

ORANGE COUNTY

Audit Report

CUSTODY OF MINORS – CHILD ABDUCTION AND RECOVERY PROGRAM

Chapter 1399, Statutes of 1976;
and Chapter 162, Statutes of 1992;
and Chapter 988, Statutes of 1996

July 1, 2018, through June 30, 2022



MALIA M. COHEN
CALIFORNIA STATE CONTROLLER

December 2024



MALIA M. COHEN
CALIFORNIA STATE CONTROLLER

December 6, 2024

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Mr. Andrew Hamilton, CPA, Auditor-Controller
Orange County
1770 North Broadway
Orange, CA 92706

Dear Mr. Hamilton:

The State Controller's Office audited the costs claimed by Orange County (the county) for the legislatively mandated Custody of Minors – Child Abduction and Recovery Program for the period of July 1, 2018, through June 30, 2022.

The county claimed and was paid \$3,074,047 for costs of the mandated program. Our audit found that \$3,891 is allowable and \$3,070,156 is unallowable. The costs are unallowable primarily because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function.

Following issuance of this audit report, the Local Government Programs and Services Division of the State Controller's Office will notify the county of the adjustment to its claims via a system-generated letter for each fiscal year in the audit period.

This audit report contains an adjustment to costs claimed by the county. If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). Pursuant to the Commission's regulations, outlined in Title 2, California Code of Regulations, section 1185.1(c), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this report, regardless of whether this report is subsequently supplemented, superseded, or otherwise amended. IRC information is available on the Commission's website at www.csm.ca.gov/forms/IRCForm.pdf.

Mr. Andrew Hamilton

December 6, 2024

Page 2 of 2

If you have any questions regarding this report, please contact Lisa Kurokawa, Chief, Compliance Audits Bureau, by telephone at 916-327-3138. Thank you.

Sincerely,

Original signed by

Kimberly A. Tarvin, CPA

Chief, Division of Audits

KAT/rs

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Contents

Audit Report

Summary	1
Background	1
Audit Authority.....	2
Objective, Scope, and Methodology	2
Conclusion	3
Follow-up on Prior Audit Findings.....	3
Views of Responsible Officials.....	3
Restricted Use	3
Schedule—Summary of Program Costs	4
Finding and Recommendation	6
Attachment—County’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Orange County (the county) for the legislatively mandated Custody of Minors – Child Abduction and Recovery (CAR) Program for the period of July 1, 2018, through June 30, 2022.

The county claimed and was paid \$3,074,047 for costs of the mandated program. Our audit found that \$3,891 is allowable and \$3,070,156 is unallowable. The costs are unallowable primarily because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function.

Background

Chapter 1399, Statutes of 1976, established the mandated CAR Program, based on the following laws:

- Civil Code section 4600.1 (repealed and added as Family Code Sections 3060 through 3064 by Chapter 162, Statutes of 1992);
- Penal Code (PC) sections 278 and 278.5 (repealed and added as PC sections 277, 278, and 278.5 by Chapter 988, Statutes of 1996); and
- Welfare and Institutions Code section 11478.5 (repealed and added as Family Code section 17506 by Chapter 478, Statutes of 1999; last amended by Chapter 759, Statutes of 2002).

These laws require the District Attorney's (DA's) Office to assist persons having legal custody of a child in:

- Locating their children when they are unlawfully taken away;
- Gaining enforcement of custody and visitation decrees and orders to appear;
- Defraying expenses related to the return of an illegally detained, abducted, or concealed child;
- Civil court action proceedings; and
- Guaranteeing the appearance of offenders and minors in court actions.

On September 19, 1979, the State Board of Control (now the Commission on State Mandates [Commission]) determined that this legislation imposed a state mandate reimbursable under Government Code (GC) section 17561.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The Commission adopted the parameters and guidelines on January 21, 1981; they were last amended on October 30, 2009. In compliance with GC section 17558, the SCO issues the *Mandated Cost Manual for Local Agencies (Mandated Cost Manual)* for mandated programs to assist local agencies in claiming reimbursable costs.

Audit Authority

We conducted this performance audit in accordance with GC sections 17558.5 and 17561, which authorize the SCO to audit the county's records to verify the actual amount of the mandated costs. In addition, GC section 12410 provides the SCO with general authority to audit the disbursement of state money for correctness, legality, and sufficient provisions of law for payment.

Objective, Scope, and Methodology

The objective of our audit was to determine whether claimed costs represent increased costs resulting from the legislatively mandated CAR Program. Specifically, we conducted this audit to determine whether claimed costs were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

The audit period was July 1, 2018, through June 30, 2022.

To achieve our objective, we performed the following procedures:

- We reviewed the annual mandated cost claims filed by the county for the audit period and identified the significant cost components of each claim as salaries and benefits, travel and training, and indirect costs. We determined whether there were any errors or unusual or unexpected variances from year to year. Then we reviewed the activities claimed to determine whether they adhered to the SCO's *Mandated Cost Manual* and the program's parameters and guidelines.
- We completed an internal control questionnaire by interviewing key county staff. We discussed the claim preparation process with county staff to determine what information was obtained, who obtained it, and how it was used.
- We reviewed payroll records for claimed employees. We noted that the records provided as support for the claimed costs did not meet the requirements of the program's parameters and guidelines (see the Finding).
- We reviewed the claimed indirect cost rates, including supporting documentation provided by the county. We found that the indirect cost rates were properly supported.
- We reviewed the county's single audit and revenue reports to identify potential sources of offsetting revenues and reimbursements from federal or pass-through programs applicable to this mandated program. The county did not claim offsetting revenues for the audit period, and we found no instances of unreported offsetting revenue. We noted no exceptions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Conclusion

As a result of performing the audit procedures, we found that the county did not comply with the requirements described in our audit objective. We did not find that the county claimed costs that were funded by other sources; however, we did find that it claimed unsupported and ineligible costs, as quantified in the Schedule and described in the Finding and Recommendation section.

For the audit period, the county claimed and was paid \$3,074,047 for costs of the legislatively mandated CAR Program. Our audit found that \$3,891 is allowable and \$3,070,156 is unallowable.

Following issuance of this audit report, the SCO's Local Government Programs and Services Division will notify the county of the adjustment to its claims via a system-generated letter for each fiscal year in the audit period.

**Follow-up on
Prior Audit
Findings**

The county has satisfactorily resolved the finding noted in our prior audit report for the period of July 1, 1997, through June 30, 1998, issued on February 28, 2001. The prior audit report was conducted under the program's previous parameters and guidelines, adopted on August 26, 1999.

**Views of
Responsible
Officials**

We issued a draft audit report on September 11, 2024. The county's representative responded by letter dated September 20, 2024, disagreeing with audit results. This final audit report includes the county's response as an attachment.

Restricted Use

This audit report is solely for the information and use of the county, the California Department of Finance, and the SCO; it is not intended to be, and should not be, used by anyone other than these specified parties. This restriction is not intended to limit distribution of this audit report, which is a matter of public record and is available on the SCO website at www.sco.ca.gov.

