



**County Counsel
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

- ALLEN ISHIDA
District One
- PETE VANDER POEL
District Two
- PHILLIP A. COX
District Three
- J. STEVEN WORTHLEY
District Four
- MIKE ENNIS
District Five

AGENDA DATE: May 24, 2011

Public Hearing Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Kathleen Bales-Lange, County Counsel
PHONE: 559-636-4950

SUBJECT: Administrative appeal CTU2011-0412-01 with the Office of Administrative Law regarding State Department of Mental Health Letter 10-2

REQUEST(S): Authorize the County of Tulare to join an administrative appeal with the Office of Administrative Law regarding State Department of Mental Health Letter 10-2 or sign a letter in support of the Petition

SUMMARY: For many years, the State has paid for the ancillary medical and mental health services received by certain patients within Institutions for Mental Diseases ("IMDs"). On August 13, 2009, however, the California Department of Health Care Services ("DHCS") issued a memorandum to all IMDs announcing a shift in financial responsibility for those ancillary services from the State to the counties. On February 1, 2010, the California Department of Mental Health ("DMH") issued a letter to county mental health officials and county administrative officers asserting and expanding upon the same policy [Letter 102]. DHCS did not follow the regulatory process in changing its policy, which is in violation of the Administrative Procedures Act [APA]. Regulations may be the basis of an SB 90 claim for reimbursement; true policies are not. Unless the APA is followed this transfer of responsibility will be an unfunded state mandate.

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Given the move at the State to transfer costs to counties, underground regulation could become a regular means of simply effecting costs transfers to local governments while denying the opportunity to file for state mandate reimbursement.

The County has the opportunity to join the administrative appeal of this illegal action, known as an underground regulation. The Petitioners are the Counties of Humboldt, Orange, Riverside and Santa Clara. These counties have hired outside counsel to pursue the appeal and possible subsequent court action. The Petitioners have invited other counties to join the appeal at no cost.

In the alternative, interested counties are coordinating a single letter of support of the Petitioners

FISCAL IMPACT/FINANCING:

There is no cost to the General Fund or other County funds for either the Petition Joinder or signing on to a letter in support of the Petition. The exact cost to the County Mental Health program from Letter 10-2 is being calculated as of the writing of this Agenda Item.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Joinder in the Petition or the letter of support would further the Strategic Initiative Organizational Performance, Goal 2: Provide for the stability of county operations through periods of economic fluctuations, changing priorities and service demands.

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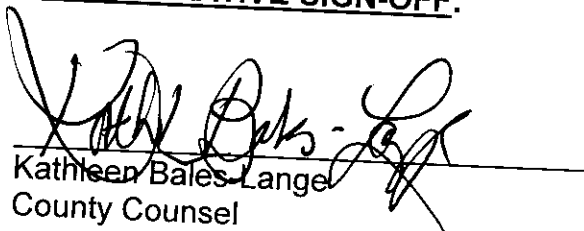
ALTERNATIVES:

1. Authorize the County to join as a Petitioner in Administrative Appeal OAL.
CTU2011-0412-01 regarding State Department of Mental Health Letter 10-2;
or
2. Authorize the County to sign a letter in support of the Petition; or
3. Authorize no participation of any kind.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

Health and Human Services Agency, Mental Health Services Branch

ADMINISTRATIVE SIGN-OFF:


Kathleen Bales Lange
County Counsel

Cc: Auditor/Controller
County Counsel
County Administrative Office (3)
Health and Human Services Agency, Mental Health Services Branch

Attachment(s)

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF)
Administrative appeal CTU2011-0412-01)
with the Office of Administrative Law) RESOLUTION NO. _____
regarding State Department of Mental)
Health Letter 10-2)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

Authorized the County of Tulare to join an administrative appeal with the Office of
Administrative Law regarding State Department of Mental Health Letter 10-2.

or

Authorize the Chairman of the Board to sign a letter in support of the Petition.