State of California
Office of Administrative Law

NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION
Government Code Section 11346.1 and 11349.6
OAL File No. 2013-1216-04 E

In re:
Department of Health Care Services
Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: [Blank]
Amend sections: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, 54501
Repeal sections: [Blank]

This emergency regulatory action by the Department of Health Care Services amends sections of Title 22 of the California Code of Regulations to reflect reimbursement rates established by the Department for specific types of facilities providing long term care services to Medi-Cal beneficiaries, as required by Welfare and Institutions Code section 14105. OAL approves this emergency regulatory action pursuant to sections 11346.1 and · 11349.6 of the Government Code. This emergency regulatory action is effective on 12/24/2013 and will expire on 6/24/2014. The Certificate of Compliance for this action is due no later than 6/23/2014.

Date: 12/24/2013

[Signed]
Beverly J. Johnson Deputy Director

For: DEBRA M. CORNEZ Director

Original: Toby Douglas
Copy: Ben Carranco

[Stamp]
EMERGENCY

State of California – Office of Administrative Law
Notice Publication/Regulations Submission

Std. 400 (Rev. 01-2013)
OAL File Numbers
Notice File Number: Z- [Blank]
Regulatory Action Number: 2013-1216-04E
Emergency Number: [Blank]

[Date Stamp]
2013 DEC 16 PM 2:45
Office of Administrative Law

For Use by Secretary of State Only
[Date Stamp]
Endorsed Filed in the Office of 2013 DEC 24 PM 12:58
Debra Bowen
Secretary of State

Agency with Rulemaking Authority: Department of Health Care Services
Agency File Number: DHCS-09-013E

A. Publication of Notice (Complete for publication in Notice Register)
1. Subject of Notice: [Blank]
Titles: [Blank]
First Section Affected: [Blank]
2. Requested Publication Date: [Blank]
3. Notice Type
Notice re Proposed Regulatory Action: [Blank]
Other: [Blank]
4. Agency Contact Person: [Blank]
Telephone Number: [Blank]
Fax: Number: [Blank]

OAL Use only
Action on Proposed Notice:
Approved as submitted [Blank]
Approved as modified [Blank]
Disapproved/Withdrawn [Blank]
Notice Register Number: [Blank]
Publication Date: [Blank]

B. Submission of Regulation (Complete when submitting regulation)
1a. Subject of Regulations: Long-Term Care Reimbursement
1b. All Previous related OAL Regulatory Action Number(s): [Blank]
2. Specify California Code of Regulation Titles and Sections (Including title 26, if toxics related
Section(s) Affected (List all section number(s) individually. Attach additional sheet if needed.)
Adopt: [Blank]
Amend: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, and 54501
Title(s): 22
Repeal: [Blank]

3. Type of Filing
Regular Rulemaking (Gov. Code §11346): [Blank]
Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4): [Blank]
Emergency [Gov. Code, §11346.1(b)): [Checked]
Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.: [Blank]
Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1): [Blank]
Emergency Readopt (Gov. Code, §11346.1(h)): [Blank]
File & Print: [Blank]
Changes without regulatory effect (cal. Code Regs., title 1, §100): [Blank]
Print Only: [Blank]
Other (Specify): [Blank]

4. All beginning and ending dates of availability of modified regulations and/or material added to the rulemaking file (Cal. Code Regs, title 1, §44 and Gov. Code §11347.1): [Blank]

5. Effective Date of Changes (Gov. Code, §§11343.4, 11346.1(d); Cal. Code Regs, title 1, §100):
Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)): [Blank]
Effective on filing with Secretary of State: [Checked]
§100 Changes Without Regulatory Effect: [Blank]
Effective other (Specify): [Blank]

6. Check if these regulations require notice to, or review, consultation, approval or concurrence by, another agency or entity.
Department of Finance (Form STD. 399) (SAM §6660): [Checked]
Fair Political Practices Commission: [Blank]

State Fire Marshal: [Blank]
Other (Specify): [Blank]

7. Contact Person: Ben Carranco
Telephone Number: 916-440-7766
Fax Number (Optional): [Blank]
Email Address: ben.carranco@dhcs.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.
Signature of Agency Head or Designee: [Signed]
Typed Name and Title of Signatory: Toby Douglas, Director
Date: 1/26/16

For use by Office of Administrative Law (OAL) only

[Stamp]
Endorsed Approved
DEC 24 2013
Office of Administrative Law

METHOD OF INDICATING CHANGES

This Accessible PDF version of the approved emergency regulation text includes the phrase [begin underline] at the beginning of each addition, [end underline] at the end of each addition, [begin strikeout] at the beginning of each deletion, and [end strikeout] at the end of each deletion.