Original signed by

Kimberly A. Tarvin, CPA
Chief, Division of Audits

December 6, 2024

Schedule—
Summary of Program Costs
July 1, 2018, through June 30, 2022

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment ¹
<u>July 1, 2018, through June 30, 2019</u>			
Direct costs:			
Salaries and benefits	\$ 541,656	\$ -	\$ (541,656)
Travel and training	810	810	-
Total direct costs	542,466	810	(541,656)
Indirect costs	173,492	-	(173,492)
Total direct and indirect costs	715,958	810	(715,148)
Less: offsetting revenue	-	-	-
Total program costs	<u>\$ 715,958</u>	810	<u>\$ (715,148)</u>
Less amount paid by the State ²		<u>(715,958)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ (715,148)</u>	
<u>July 1, 2019, through June 30, 2020</u>			
Direct costs:			
Salaries and benefits	\$ 538,789	\$ -	\$ (538,789)
Travel and training	1,906	1,906	-
Total direct costs	540,695	1,906	(538,789)
Indirect costs	194,072	-	(194,072)
Total direct and indirect costs	734,767	1,906	(732,861)
Less: offsetting revenue	-	-	-
Total program costs	<u>\$ 734,767</u>	1,906	<u>\$ (732,861)</u>
Less amount paid by the State ²		<u>(734,767)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ (732,861)</u>	

Schedule (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment ¹
<u>July 1, 2020, through June 30, 2021</u>			
Direct costs:			
Salaries and benefits	\$ 612,707	\$ -	\$ (612,707)
Travel and training	625	625	-
Total direct costs	613,332	625	(612,707)
Indirect costs	218,981	-	(218,981)
Total direct and indirect costs	832,313	625	(831,688)
Less: offsetting revenue	-	-	-
Total program costs	<u>\$ 832,313</u>	625	<u>\$ (831,688)</u>
Less amount paid by the State ²		(832,313)	
Amount paid in excess of allowable costs claimed		<u>\$ (831,688)</u>	
<u>July 1, 2021, through June 30, 2022</u>			
Direct costs:			
Salaries and benefits	\$ 580,026	\$ -	\$ (580,026)
Travel and training	550	550	-
Total direct costs	580,576	550	(580,026)
Indirect costs	210,433	-	(210,433)
Total direct and indirect costs	791,009	550	(790,459)
Less: offsetting revenue	-	-	-
Total program costs	<u>\$ 791,009</u>	550	<u>\$ (790,459)</u>
Less amount paid by the State ²		(791,009)	
Amount paid in excess of allowable costs claimed		<u>\$ (790,459)</u>	
<u>Summary: July 1, 2018, through June 30, 2022</u>			
Direct costs:			
Salaries and benefits	\$ 2,273,178	\$ -	\$ (2,273,178)
Travel and training	3,891	3,891	-
Total direct costs	2,277,069	3,891	(2,273,178)
Indirect costs	796,978	-	(796,978)
Total direct and indirect costs	3,074,047	3,891	(3,070,156)
Less: offsetting revenue	-	-	-
Total program costs	<u>\$ 3,074,047</u>	3,891	<u>\$ (3,070,156)</u>
Less amount paid by the State ²		(3,074,047)	
Amount paid in excess of allowable costs claimed		<u>\$ (3,070,156)</u>	

¹ See the Finding and Recommendation section.

² Payment amount current as of November 12, 2024.

Finding and Recommendation

**FINDING—
Unsupported salaries,
benefits, and related
indirect costs**

The county claimed \$2,273,178 in salaries and benefits for the audit period. We determined that the entire amount is unallowable. The related unallowable indirect costs total \$796,978, for total unallowable costs of \$3,070,156. The costs are primarily unallowable because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function.

Following is a summary of the unallowable salaries and benefits, the related indirect costs, and the audit adjustment:

Cost Elements	Fiscal Year				Total
	2018-19	2019-20	2020-21	2021-22	
Total unallowable salaries and benefits	A \$ (541,656)	\$ (538,789)	\$ (612,707)	\$ (580,026)	\$ (2,273,178)
Claimed indirect cost rate	B 32.03%	36.02%	35.74%	36.28%	
Related indirect costs [A×B]	C (173,492)	(194,072)	(218,981)	(210,433)	(796,978)
Audit Adjustment [A+C]	D \$ (715,148)	\$ (732,861)	\$ (831,688)	\$ (790,459)	\$ (3,070,156)

The county provided two types of records to support the claimed hours: (1) monthly timesheets completed by employees to track time spent on child abduction and recovery activities; and (2) bi-weekly Virtual Timesheet Interface (VTI) time cards completed by employees documenting total hours worked. The employee classifications claimed included Deputy DAs, DA Investigators, and DA Investigative Assistants.

The VTI time card hours include employee hours charged to various pay codes. The VTI system is the countywide time system that interfaces with the Countywide Accounting and Personnel System.

The timesheet hours were split between Reimbursable and Non-Reimbursable categories. No further descriptions for the categories were included.

The Reimbursable categories included:

- Child Abduction 3130;
- Training Training/Investigation/Meeting 3130; and
- Overtime 3130.

The Non-Reimbursable categories included:

- Special Assignments;
- Court Time;
- Other/Misc;
- Vacation/Annual leave/Holiday;

- Compensatory Time/PIP; and
- Overtime.

District Attorney Investigators and Investigative Assistants

For fiscal year (FY) 2018-19 and FY 2019-20, the county provided timesheets and VTI time cards to support the hours claimed for the DA Investigators and DA Investigative Assistants. Neither timesheets nor VTI time cards include a description of the mandated activities performed. Without a description of the mandated functions performed, we were unable to verify that the claimed hours were for reimbursable activities.

For FY 2020-21 and FY 2021-22, the county provided VTI time cards only. These VTI time cards included job code “DA0110”, specific to the CAR Program. Through discussions with DA’s Office staff members, we determined that all of their time is charged to job code DA0110 because these positions spend all their time completing CAR Program duties. As evidenced on the VTI time cards, there is no breakdown within job code DA0110 that shows how much time was spent on specific mandated activities.

Furthermore, after discussions with DA’s Office staff members, we determined that DA investigative assistants input reports for cases that fell under PC section 278.7 (commonly referred to as “good cause” cases) into the “good cause” database. Time spent on activities related to good-cause cases is unallowable because the parameters and guidelines do not identify such cases as reimbursable.

The parameters and guidelines incorporate requirements of PC sections 278 and 278.5, as amended by Chapter 988, Statutes of 1996. This law, known as the Parental Kidnapping Prevention Act, also added PC section 278.7. However, PC section 278.7 was not incorporated into the parameters and guidelines; therefore, no costs claimed under this section are reimbursable.

Deputy District Attorney

For the entire audit period, the county provided timesheets and VTI time cards to support the hours claimed for the Deputy DA. Neither timesheets nor VTI time cards include a description of the mandated activities performed. Without a description of the mandated functions performed, we were unable to verify that the claimed hours were for reimbursable activities.

