001, Sec. 2,00, Budget Act of 1995 (Ch. 303, Stats. 1995); Item 4440-295-0001, Sec. 2.00, Budget Acts of 1997 to 2001, inclusive).

Section 5701.4 provides as follows:

"5701.4. Costs that were reimbursed, prior to July 1, 1991, from the local assistance appropriation contained in Item 4440-101-001 of the annual Budget Act, shall be reimbursed from funds received by counties pursuant to this chapter."

Costs reimbursed prior to July 1, 1991, from the local assistance appropriation contained in Item 4440-101-001 of Section 2.00 of the annual Budget Act did not include reimbursement for services provided pursuant to Chapter 26.5. Prior to July 1, 1991, reimbursement for services provided pursuant to Chapter 26.5 was provided in Item 4440-131-001, which was the specific appropriation for the purpose of funding services required by Chapter 26.5. For example, prior to July 1, 1991, Item 4440-101-001 of Section 2.00 of the Budget Act of 1990 appropriated funds "for assistance to local agencies in the establishment and operation of mental health services, in accordance with the provisions of Division 5 (commencing with Section 5000) of the Welfare and Institutions Code..." (Provision 1, Item 4440-101-001, Sec. 2.00, Budget Act of 1990 (Ch. 467, Stats. 1990)). Included in Item 4440-101-001 of Section 2.00 of the Budget Act of 1990 were appropriations for the Community Residential Treatment System, Community Services-other treatment, Adult System of Care Pilots, Mental Health Services for Wards and Dependents, Targeted Supplemental Services: Alternatives to inappropriate jail placement, Targeted Supplement Services: Priority population services, Residential Care Services, Homeless Mentally Disabled, and AIDS (Item 4440-101-001, Sec. 2.00, Budget Act of 1990 (Ch. 467, Stats. 1990)).

Pursuant to Section 5704, funds described in paragraphs (1) and (2) of subdivision (a) of Section 5700 are required to be deposited in the mental health account of the local health and welfare trust fund and to only be used to fund expenditures for the costs of mental health services as delineated in regulations promulgated by the department,[9] and may not be used to fund expenditures for costs excluded from funding from this source by any provision of law (Sec. 5704).

Section 5707 provides as follows:

"5707. Funds appropriated to the department which are designated for local mental health services and funds which the department is responsible for allocating or administering, including, but not limited to, federal block grants funds, shall be expended in accordance with this section and Sections 5708 to

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[9] See Article 4 (commencing with Section 540) and Article 5 (commencing with Section 560) of Chapter 3 of Division 1 of Title 9 of the California Code of Regulations. These regulations describe mental health treatment services, including 24-hour services (9 Cal. Code Regs. 541) and day services (9 Cal. Code Regs. 542).

5717, inclusive, except when there are conflicting federal requirements, in which case the federal requirements shall be controlling."

Thus, funds appropriated to the department that are designated for local mental health services are required to be expended in accordance with Sections 5708 to 5717, inclusive.

In this regard, Section 5712 provides as follows:

"5712. The department shall contract with counties for the funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700 in accordance with the following:

"(a) The net cost of all services specified in the contract between the counties and the department shall be financed on a basis of 90 percent state funds and 10 percent county funds except for services to be financed from other public or private sources as indicated in the contracts.

"(b) The cost requirement for local financial participation pursuant to this section shall be waived for all counties with a population of 125,000 or less based on the most recent available estimates of population data as determined by the Population Research Unit of the Department of Finance.

"(c) The cost requirements for local financial participation pursuant to this section shall be waived for funds provided pursuant to Part 2.5 (commencing with Section 5775)."

Thus, Section 5712 requires the department to contract with counties for the funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700, and requires that the net cost of all services specified in the contract between the counties and the department be financed on a basis of 90 percent state funds and 10 percent county funds, except with regard to a county with a population of 125,000 or less and as otherwise provided (subd. (a), Sec. 5712).