A standard PDF version of this approved emergency regulation text is also available on the Department's Office of Regulations Internet site.

(1) Amend Section 51510 to read as follows:

§ 51510. Nursing Facility Level A Services.

(a) – (d) No change

(e) Payment to nursing facilities or public institutions providing Level A services in accordance with Section 51120 shall be as follows:

(1) For facilities in the following counties the base rate is:

[begin underline]Effective Rate Year[end underline]

Los Angeles County

[begin underline]2004-05[end underline] $80.62

[begin underline]2005-06 $87.18

2006-07 $99.38

Effective Rate Year[end underline]

Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara & Sonoma Counties

[begin underline]2004-05[end underline] $80.62

[begin underline]2005-06 $87.18

2006-07 $99.38

Effective Rate Year[end underline]

All Other Counties

[begin underline]2004-05[end underline] $67.94

[begin underline]2005-06 $67.94

2006-07 $67.94[end underline]

(2) For facilities with licensed bed capacities of 100 beds or more, effective August 2, 2003, each facility shall receive a rate of $89.54 until such time the prospective county rate for their geographic location based on the categories listed above exceeds that amount. At that time, those facilities shall receive the rate for all facilities within that geographic location.

(3) For a leave of absence, the base rate shall be reduced pursuant to Section 51535.

(4) For bed holds, the base rate shall be reduced pursuant to Section 51535.1.

(f) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14110.6, 14110.7 [begin strikeout]~~,~~[end strikeout] [begin underline]and [end underline]14124.5[begin strikeout]~~ and 14126.023~~[end strikeout], Welfare and Institutions Code. Reference: Sections, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7 and 14123, Welfare and Institutions Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(2) Amend Section 51510.1 to read as follows:

§ 51510.1. Intermediate Care Services for the Developmentally Disabled.

(a) – (c) No change

(d) Skilled nursing facilities and intermediate care facilities with the licensed bed capacities shown below meeting the standards and criteria established for intermediate care facility services for the developmentally disabled, as defined in Sections 76301 through 76413, Article 3, Chapter 8, Division 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

[begin strikeout]~~Total Licensed Beds~~

~~**7/1/03 – 7/31/03**~~

~~*1 through 59*~~

~~$141.19~~

~~Total Licensed Beds~~

~~**7/1/03 – 7/31/03**~~

~~*60 Plus*~~

~~$120.69~~

~~Total Licensed Beds~~

~~**7/1/03 – 7/31/03**~~

~~*60 Plus with Distinct Part*~~

~~$120.69~~

~~Total Licensed Beds~~

~~**8/1/03**~~

~~*1 through 59*~~

~~$143.95~~

~~Total Licensed Beds~~

~~**8/1/03**~~

~~*60 Plus*~~

~~$123.87~~

~~Total Licensed Beds~~

~~**8/1/03**~~

~~*60 Plus with Distinct Part*~~

~~$123.87~~[end strikeout]

[begin underline]Total Licensed Beds

1 through 59

Effective Rate Year 2004 through 05

$143.95

Total Licensed Beds

60 Plus

Effective Rate Year 2004 through 05

$123.87

Total Licensed Beds

60 Plus with Distinct Part

Effective Rate Year 2004 through 05

$123.87

Total Licensed Beds

1 through 59

Effective Rate Year 2005 through 06

$158.58

Total Licensed Beds

60 Plus

Effective Rate Year 2005 through 06

$134.46

Total Licensed Beds

60 Plus with Distinct Part

Effective Rate Year 2005 through 06

$134.46

Total Licensed Beds

1 through 59

Effective Rate Year 2006 through 07

$158.58

Total Licensed Beds

60 Plus

Effective Rate Year 2006 through 07

$147.03

Total Licensed Beds

60 Plus with Distinct Part

Effective Rate Year 2006 through 07

$147.03[end underline]

(1) Reduced for leave of absence for all patients receiving intermediate care facility services for the developmentally disabled in accordance with Section 51535.

(2) Reduced for bed hold for acute hospitalization for all patients receiving intermediate care facility services for the developmentally disabled in accordance with Section 51535.1.