In addition, we noted multiple inconsistencies with the FY 2020-21 and FY 2021-22 Deputy DA timesheets. The time sheets were often signed and dated several months after the end of the timesheet period. We also noted instances in which multiple timesheets had been signed and dated on the same date, indicating that they were not completed contemporaneously.

During audit fieldwork, the county provided documentation for three child-abduction cases, including case file notes, Minute Orders from the Superior Court of California for the County of Orange, as well as the timesheets and VTI time cards previously provided. The documents provided do not describe the mandated functions performed or specify the actual number of hours devoted to each function. Without the detail required by the parameters and guidelines, we cannot determine whether the documents provided and any associated time were claimed on a particular day.

Additionally, the county provided declarations from a Deputy DA and a Senior Fiscal Manager, as well as exhibits, including VTI time cards and organizational charts, that it had previously provided. Per the program's parameters and guidelines, signed declarations are considered corroborating documents and are not a substitute for source documents. Only actual costs traceable to source documents may be claimed for this program.

Criteria

Section V., "Reimbursable Costs," of the parameters and guidelines begins:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. **However, corroborating documents cannot be substituted for source documents** [emphasis added].

Section VI.A, "Non-Reimbursable Costs," of the parameters and guidelines states:

Costs associated with criminal prosecution, commencing with the defendant's first appearance in a California court, for offenses defined in Sections 278 or 278.5 of the Penal Code, wherein the missing, abducted, or concealed child(ren) has been returned to the lawful person or agency.

Section VII.A.1., “Salaries and Employees’ Benefits” of the parameters and guidelines states, in part:

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

Recommendation

We recommend that the county:

- Follow the SCO’s *Mandated Cost Manual* and the mandated program’s parameters and guidelines when preparing its reimbursement claims; and
- Ensure that claimed costs are supported by source documentation.

County’s Response

A. The County Properly Submitted Claims for the Costs of Performing Reimbursable Activities In Compliance with the Parameters and Guidelines for the CAR Program and the Instructions and Forms Issued By the Controller, Which Were Supported by Source Documents

Under article XIII B, section 6 of the state Constitution, which specifies that if the state imposes any “new program or higher level of service” on any local government (including a school district), the State must reimburse the locality for the costs of the program or increased level of service. California courts have recognized that the purpose of article XIII B, section 6, is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 751–752.) Section 17561¹ is the primary code section that sets forth the State’s duties once a mandate is determined by the Commission on State Mandates (the “Commission”). (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 787.) Section 17561, subdivision (a) states: “The state shall reimburse each local agency and school district for all ‘costs mandated by the state,’ as defined in Section 17514 and for legislatively determined mandates in accordance with Section 17573.”

The Commission first determines whether a new program or higher level of service exists and whether there are actual, increased costs mandated by the state. (§§ 17514, 17551.) If these findings are made, the Commission determines the amount to be reimbursed to all local agencies and school districts by adopting parameters and guidelines. (§ 17557.) The parameters and guidelines identify the eligible claimants, period of reimbursement, reimbursable activities, and any offsetting revenues or savings. (Cal. Code Regs., tit. 2, § 1183.7.)

¹ All section references are to the Government Code unless otherwise specified.

After the adoption of the parameters and guidelines, the Commission submits the adopted parameters and guidelines to the Controller's Office to issue claiming instructions and to pay and audit reimbursement claims. (§§ 17558, 17560, 17561.) "The claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines, reasonable reimbursement methodology, or statute declaring a legislatively determined mandate." (§ 17558.)

Here, the parameters and guidelines for the CAR program were originally adopted in 1981, and the currently applicable parameters and guidelines were last amended in 2009. The Controller has also issued claiming instructions pursuant to Section 17558, which included the forms that delineate the information that the County is required to submit in support of its claims. For example, the Controller issued Form CAR-2, which refers to "Child Abduction And Recovery Component/Activity Cost Detail." Under box (03), the form requires claimants to: "Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 must be prepared for each activity." A 2003 version of the form listed two available activities: "Compliance with Court Orders" and "Court Costs for Out-of-Jurisdiction Cases." The current 2022 version of Form CAR-2 expanded the list to the following four categories of reimbursable activities:

1. Compliance with Court Orders [Section V.B.1]
2. Court Costs for Out-of-Jurisdiction Cases [Section V.B.2]
3. Secure Appearance of Offender [Section V.B.2.b.(3)]
4. Return of Children to Custodian [Section V.B.2.b.(4)]

These four reimbursable activities correspond to the above referenced "Reimbursable Activities," of the parameters and guidelines. Thus, when the Controller has determined that additional detail regarding the nature of reimbursable activities performed is necessary to comply with the current parameters and guidance, the Controller has revised its claiming instructions and forms for the program in question.

Given the population of Orange County, the Orange County District Attorney performs the duties mandated by the CAR program by assigning an experienced Deputy District Attorney IV to the Child Abduction Unit (CAU), which is contained in the District Attorney's Family Protection Unit. The Deputy District Attorney is supported by a DA Investigator and an Investigative Assistant. As depicted in the organizational charts submitted by the County during the audit, the CAU is a dedicated unit that investigates and handles cases of missing children in civil and/or criminal court when the suspected abductor is a family member. Indeed, the fact that the Orange County District Attorney's office has a dedicated unit that focuses on performing the CAR program mandates further reduces the likelihood that the individuals assigned to unit are submitting hours for work unrelated to the CAR program. During the four-year audit period, the Orange County District Attorney's Office opened 246 civil cases and closed about 324 cases. Based on this work, the County submitted claims for

payment for \$715,958, \$734,767, \$832,313 and \$791,009 for Fiscal Years 2018-19 through 2021-22, respectively.

From FY 2018-19 to 2021-22, the County recorded and maintained employee time records using a Virtual Timesheet Interface (VTI) system. The VTI system is a countywide time system, which requires all County employees to record and submit their time on a biweekly basis. The County processes its payroll based on each employee's submittal of biweekly timesheets through VTI. Each time an employee submits their time sheet, they are required to state: "I certify to the best of knowledge that the above information is true and correct." Each employee's manager is then required to review and approve the submittal of the timesheet by stating: "I certify that I have reviewed and approved the above information." The contemporaneous certifications are set forth at the bottom of the VTI timesheet for each biweekly pay period. The timesheets that are submitted through VTI constitute a source document, which is created at or near the same time the actual cost was incurred for the event or activity in question. The VTI timesheets for the employees whose hours were listed in the County's claims for reimbursement were provided to the auditors.