Section 5717 specifies the expenditures counties may make with the funds allocated to the county by the department from funds appropriated to the department. Section 5717 provides as follows:

"5717. (a) Expenditures that may be funded from amounts allocated to the county by the department from funds appropriated to the department shall include negotiated rates and net amounts; salaries of personnel; approved facilities and services provided through contract; operation, maintenance and service costs including insurance costs or departmental charges for participation in a county self-insurance program if the charges are not in excess of comparable available commercial insurance premiums and on the condition that any surplus reserves be used to reduce future year contributions; depreciation of county facilities as established in the state's uniform accounting manual, disregarding depreciation on the facility to the extent it was financed by state funds under this part; lease of facilities where there is no intention to,

nor option to, purchase; expenses incurred under this act by members of the California Conference of Local Mental Health Directors for attendance at regular meetings of these conferences; expenses incurred by either the chairperson or elected representative of the local mental health advisory boards for attendance at regular meetings of the Organization of Mental Health Advisory Boards; expenditures included in approved countywide cost allocation plans submitted in accordance with the Controller's guidelines, including, but not limited to, adjustments of prior year estimated general county overhead to actual costs, but excluding allowable costs otherwise compensated by state funding; net costs of conservatorship investigation, approved by the Director of Mental Health. Except for expenditures made pursuant to Article 6 (commencing with Section 129225) of Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, it shall not include expenditures for initial capital improvements; the purchaser [sic] or construction of buildings except for equipment items and remodeling expense as may be provided for in regulations of the State Department of Mental Health; compensation to members of a local mental health advisory board, except actual and necessary expenses incurred in the performance of official duties that may include travel, lodging, and meals while on official business; or expenditures for a purpose for which state reimbursement is claimed under any other provision of law.

"(b) The director may make investigations and audits of expenditures the director may deem necessary.

"(c) With respect to funds allocated to a county by the department from funds appropriated to the department, the county shall repay to the state amounts found not to have been expended in accordance with the requirements set forth in this part. Repayment shall be within 30 days after it is determined that an expenditure has been made that is not in accordance with the requirements. In the event that repayment is not made in a timely manner, the department shall offset any amount improperly expended against the amount of any current or future advance payment or cost report settlement from the state for mental health services. Repayment provisions shall not apply to Short-Doyle funds allocated by the department for fiscal years up to and including the 1990-91 fiscal year." (Emphasis added.)

Thus, under Section 5717, expenditures for a purpose for which state reimbursement is claimed under any other provision of law may not be funded from amounts allocated to the county by the department from funds appropriated to the department.

The issue to be resolved is whether the costs of providing mental health services to disabled pupils pursuant to Chapter 26.5, if funded with money allocated to a county pursuant to the act by the department from funds appropriated to the department, are only 10 percent reimbursable according to any cost-sharing formula contained in the act, or

whether those costs are 100 percent reimbursable. As discussed below, based upon our review of the statutes, these costs, in our view, are 100 percent reimbursable.

To begin, we are concerned with the application of Section 5712, which establishes a cost-sharing formula for certain counties for services provided pursuant to a contract with the department in connection with funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700.

As stated above, Section 5651 requires the proposed annual county mental health services performance contract to include an assurance that the county will provide the mental health services required by Chapter 26.5 and will comply with all requirements of that chapter. However, Section 5651 does not provide that mental health services required by Chapter 26.5 are a part of the county contract; it merely requires an assurance that the county will provide those services. Thus, this provision is not conclusive to determine the question at hand.

Section 5701.3 states the intent of the Legislature that Chapter 3 not affect the responsibilities to fund psychotherapy and other mental health services required by Chapter 26.5. This statement of legislative intent does not explicitly address the matter in question here and thus is not very helpful in the instant case. However, Section 5701.3 also provides that counties shall continue to receive allocations from specifically appropriated funds for mental health services provided in accordance with Chapter 26.5. As stated above, in each year since the enactment of Chapter 26.5, funds have been specifically appropriated in the annual Budget Act to the department for services provided under Chapter 26.5. This is an indication that the Legislature intended to separately provide funding for services provided under Chapter 26.5, at least partially, by an appropriation in the annual Budget Act.