[begin underline](e) Effective October 1, 1990, state operated facilities shall be entitled to payment for services at actual allowable cost.[end underline]

[begin strikeout]~~(e)~~ [end strikeout] [begin underline] (f)[end underline] For purposes of this section, the rate year is August 1st through July 31st.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14110.6, 14110.7 [begin strikeout]~~,~~[end strikeout] [begin underline]and[end underline] 14124.5 [begin strikeout]~~ and 14126.023~~[end strikeout], Welfare and Institutions Code. Reference: Sections 14087.3, 14108, 14109.5, 14110.4, 14110.6, 14110.7 and 14123, Welfare and Institutions Code; Sections 1250, 1324, 1324.2, 1324.4, 1324.8, 1324.10 and 1324.12, Health and Safety Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapter 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(3) Amend Section 51510.2 to read as follows:

§ 51510.2. Intermediate Care Services for the Developmentally Disabled – Habilitative.

(a) Daily Reimbursement Rate – Intermediate care facilities meeting licensing and Medi-Cal standards and criteria for providing services to the developmentally disabled-habilitative as contained or referred to in Section 51164.1 through 51343.1, and Sections 76801 through 76962, Divisions 3 and 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

[begin strikeout]~~Total Licensed Beds~~

~~4 through 6~~

~~**7/1/03 through 7/31/03**~~

~~$163.45~~

~~Total Licensed Beds~~

~~7 through 15~~

~~**7/1/03 through 7/31/03**~~

~~$162.35~~

~~Total Licensed Beds~~

~~4 through 6~~

~~**8/1/03**~~

~~$163.45~~

~~Total Licensed Beds~~

~~**8/1/03**~~

~~7 through 15~~

~~$163.18~~[end strikeout]

[begin underline]Total Licensed Beds

4 through 6

Effective Rate Year 2004 through 05

$163.45

Total Licensed Beds

7 through 15

Effective Rate Year 2004 through 05

$163.18

Total Licensed Beds

4 through 6

Effective Rate Year 2005 through 06

$174.96

Total Licensed Beds

7 through 15

Effective Rate Year 2005 through 06

$190.26

Total Licensed Beds

4 through 6

Effective Rate Year 2006 through 07

$174.96

Total Licensed Beds

7 through 15

Effective Rate Year 2006 through 07

$190.26[end underline]

(a)(1) – (d) No change

NOTE: Authority cited: Sections 20 and 1267.7, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.2, 14110.6, 14110.7[begin strikeout],[end strikeout] [begin underline]and [end underline]14125.5[begin strikeout] and 14126.023[end strikeout], Welfare and Institutions Code. Reference: Sections 1250, 1267.7, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10 and 1324.12, Health and Safety Code; Sections 14105.47, 14108, 14108.2, 14109.5, 14110.4, 14110.6 and 14123, Welfare and Institutions Code; [begin strikeout]and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890[end strikeout][begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(4) Amend Section 51510.3 to read as follows:

§ 51510.3. Intermediate Care Services for the Developmentally Disabled-Nursing.

(a) Daily Reimbursement Rate – Intermediate care facilities meeting licensing and Medi-Cal Standards and criteria for providing services to the developmentally disabled-nursing as contained or referred to in Sections 51164.2 through 51343.2, Division 3, and Sections 73800 through 73956, Division 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

[begin strikeout]~~Total Licensed Beds~~

~~4-through 6~~

~~**7/1/03 – 7/31/03**~~

~~$200.28~~

~~Total Licensed Beds~~

~~7 through 15~~

~~**7/1/03 – 7/31/03**~~

~~$177.60~~

~~Total Licensed Beds~~

~~4 through 6~~

~~**8/1/03**~~

~~$200.28~~

~~Total Licensed Beds~~

~~7 through 15~~

~~**8/1/03**~~

~~$177.60~~[end strikeout]

[begin underline]Total Licensed Beds

4 through 6

Effective Rate Year 2004 through 05

$200.28

Total Licensed Beds

7 through 15

Effective Rate Year 2004 through 05

$177.60

Total Licensed Beds

4 through 6

Effective Rate Year 2005 through 06

$203.18

Total Licensed Beds

7 through 15

Effective Rate Year 2005 through 06

$202.61

Total Licensed Beds

4 through 6

Effective Rate Year 2006-07

$212.55

Total Licensed Beds

7 through 15

Effective Rate Year 2006-07

$217.66 [end underline]

(a)(1) – (e) No change

NOTE: Authority cited: Sections 20, 1267.7 and 1275.3, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.2, 14110.6, 14110.7[begin strikeout]~~,~~[end strikeout][begin underline]and [end underline]14125.5 [begin strikeout]~~and 14126.023~~[end strikeout], Welfare and Institutions Code. Reference: Sections 1250, 1267.7, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10, 1324.12 and 1324.14, Health and Safety Code; Sections 14108, 14108.2, 14109.5, 14110.4, 14110.6 and 14123, Welfare and Institutions Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(5) Amend Section 51511 to read as follows:

§ 51511. Nursing Facility Level B Services.