The County also provided time logs, which were completed by the employees whose hours were listed in the County's claims for reimbursement, to the auditors. In most instances, these logs were prepared within a month of the period referenced. The logs consist of worksheets that were completed by hand by each employee for the period referenced, then signed by the employee and their supervisor. On the logs, the employee would allocate their time between reimbursable work and non-reimbursable work with the bulk of hours being allocated to the code "Child Abduction 3130." From FY 2018-19 to 2019-20, 22 out of 25 time logs were prepared and signed by the attorneys referenced within a month of the period at issue. Likewise, from FY 2018-19 to 2020-21, 31 out of 32 logs were completed within a month of the period referenced for the Investigator, and 34 out of 36 logs were completed within a month of the period referenced for the Investigative Assistant. Finally, beginning in March 2021 through the end of FY 2021-22, both the Investigator and Investigative Assistant began to directly code their time in VTI to code "DA0110," which refers to the CAR program. The time logs for the employees whose hours were listed in the County's claims for reimbursement were provided to the auditors.

The VTI timesheets and the time logs that the County employees submitted within a month of the period referenced clearly fall within the definition of a source document:

A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

In addition, even the minority of time logs, which are not contemporaneous, can also be considered as corroborating evidence as worksheets that allocate the time depicted in the source documents between reimbursable and non-reimbursable activities.

Even though the employees were assigned to Family Protection with the assigned attorney Deputy District Attorney being specifically assigned to the Child Abduction Unit in Family Protection, the County did not simply claim the hours they worked as costs. Instead, the billing code of “3130,” including Child Abduction 3130, on the time logs and “DA0110” on the VTI timesheets directly correspond to the reimbursable activity listed on Form CAR-2 (that was in effect at the time the County filed its claim) for “Compliance with Court Orders” and were used to calculate the hours that the County claimed for the performance of this activity. There is no finding in the Draft Audit that the hours claimed by the County were excessive or unreasonable. (See § 17561 [Controller may reduce any claim that the Controller determines is excessive or unreasonable].)

B. The Disallowance of Almost All of the County’s CAR Program Costs is Arbitrary and Capricious, and Lacks Evidentiary Support

Consistent with the purpose of requiring the State to reimburse the actual costs of local agencies, the Government Code authorizes the Controller to audit claims to correct inaccurate fund disbursements. The draft audit cites Section 17558.5 of the Government Code, which provides: “A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.”² Likewise, the draft audit cites Section 17561, which states that the Controller has the authority to audit the records of “any local agency or school district to verify the actual amount of the mandated costs” and “may reduce any claim that the Controller determines is excessive or unreasonable.” Thus, courts have held that Section 17561 allows the Controller to correct inaccurate fund disbursements after auditing the local entity’s supporting records. (See *California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 789 [this administrative power to adjust payments is not equivalent to stating that the Legislature has the authority to provide a nominal payment for a mandate].)

Here, notwithstanding the clear evidence that the County has incurred and submitted documented claims for costs resulting from the Orange County District Attorney’s performance of the CAR program mandates, the Draft Audit disallows almost all costs incurred and claimed by the County. The auditor did not find that the County’s costs were either excessive or unreasonable. Instead, the Draft Audit found: “The costs are primarily unallowable because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function.”

² The County’s claim for FY 2018-19 was submitted on February 5, 2020. The current audit was initiated on May 5, 2023, which is 3 years, 3 months, 14 days after the submittal of the claim. Thus, the disallowance of the amounts claimed for FY 2018-19 is untimely and should be withdrawn.

As noted by several other counties in response to similar audit findings by the Controller with respect to the CAR program, the Draft Audit appears to base this finding on a strained reading of the of the [sic] program's parameters and guidelines to broadly reject time records that established that County employees performed mandated activities, which had been acceptable for decades. For example, even though the Draft Audit acknowledges that the County provided time logs and VTI timesheets, which contain codes that directly correspond to the reimbursable activities identified in both the parameters and guidelines and the Controller's claiming instructions and forms, the Draft Audit states:

Neither timesheets nor VTI timecards include a description of the mandated activities performed. Without a description of the mandated functions performed, we were unable to verify that the claimed hours were for reimbursable activities.

Implicit in this finding is the assumption that (1) the use of time codes that directly correspond to the reimbursable activities identified in parameters and guidelines and the Controller's claiming instructions is insufficient and (2) the parameters and guidelines require an unspecified level detail that goes beyond the stated requirements of the Controller's own claiming instructions and forms. The claiming instructions divide reimbursable activities into the four categories discussed above.³ Indeed, the claiming instructions use the term function to refer to a description of the job duties of the employees who the County must list on Form CAR-2. The form requires the County: "To itemize costs for the activity checked in block (03), enter each employee name, job classification, a brief description of the activities performed, productive hourly rate, actual time spent, fringe benefits, supplies used, contract services, fixed assets, and travel and training expenses."

Orange County is not alone in having almost all its claimed costs disallowed based on this recent re-interpretation of the parameters and guidelines given that the Controller has made similar findings for other counties, which also resulted in the disallowance of almost all costs associated with the CAR program. Every county that has been audited

³ If the parameters and guidelines required the level of detail implied by the Draft Audit beyond the use of billing codes that correspond to reimbursable activities such as a requiring a narrative description to accompany time entries, then the parameters and guidelines and claiming instructions would expressly state such a requirement, though doing so would itself create a reimbursable mandate.

since November 2022 had over 97 percent of its CAR program costs disallowed:

County Name	Audit Date	Claimed Costs (A)	Disallowed Costs (B)	Disallowance Rate (B/A)
Sacramento	2/23/2022	\$1,885,876	\$465,094	24.70%
Ventura	11/28/2022	\$4,284,397	\$4,185,340	97.70%
San Joaquin	5/2/2023	\$2,061,920	\$2,033,798	98.60%
Riverside	6/30/2023	\$3,762,254	\$3,649,699	97.00%
San Diego	7/14/2023	\$3,433,637	\$3,390,611	98.70%
Shasta	8/23/2023	\$1,204,994	\$1,192,584	98.90%
Los Angeles	5/2/2024	\$10,292,292	\$10,292,232	100%
San Luis Obispo	8/22/2024	\$1,175,665	\$1,174,239	99.9%
Orange	N/A	\$3,074,047	\$3,070,156	99.87%

Like other counties, the Controller previously initiated an audit of the County’s CAR program for FY 2006-07 through FY 2008-09, which encompasses the period covered by the current 2009 parameters and guidelines, but cancelled the audit because it concluded that the County’s claims were reasonably supported.⁴

These facts, along with the absence of any determination that the County’s claimed costs for the CAR program are either excessive or unreasonable, demonstrate that at minimum the County substantially complied with the requirements of the parameters and guidelines for the CAR program along with the Controller’s claiming instructions. Substantial compliance, as the phrase is used in court decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute. (*Southern Pac. Transportation Co. v. State Bd. of Equalization* (1985) 175 Cal.App.3d 438, 442.) “Where there is compliance as to all matters of substance technical deviations are not to be given the stature of noncompliance.” (*Ibid.*) “Substance prevails over form.” (*Ibid.*) In contrast, “strict compliance with a statute is warranted when the Legislature evinces its intent that the statute’s requirements are to be followed precisely. (*2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 860–861.) A court may infer such an intent when (1) the Legislature has provided a *detailed and specific mandate*, or (2) the intent of the statute can only be served by demanding strict compliance with its terms. (*Ibid.*) Thus, unless the intent of a statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test. (*San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 647.)