Section 5701.4 delineates the costs that are required to be reimbursed from funds received by counties pursuant to Chapter 3. These costs include costs that were reimbursed, prior to July 1, 1991, from Item 4440-101-001 of Section 2.00 of the annual Budget Act. As discussed above, funding for the costs of services provided under Chapter 26.5 were not included in that item prior to July 1, 1991. This could be construed as an indication that the act does not provide funding for Chapter 26.5. However, Section 5701.4 does not expressly exclude costs that were not reimbursed, prior to July 1, 1991, from that item, that could otherwise come within realignment funding (see Sec. 17609).

More importantly, we find evidence that the act does not provide funding for mental health treatment services provided under Chapter 26.5 through one of the act's funding mechanisms in Section 5717, which delineates the expenditures that may be funded from amounts appropriated to the department for local mental health services, and which also excludes certain expenditures from this funding mechanism (see Sec. 5707). Specifically excluded are "expenditures for a purpose for which state reimbursement is claimed under any other provision of law" (subd. (a), Sec. 5717). In that regard, as discussed above, the costs of providing services under Chapter 26.5 are in fact expenditures for a purpose for which state reimbursement may be claimed pursuant to Section 6 of Article XIII B (see *Hayes*, supra, at p. 1594). Moreover, as stated above, claims for reimbursement for services provided under Chapter 26.5 have been made pursuant to Section 6 of Article XIII B (see Item

4440-295-001, Sec. 2.00, Budget Act of 1995 (Ch. 303, Stats. 1995); Item 4440-295-0001, Sec. 2.00, Budget Acts of 1997 to 2001, inclusive).

Thus, in our view, Section 5717 precludes the use of funding, from amounts appropriated to the department for local mental health services, to fund mental health treatment services provided pursuant to Chapter 26.5. This conclusion is supported by the mandate set forth in subdivision (c) of Section 5600.9 that, to the extent permitted by law, counties should maximize all available funds for the provision of services to target populations.

Consequently, while Section 5712 generally requires a county, pursuant to a contract with the department, to provide 10 percent of the funds for services provided using the funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700, we conclude that this cost-sharing requirement does not apply to mental health treatment services provided under Chapter 26.5, because these funds are not intended to be used for this purpose.

However, there is nothing in the act that would prohibit a county from using state money in the mental health account of its local health and welfare trust fund that was allocated from the Local Revenue Fund for the purpose of providing mental health treatment services to seriously emotionally disturbed children pursuant to Chapter 26.5, as a supplement to state funds provided by Items 4440-131-0001 and 4440-295-0001 of Section 2.00 of the annual Budget Act. Moneys provided to counties from the revenue stream comprised of funds from the imposition of the state sales and use tax and the vehicle license fee in the Local Revenue Fund constitute a state subvention of funds within the meaning of Section 6 of Article XIII B. In our view, because the state has provided a subvention of state money by allocating funds from the Local Revenue Account to the local health and welfare trust fund, to the extent that a county uses this subvention for the purpose of providing mental health treatment services to seriously emotionally disturbed children pursuant to Chapter 26.5 to supplement funds appropriated in these Budget Act items, the county would not be entitled to reimbursement by the state for those amounts. However, a county would be entitled to reimbursement for the costs of providing those services to the extent that the county does not use state money in the mental health account of the local health and welfare trust fund derived from the Local Revenue Fund to fund those costs.

Thus, we conclude that if a county uses funds received by the county pursuant to the Bronzan-McCorquodale Act (Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code) to fund mental health services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code because the state has not appropriated sufficient funds to fully fund those services provided under that chapter, the county would be entitled to be reimbursed for the entire amount of those expenditures except with regard to those expenditures for services to

seriously emotionally disturbed children that are funded by state funds in the mental health account of the local health and welfare trust fund derived from the Local Revenue Fund.

Very truly yours,

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