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May 1, 2014

Mr. Richard Gillihan, Acting Director
Department of Human Resources
1515 S Street, North Building, Suite 400
Sacramento, California 95811-7258

Dear Mr. Gillihan:

On April 1, 2014, the Department of Human Resources (CalHR) submitted to the Joint Legislative Budget Committee (JLBC) an addendum to the memorandum of understanding (MOU) between the state and Bargaining Unit 19, represented by the American Federation of State, County, and Municipal Employees (AFSCME). The affected employees work as recreation therapists for the state. Recreation therapists plan, direct, and coordinate recreation-based treatment programs for people with disabilities, injuries, or illnesses. The affected employees perform this work in facilities run by one of four state departments—Corrections and Rehabilitation, Developmental Services, State Hospitals, and Veterans Affairs. The JLBC determines if MOU addenda require legislative approval.

Addendum

Addendum Requires Legislative Approval. The Ralph C. Dills Act requires the Legislature to approve any agreement that results in the expenditure of funds not already approved by the Legislature through an MOU, the budget act, or some other legislative vehicle. This agreement does not require a new appropriation as its costs are expected to be absorbed by affected departments within existing departmental resources. The agreement does, however, require the expenditure of funds not previously approved by the Legislature. Accordingly, I advise the administration to submit the addendum for legislative approval either as part of the 2014-15 Budget Act or through some other legislative vehicle.

Classification Review Policy

In addition to the question of legislative approval, this addendum raises concerns about the state's current policy for ensuring that state classifications conform to state law. I discuss my concerns below.

Recreation Therapists Must Be Certified Under Current Law. Section 17505.2 of the California Business and Professions Code—established by Chapter 677, Statutes of 1997 (SB 1347, Committee on Business and Professions)—specifies that “it is unlawful for a person to represent himself or herself as a recreation therapist, [or] to represent the services he or she performs as recreation therapy” unless he or she has a “current certification or eligibility for certification as a recreation therapist by the California Board of Recreation and Park Certification or by the National Council for Therapeutic Recreation Certification, Inc.” This section specifies that any person injured by a person in violation of this section may bring a civil action and may recover \$1,500 for the first violation and \$2,500 for each subsequent violation.

State Recreation Therapy Classifications Not Consistent With Current Law. Approximately 300 people are employed by the state in one of three state classifications that perform recreation therapy. The state established and last revised two of these classifications before Section 17505.2 was enacted in 1997 (class codes 8312 and 9286), and established the other classification in 2000 (class code 8324). Although employees in these classifications provide recreation therapy, the classifications do not require these employees to be certified or have eligibility for certification as a recreation therapist as is required by Section 17505.2. In the cost estimates submitted to the Legislature with the agreement, CalHR indicates that 163 people employed by the state in one of these three classifications did not have the necessary certification at the time the MOU addendum was signed in March 2014.

State's Classification Review Process Failed to Identify Incongruity. The Legislative Analyst's Office (LAO) informs me that CalHR's stated policy is to review classifications on a case-by-case basis when changes are proposed to (1) laws affecting professional prerequisites, or (2) state classifications. If CalHR followed this policy conscientiously, it would have kept the state's classification system in conformity with state law. Specifically, the administration would have compared the recreation therapist classifications with the 1997 law in two instances: (1) in 1997, when the law requiring certification was enacted and (2) in 2000, when the administration established the most recent of the three recreation therapist classifications. In both instances, however, the administration failed to identify the state classifications as inconsistent with state law. The LAO informs me that it was not until 2012—15 years after the recreation therapist certification law was enacted—that the State Personnel Board (SPB) identified the incongruity between the law and the state's classifications. It is possible that some individuals may have worked as state-employed recreation therapists for this entire 15-year period without the necessary certification.

Other State Classifications May Be Inconsistent With State Law—or Become So. Given the state's experience with recreation therapists, it is possible that other state classifications also may need to be modified to be consistent with state law. In addition, in any year, a state classification may be revised or established or a state law related to the classification may change. Ensuring

that each of the state's 4,500 classifications is and remains consistent with the law is a difficult but important activity. Without a policy that ensures this consistency, the state is vulnerable to the legal and financial risks resulting from employing unqualified professionals.

State Needs Plan to Address Incongruities Quickly. The LAO informs me that the administration anticipates the process to correct the recreation therapist classifications will be complete by the end of 2014—two years after the problem was identified by SPB. It is my understanding that the delay is the result of CalHR conducting a classification study, meeting with affected departments, conducting meet and confer discussions with AFSCME, and consulting legal experts. I am concerned that the slow nature of this process creates risks for the state.

LAO Is Recommending Supplemental Report Language. The LAO has recommended that the Legislature adopt supplemental report language for the 2014-15 budget directing CalHR and SPB to submit a joint report by January 10, 2015 that (1) identifies the shortcomings in the state's classification review process that led to the recreation therapist classifications' incongruities with state law, (2) delineates which departments—CalHR, SPB, or other—are responsible going forward for reviewing existing and proposed classifications to ensure compliance with state law and the steps they will take to carry out these responsibilities, and (3) reports on the state's status in ensuring that all of its recreation therapists meet the professional standards set forth in law. I am enclosing the language that the LAO has submitted to the Legislature for consideration.

Sincerely,



Mark Leno
Chair

Enclosure

cc: Members of the Joint Legislative Budget Committee
Michael Cohen, Director of Finance

ENCLOSURE: PROPOSED SUPPLEMENTAL REPORT LANGUAGE

Item 9800-001-0001—Augmentation for Employee Compensation

1. *State Civil Service Classification Review Plan.* On or before January 10, 2015, the State Personnel Board (SPB) and the director of the Department of Human Resources (CalHR) shall submit to the chair of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the Legislature a joint report concerning the state's civil service classification review policy. Specifically, the report shall (1) identify the shortcomings in the state's classification review process that led to incongruities between state civil service specifications for recreation therapists and state law, (2) delineate which departments—CalHR, SPB, or other—are responsible for reviewing existing and proposed state employee classifications to ensure compliance with state law and the steps they will take going forward to carry out these responsibilities, and (3) report on the state's status in ensuring that recreation therapists meet the professional standards set forth in law.