The Draft Audit’s wholesale disallowance of claimed hours based on the alleged inclusion of time spent by DA investigative assistants inputting reports for cases for which Penal Code section 278.7 (which can be raised an affirmative defense to the enforcement of Penal Code 278.5) might apply, illustrates the arbitrary nature of the Draft Audit’s finding and disallowance of costs. As the Draft Audit notes, the parameters and guidelines for CAR do not mention Penal Code section 278.7. Likewise, the Controller’s claiming instructions are silent with respect to the need to track or deduct time spent on this affirmative defense, thus the County did not create any codes to track

⁴ The 2009 parameters and guidelines were effective for claims filed from FY 2005-06 going forward.

time that is potentially attributable to Penal Code section 278.7. Yet, despite the absence of any mention in the parameters and guidance or the Controller’s claiming instructions and the absence of any records establishing that the County has claimed time attributable to Penal Code section 278.7, the Draft Audit disallows 100 percent of the time claimed by the County because the auditors “determined that DA investigative assistants input reports for cases that fell under PC section 278.7” based on “discussions with DA’s Office staff members” during the audit. However, the Draft Audit fails to reflect that the DA investigative assistant stated during the discussion that it takes an investigative assistant 2-3 minutes to input a good cause report into the database, and that on average, there are about 3 to 6 reports per week, or 9 to 18 minutes per week, or less than 8 to 16 hours a year, spent on Penal Code section 278.7 “good cause” activities by the investigative assistant.⁵ Thus, while the Draft Audit otherwise takes a strict view against the consideration of corroborating evidence, which “cannot be substituted for source documents,” the Draft Audit relies on such corroborating evidence to disregard time records, which had been acceptable for decades.

Accordingly, to the extent that the Draft Audit concludes that the County has not complied with the rigorous (but unspecified) detail required by the parameters and guidelines, which extends far beyond the express requirements of the Controller’s claiming instructions, the County has substantially complied and relying on such a technical violation to disallow the County’s claimed costs as a penalty without any facts showing that these costs are unreasonable or excessive conflicts with the purpose of article XIII B, section 6, of the Constitution and its implementing statutes.⁶ This is particularly true with respect to the wholesale disallowance of costs based on the County’s failure to comply with the alleged requirement that it separately track and deduct time attributed to Penal Code section 278.7, which the Draft Audit acknowledges is not discussed in the parameters and guidelines or the Controller’s claiming instructions.

⁵ In the Controller’s audit of Sacramento County, the auditor attributed 2.6 percent of labor costs to work attributable to Penal Code section 278.7 and disallowed this percentage of costs, rather than the entirety of costs claimed. Sacramento’s calculation of time spent on Penal Code section 278.7 work is in line with the estimates provided by the investigative assistant during the current audit. Thus, it is arbitrary and capricious to presume in the Draft Audit that 100 percent of the County’s labor costs were spent on work attributable to Penal Code section 278.7 and disallow such costs.

⁶ It is well established that the rulemaking power of an administrative agency such as the Commission does not permit the agency to exceed the scope of authority conferred on the agency by the Legislature. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321.) Likewise, administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to, strike down such regulations. (*Home Depot, U.S.A., Inc. v. Contractors’ State License Bd.* (1996) 41 Cal.App.4th 1592, 1604.) Thus, the parameters and guidelines must be read in a manner to effectuate, not defeat, the purpose of article XIII B, section 6, of the Constitution and its implementing

statutes, which is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, the Commission and Controller must do so. (See *Conservatorship of T.B.* (2024) 99 Cal.App.5th 1361 [under canon of “constitutional avoidance,” if statute is susceptible of two constructions, one of which will render it constitutional and other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, court will adopt construction which will render it valid in its entirety, or free from doubt as to its constitutionality, even though other construction is equally reasonable].)

SCO’s Response

Our finding and recommendation remain unchanged. We will address the county’s concerns in the order in which they appear in the county’s response.

On page 4 (Section A. The County Properly Submitted Claims for the Costs of Performing Reimbursable Activities In Compliance with the Parameters and Guidelines for the CAR Program and the Instructions and Forms Issued By the Controller, Which were Supported by Source Documents), the county states, in part:

Even though the employees were assigned to Family Protection with the assigned attorney Deputy District Attorney being specifically assigned to the Child Abduction Unit in Family Protection, the County did not simply claim the hours they worked as costs. Instead, the billing code of “3130,” including Child Abduction 3130, on the time logs and “DA0110” on the VTI timesheets directly correspond to the reimbursable activity listed on Form CAR-2 (that was in effect at the time County filed its claim) for “Compliance with Court Orders” and were used to calculate the hours claimed for the performance of this activity.

We disagree. Assigning a billing code to hours worked without including a description of the mandated functions performed, and simply providing the total hours to align with the claim’s summarization of a reimbursable activity described as “Compliance with Court Orders” does not meet the requirements of the parameters and guidelines. The county’s use of a summary form does not exempt it from adhering to parameters and guidelines requirements.

The “Audit of Costs” section (“Program No. 13,” page 2) of the SCO’s *Mandated Cost Manual* begins:

All claims submitted to SCO are subject to review to determine if costs are related to the mandate, are reasonable and not excessive, and if the claim was prepared in accordance with the SCO’s claiming instructions **and the Ps & Gs adopted by CSM** [emphasis added]. . . .

On page 4 (Section B. The Disallowable of Almost All of the County’s CAR Program Costs is Arbitrary and Capricious, and Lacks Evidentiary Support), the county states, in part:

The draft audit cites Section 17558.5 of the Government Code, which provides: “A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.”²

In footnote 2, the county states:

The County’s claim for FY 2018-19 was submitted on February 5, 2020. The current audit was initiated on May 5, 2023, which is 3 years, 3 months, 14 days after the submittal of the claim. Thus, the disallowance of the amounts claimed for FY 2018-19 is untimely and should be withdrawn.

The county does not quote GC section 17558.5(a) in its entirety. The subparagraph concludes:

. . . However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

The initial payment of the FY 2018-19 claim was made on August 14, 2020. The SCO contacted the county on May 4, 2023, to initiate the audit, and the engagement start letter was dated May 19, 2023. Therefore, our audit of the FY 2018-19 claims was initiated in a timely manner. The three-year statutory limit had not expired.

In footnote 3, the county states:

If the parameters and guidelines required the level of detail implied by the Draft Audit beyond the use of billing codes that correspond to reimbursable activities such as requiring a narrative description to accompany time entries, then the parameters and guidelines and claiming instructions would expressly state such a requirement, though doing so would itself create a reimbursable mandate.

We disagree. The county’s response fails to address the primary audit issue that the county did not adhere to the parameters and guidelines. The parameters and guidelines clearly state how claimed costs must be supported.

Section VII.A “Direct Costs,” of the parameters and guidelines states, in part:

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information [emphasis added]:

1. Salary and Employees' Benefits

Identify the employee(s), show the classification of the employee(s) involved, **describe the mandated functions performed and specify the actual number of hours devoted to each function**, [emphasis added] the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study. . . .

Furthermore, the regulatory parameters and guidelines for the CAR Program establish the state mandate and define reimbursement criteria; SCO issues nonregulatory claiming instructions to assist local agencies in claiming reimbursable costs (see *Clovis Unified School District v. Chiang* [2010] 188 Cal.App.4th 794).

On page 16 (B. The Controller's Reductions Based on the Denial of Activities Included in the Claimant's Time Study that the Controller Found Were Beyond the Scope of the Mandate Are Correct as Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support), the Commission's July 27, 2018 Decision for the incorrect reduction claim filed by Carlsbad Unified School District (Case No. 14-9825-I-02, *The Stull Act*) states, in part:

Pursuant to Government Code section 17564, reimbursement claims filed with the Controller shall be filed in the manner prescribed in the Parameters and Guidelines, and the Parameters and Guidelines, as a quasi-judicial decision of the Commission, are final and binding.

On page 6 (Section B. The Disallowance of Almost All of the County's CAR Program Costs is Arbitrary and Capricious, and Lacks Evidentiary Support) of its response, the county states, in part:

The Draft Audit's wholesale disallowance of claimed hours based on the alleged inclusion of time spent by DA investigative assistants inputting reports for cases for which Penal Code section 278.7 (which can be raised an affirmative defense to the enforcement of Penal Code 278.5) might apply, illustrates the arbitrary nature of the Draft Audit's finding and disallowance of costs.

There is no evidence in the record contradicting the statement that DA investigative assistants inputted reports for cases related to PC section 278.7. The parameters and guidelines incorporate requirements of PC sections 278 and 278.5, as amended by Chapter 988, Statutes of 1996. This law, known as the Parental Kidnapping Prevention Act, also added PC section 278.7. However, PC section 278.7 was not incorporated into the parameters and guidelines; therefore, no costs claimed under this section are reimbursable. Furthermore, the VTI timesheets and time logs provided by the county do not comply with the requirements of the parameters and guidelines to support the actual number of hours devoted to each reimbursable function.

**Attachment—
County’s Response to Draft Audit Report**



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COUNTY OF ORANGE

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September 20, 2024

VIA U.S. MAIL & ELECTRONIC MAIL

Lisa Kurokawa
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Email: lkurokawa@sco.ca.gov

Re: Draft Audit Report for Orange County's Child Abduction and Recovery Program
(July 1, 2018 - June 30, 2022)

Dear Ms. Kurokawa:

I write on behalf of the County of Orange (the "County") in response to the State Controller's draft audit report for Orange County's Child Abduction and Recovery ("CAR") Program (the "Draft Audit"). The Draft Audit covers the period of July 1, 2018 - June 30, 2022. Out of \$3,074,047 in costs claimed by the County, the State Controller disallowed \$3,070,156, which represents 99.87 percent of the costs claimed. The disallowance is based on the Draft Audit's finding that the "costs are primarily unallowable because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function." Notably, the Draft Audit does not dispute that the costs were incurred and were reasonable. Rather, the Draft Audit effectively rejects all the County's costs on the assertion that the employees dedicated to the CAR program and its mission didn't record their time spent on reimbursable activities with sufficient detail. The County's timekeeping followed the State Controller's guidance in its forms, guidance that did not reflect the State Controller's current strained reading of its parameters and guidelines, which has resulted in the disallowance of the reimbursable costs resulting from the efforts of Orange County prosecutors' efforts to protect families. As discussed below, the County disagrees with Draft Audit's finding and the disallowance of almost all costs claimed by the County for performing the mandates of the CAR program.

A. The County Properly Submitted Claims for the Costs of Performing Reimbursable Activities In Compliance with the Parameters and Guidelines for the CAR Program and the Instructions and Forms Issued By the Controller, Which Were Supported by Source Documents

Under article XIII B, section 6 of the state Constitution, which specifies that if the state imposes any "new program or higher level of service" on any local government (including a school district), the State must reimburse the locality for the costs of the program or increased level of service. California courts have recognized that the purpose of article XIII B, section 6, is to preclude the state from shifting financial responsibility for carrying out governmental

Lisa Kurokawa
Chief, Compliance Audits Bureau, Division of Audits
September 20, 2024
Page 2

functions to local agencies, which are ill equipped to assume increased financial responsibilities. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 751–752.) Section 17561¹ is the primary code section that sets forth the State’s duties once a mandate is determined by the Commission on State Mandates (the “Commission”). (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 787.) Section 17561, subdivision (a) states: “The state shall reimburse each local agency and school district for all ‘costs mandated by the state,’ as defined in Section 17514 and for legislatively determined mandates in accordance with Section 17573.”

The Commission first determines whether a new program or higher level of service exists and whether there are actual, increased costs mandated by the state. (§§ 17514, 17551.) If these findings are made, the Commission determines the amount to be reimbursed to all local agencies and school districts by adopting parameters and guidelines. (§ 17557.) The parameters and guidelines identify the eligible claimants, period of reimbursement, reimbursable activities, and any offsetting revenues or savings. (Cal. Code Regs., tit. 2, § 1183.7.) After the adoption of the parameters and guidelines, the Commission submits the adopted parameters and guidelines to the Controller’s Office to issue claiming instructions and to pay and audit reimbursement claims. (§§ 17558, 17560, 17561.) “The claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines, reasonable reimbursement methodology, or statute declaring a legislatively determined mandate.” (§ 17558.)

Here, the parameters and guidelines for the CAR program were originally adopted in 1981, and the currently applicable parameters and guidelines were last amended in 2009. The Controller has also issued claiming instructions pursuant to Section 17558, which included the forms that delineate the information that the County is required to submit in support of its claims. For example, the Controller issued Form CAR-2, which refers to “Child Abduction And Recovery Component/Activity Cost Detail.” Under box (03), the form requires claimants to: “Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 must be prepared for each activity.” A 2003 version of the form listed two available activities: “Compliance with Court Orders” and “Court Costs for Out-of-Jurisdiction Cases.” The current 2022 version of Form CAR-2 expanded the list to the following four categories of reimbursable activities:

1. Compliance with Court Orders [Section V.B.1]
2. Court Costs for Out-of-Jurisdiction Cases [Section V.B.2]
3. Secure Appearance of Offender [Section V.B.2.b.(3)]
4. Return of Children to Custodian [Section V.B.2.b.(4)]

These four reimbursable activities correspond to the above referenced “Reimbursable Activities,” of the parameters and guidelines. Thus, when the Controller has determined that additional detail regarding the nature of reimbursable activities performed is necessary to comply with the current parameters and guidance, the Controller has revised its claiming instructions and forms for the program in question.

¹ All section references are to the Government Code unless otherwise specified.

Given the population of Orange County, the Orange County District Attorney performs the duties mandated by the CAR program by assigning an experienced Deputy District Attorney IV to the Child Abduction Unit (CAU), which is contained in the District Attorney's Family Protection Unit. The Deputy District Attorney is supported by a DA Investigator and an Investigative Assistant. As depicted in the organizational charts submitted by the County during the audit, the CAU is a dedicated unit that investigates and handles cases of missing children in civil and/or criminal court when the suspected abductor is a family member. Indeed, the fact that the Orange County District Attorney's office has a dedicated unit that focuses on performing the CAR program mandates further reduces the likelihood that the individuals assigned to unit are submitting hours for work unrelated to the CAR program. During the four-year audit period, the Orange County District Attorney's Office opened 246 civil cases and closed about 324 cases. Based on this work, the County submitted claims for payment for \$715,958, \$734,767, \$832,313 and \$791,009 for Fiscal Years 2018-19 through 2021-22, respectively.

From FY 2018-19 to 2021-22, the County recorded and maintained employee time records using a Virtual Timesheet Interface (VTI) system. The VTI system is a countywide time system, which requires all County employees to record and submit their time on a biweekly basis. The County processes its payroll based on each employee's submittal of biweekly timesheets through VTI. Each time an employee submits their time sheet, they are required to state: "I certify to the best of knowledge that the above information is true and correct." Each employee's manager is then required to review and approve the submittal of the timesheet by stating: "I certify that I have reviewed and approved the above information." The contemporaneous certifications are set forth at the bottom of the VTI timesheet for each biweekly pay period. The timesheets that are submitted through VTI constitute a source document, which is created at or near the same time the actual cost was incurred for the event or activity in question. The VTI timesheets for the employees whose hours were listed in the County's claims for reimbursement were provided to the auditors.

The County also provided time logs, which were completed by the employees whose hours were listed in the County's claims for reimbursement, to the auditors. In most instances, these logs were prepared within a month of the period referenced. The logs consist of worksheets that were completed by hand by each employee for the period referenced, then signed by the employee and their supervisor. On the logs, the employee would allocate their time between reimbursable work and non-reimbursable work with the bulk of hours being allocated to the code "Child Abduction 3130." From FY 2018-19 to 2019-20, 22 out of 25 time logs were prepared and signed by the attorneys referenced within a month of the period at issue. Likewise, from FY 2018-19 to 2020-21, 31 out of 32 logs were completed within a month of the period referenced for the Investigator, and 34 out of 36 logs were completed within a month of the period referenced for the Investigative Assistant. Finally, beginning in March 2021 through the end of FY 2021-22, both the Investigator and Investigative Assistant began to directly code their time in VTI to code "DA0110," which refers to the CAR program. The time logs for the employees whose hours were listed in the County's claims for reimbursement were provided to the auditors.

Lisa Kurokawa
Chief, Compliance Audits Bureau, Division of Audits
September 20, 2024
Page 4

The VTI timesheets and the time logs that the County employees submitted within a month of the period referenced clearly fall within the definition of a source document:

A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

In addition, even the minority of time logs, which are not contemporaneous, can also be considered as corroborating evidence as worksheets that allocate the time depicted in the source documents between reimbursable and non-reimbursable activities.

Even though the employees were assigned to Family Protection with the assigned attorney Deputy District Attorney being specifically assigned to the Child Abduction Unit in Family Protection, the County did not simply claim the hours they worked as costs. Instead, the billing code of "3130," including Child Abduction 3130, on the time logs and "DA0110" on the VTI timesheets directly correspond to the reimbursable activity listed on Form CAR-2 (that was in effect at the time the County filed its claim) for "Compliance with Court Orders" and were used to calculate the hours that the County claimed for the performance of this activity. There is no finding in the Draft Audit that the hours claimed by the County were excessive or unreasonable. (See § 17561 [Controller may reduce any claim that the Controller determines is excessive or unreasonable].)

B. The Disallowance of Almost All of the County's CAR Program Costs Is Arbitrary and Capricious, and Lacks Evidentiary Support

Consistent with the purpose of requiring the State to reimburse the actual costs of local agencies, the Government Code authorizes the Controller to audit claims to correct inaccurate fund disbursements. The draft audit cites Section 17558.5 of the Government Code, which provides: "A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later."² Likewise, the draft audit cites Section 17561, which states that the Controller has the authority to audit the records of "any local agency or school district to verify the actual amount of the mandated costs" and "may reduce any claim that the Controller determines is excessive or unreasonable." Thus, courts have held that Section 17561 allows the Controller to correct inaccurate fund disbursements after auditing the local entity's supporting records. (See *California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 789 [this administrative power to adjust payments is not equivalent to stating that the Legislature has the authority to provide a nominal payment for a mandate].)

² The County's claim for FY 2018-19 was submitted on February 5, 2020. The current audit was initiated on May 5, 2023, which is 3 years, 3 months, 14 days after the submittal of the claim. Thus, the disallowance of the amounts claimed for FY 2018-19 is untimely and should be withdrawn.

Lisa Kurokawa
Chief, Compliance Audits Bureau, Division of Audits
September 20, 2024
Page 5

Here, notwithstanding the clear evidence that the County has incurred and submitted documented claims for costs resulting from the Orange County District Attorney's performance of the CAR program mandates, the Draft Audit disallows almost all costs incurred and claimed by the County. The auditor did not find that the County's costs were either excessive or unreasonable. Instead, the Draft Audit found: "The costs are primarily unallowable because the county did not provide contemporaneous source documentation to support the mandated functions performed or the actual number of hours devoted to each function."

As noted by several other counties in response to similar audit findings by the Controller with respect to the CAR program, the Draft Audit appears to base this finding on a strained reading of the of the program's parameters and guidelines to broadly reject time records that established that County employees performed mandated activities, which had been acceptable for decades. For example, even though the Draft Audit acknowledges that the County provided time logs and VTI timesheets, which contain codes that directly correspond to the reimbursable activities identified in both the parameters and guidelines and the Controller's claiming instructions and forms, the Draft Audit states:

Neither timesheets nor VTI timecards include a description of the mandated activities performed. Without a description of the mandated functions performed, we were unable to verify that the claimed hours were for reimbursable activities.

Implicit in this finding is the assumption that (1) the use of time codes that directly correspond to the reimbursable activities identified in parameters and guidelines and the Controller's claiming instructions is insufficient and (2) the parameters and guidelines require an unspecified level detail that goes beyond the stated requirements of the Controller's own claiming instructions and forms. The claiming instructions divide reimbursable activities into the four categories discussed above.³ Indeed, the claiming instructions use the term function to refer to a description of the job duties of the employees who the County must list on Form CAR-2. The form requires the County: "To itemize costs for the activity checked in block (03), enter each employee name, job classification, a brief description of the activities performed, productive hourly rate, actual time spent, fringe benefits, supplies used, contract services, fixed assets, and travel and training expenses."

Orange County is not alone in having almost all its claimed costs disallowed based on this recent re-interpretation of the parameters and guidelines given that the Controller has made similar findings for other counties, which also resulted in the disallowance of almost all costs associated with the CAR program. Every county that has been audited since November 2022 had over 97 percent of its CAR program costs disallowed:

³ If the parameters and guidelines required the level of detail implied by the Draft Audit beyond the use of billing codes that correspond to reimbursable activities such as a requiring a narrative description to accompany time entries, then the parameters and guidelines and claiming instructions would expressly state such a requirement, though doing so would itself create a reimbursable mandate.

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Like other counties, the Controller previously initiated an audit of the County’s CAR program for FY 2006-07 through FY 2008-09, which encompasses the period covered by the current 2009 parameters and guidelines, but cancelled the audit because it concluded that the County’s claims were reasonably supported.⁴

These facts, along with the absence of any determination that the County’s claimed costs for the CAR program are either excessive or unreasonable, demonstrate that at minimum the County substantially complied with the requirements of the parameters and guidelines for the CAR program along with the Controller’s claiming instructions. Substantial compliance, as the phrase is used in court decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute. (*Southern Pac. Transportation Co. v. State Bd. of Equalization* (1985) 175 Cal.App.3d 438, 442.) “Where there is compliance as to all matters of substance technical deviations are not to be given the stature of noncompliance.” (*Ibid.*) “Substance prevails over form.” (*Ibid.*) In contrast, “strict compliance with a statute is warranted when the Legislature evinces its intent that the statute’s requirements are to be followed precisely. (*2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 860–861.) A court may infer such an intent when (1) the Legislature has provided a *detailed and specific mandate*, or (2) the intent of the statute can only be served by demanding strict compliance with its terms. (*Ibid.*) Thus, unless the intent of a statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test. (*San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 647.)

The Draft Audit’s wholesale disallowance of claimed hours based on the alleged inclusion of time spent by DA investigative assistants inputting reports for cases for which Penal Code section 278.7 (which can be raised an affirmative defense to the enforcement of Penal Code 278.5) might apply, illustrates the arbitrary nature of the Draft Audit’s finding and disallowance of costs. As the Draft Audit notes, the parameters and guidelines for CAR do not mention Penal Code section 278.7. Likewise, the Controller’s claiming instructions are silent with respect to the need to track or deduct time spent on this affirmative defense, thus the County did not create any codes to track time that is potentially attributable to Penal Code section 278.7. Yet, despite the absence of any mention in the parameters and guidance or the Controller’s

⁴ The 2009 parameters and guidelines were effective for claims filed from FY 2005-06 going forward.

Lisa Kurokawa
Chief, Compliance Audits Bureau, Division of Audits
September 20, 2024
Page 7

claiming instructions and the absence of any records establishing that the County has claimed time attributable to Penal Code section 278.7, the Draft Audit disallows 100 percent of the time claimed by the County because the auditors “determined that DA investigative assistants input reports for cases that fell under PC section 278.7” based on “discussions with DA’s Office staff members” during the audit. However, the Draft Audit fails to reflect that the DA investigative assistant stated during the discussion that it takes an investigative assistant 2-3 minutes to input a good cause report into the database, and that on average, there are about 3 to 6 reports per week, or 9 to 18 minutes per week, or less than 8 to 16 hours a year, spent on Penal Code section 278.7 “good cause” activities by the investigative assistant.⁵ Thus, while the Draft Audit otherwise takes a strict view against the consideration of corroborating evidence, which “cannot be substituted for source documents,” the Draft Audit relies on such corroborating evidence to disregard time records, which had been acceptable for decades.

Accordingly, to the extent that the Draft Audit concludes that the County has not complied with the rigorous (but unspecified) detail required by the parameters and guidelines, which extends far beyond the express requirements of the Controller’s claiming instructions, the County has substantially complied and relying on such a technical violation to disallow the County’s claimed costs as a penalty without any facts showing that these costs are unreasonable or excessive conflicts with the purpose of article XIII B, section 6, of the Constitution and its implementing statutes.⁶ This is particularly true with respect to the wholesale disallowance of costs based on the County’s failure to comply with the alleged requirement that it separately track and deduct time attributed to Penal Code section 278.7, which the Draft Audit acknowledges is not discussed in the parameters and guidelines or the Controller’s claiming instructions.

C. Future Record Keeping

As discussed above, the County believes that the documentation it provided is sufficient and consistent with the parameters and guidelines. Beginning in August 2022, after the period covered by the Draft Audit, the Orange County District Attorney began using the County’s new timekeeping system, OC TIME, as part of a countywide transition to the new time system. Like

⁵ In the Controller’s audit of Sacramento County, the auditor attributed 2.6 percent of labor costs to work attributable to Penal Code section 278.7 and disallowed this percentage of costs, rather than the entirety of costs claimed. Sacramento’s calculation of time spent on Penal Code section 278.7 work is in line with the estimates provided by the investigative assistant during the current audit. Thus, it is arbitrary and capricious to presume in the Draft Audit that 100 percent of the County’s labor costs were spent on work attributable to Penal Code section 278.7 and disallow such costs.

⁶ It is well established that the rulemaking power of an administrative agency such as the Commission does not permit the agency to exceed the scope of authority conferred on the agency by the Legislature. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321.) Likewise, administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to, strike down such regulations. (*Home Depot, U.S.A., Inc. v. Contractors’ State License Bd.* (1996) 41 Cal.App.4th 1592, 1604.) Thus, the parameters and guidelines must be read in a manner to effectuate, not defeat, the purpose of article XIII B, section 6, of the Constitution and its implementing statutes, which is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, the Commission and Controller must do so. (See *Conservatorship of T.B.* (2024) 99 Cal.App.5th 1361 [under canon of “constitutional avoidance,” if statute is susceptible of two constructions, one of which will render it constitutional and other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, court will adopt construction which will render it valid in its entirety, or free from doubt as to its constitutionality, even though other construction is equally reasonable].)

Lisa Kurokawa
Chief, Compliance Audits Bureau, Division of Audits
September 20, 2024
Page 8

VTI, OC TIME allows employees to record their time against job numbers that correspond to different activities. The Orange County District Attorney can implement additional job numbers as needed, particularly if clearer guidance is provided. As all County employees are required to use this timekeeping system to submit their hours worked to receive timely bi-weekly pay, the use of OC TIME ensures that County source documents recording work performed for reimbursable activity are created at or near the time the actual costs are incurred for the event or activity in question.

D. Conclusion

The Orange County District Attorney is proud of its record of successfully reuniting children with their custodial parents and legal guardians from whom they were unlawfully taken in fulfillment of the mandates set forth in the CAR statutes. During the period of the audit, the Orange County District Attorney's office filed 246 cases resulting in the recovery and reunification of over a hundred children, which provides ample evidence that reimbursable work was performed. To disallow almost all the County's claimed costs based on an unjustifiably narrow and strict interpretation of what constitutes a source document coupled with an expansive interpretation of the level of detail required for time records that goes beyond the claiming instructions and forms issued by the Controller is not reasonable. Accordingly, the County disagrees with the finding against the County and the disallowance of almost all costs it claimed for performing the CAR mandates and reserves the right to file an Incorrect Reduction Claim with the Commission on State Mandates within three years of the Controller's notification of adjustment.

Very truly yours,

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