(a) Payment to nursing facilities, hospitals, or public institutions providing Level B services in accordance with Section 51123 shall be as set forth in this section. As used in this section, the term "nursing facility Level B services" is defined as nursing facility services provided in accordance with Section 51123. [begin underline]Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.21.[end underline] Payment shall be as follows:

(1) For facilities with licensed bed capacities and located by county, for the [begin strikeout]~~2003-04~~[end strikeout][begin underline]2004-05[end underline] rate year are as follows:

Bedsize

1 through 59

Los Angeles County

$[begin strikeout]~~107.06~~[end strikeout] [begin underline]112.79[end underline]

Bedsize

60 Plus

Los Angeles County

$[begin strikeout]~~107.20~~[end strikeout] [begin underline]112.92[end underline]

Bedsize

1 through 59

Alameda, Contra Costa, Marin, Napa,

San Francisco San Mateo, Santa Clara & Sonoma Counties

$[begin strikeout]~~132.57~~[end strikeout] [begin underline]137.95[end underline]

Bedsize

60 Plus

Alameda, Contra Costa, Marin, Napa,

San Francisco San Mateo, Santa Clara & Sonoma Counties

$[begin strikeout]~~139.34~~[end strikeout][begin underline]146.81[end underline]

Bedsize

1-59

Al Other Counties

$[begin strikeout]~~115.19~~[end strikeout] [begin underline]122.90[end underline]

Bedsize

60 Plus

Al Other Counties

$[begin strikeout]~~119.60~~[end strikeout][begin underline]126.80[end underline]

(2) For nursing facilities that are distinct parts of acute care hospitals, if such facilities are not state operated, the per-diem reimbursement rate shall be the lesser of the facility's costs, as projected by the Department, or $[begin strikeout]~~236.82.~~ [end strikeout][begin underline]as listed in the chart below:

Distinct Part Nursing Facilities

Effective Rate Year

2004-05 $236.82

Distinct Part Nursing Facilities

Effective Rate Year

2005-06 $299.80

Distinct Part Nursing Facilities

Effective Rate Year

2006-07 $310.68[end underline]

(A) For purposes of this section, the rate year is August 1st [begin strikeout]~~,~~ ~~2003,~~[end strikeout] through July 31[begin underline]st[end underline][begin strikeout]~~, 2004~~[end strikeout].

(B) The facility's projected costs shall be based on the audit report findings of cost reports with fiscal periods ending January 1[begin strikeout]~~, 2001,~~ [end strikeout] through December 31, [begin strikeout]~~2001~~[end strikeout] [begin underline]two calendar years prior to the beginning of the effective rate year[end underline]. In the event the provider appeals the audit, pursuant to Welfare and Institutions Code Section 14171, and the provider notifies the Department by June 1[begin strikeout]~~, 2003,~~[end strikeout][begin underline] of the effective rate year[end underline] that the audit report findings have been modified by an appeal decision or an agreement between the hospital and the Department, the facility's projected costs shall be based on the modified audit findings.

(C) If the audit of a cost report is not issued by July 1[begin strikeout]~~,~~ ~~2003~~[end strikeout] [begin underline]of the effective rate year[end underline], the Department shall establish an interim projected reimbursement rate based on the cost report with a fiscal period ending January 1[begin strikeout]~~, 2001~~[end strikeout] through December 31, [begin strikeout]~~2001~~[end strikeout] [begin

underline]two calendar years prior to the effective rate year[end underline], adjusted by an audit disallowance factor [begin strikeout]~~of .96106.~~ [end strikeout] [begin underline]as listed in the chart below:

Audit Disallowance Factor

Per Rate Year

2004 through 05 .95566

Audit Disallowance Factor

Per Rate Year

2005 through 06 .95211

Audit Disallowance Factor

Per Rate Year

2006 through 07 .95211[end underline]

(D) The Department will use the facility's interim projected reimbursement rate in the computation of the prospective class median rate. Facilities that did not provide Nursing Facility Level B services to Medi-Cal patients during the cost report period and/or facilities with less than a full year's reported cost shall not be used to establish the prospective class median rate. In addition, facilities with Medi-Cal patient days representing less than 20 percent of their total patient days will be excluded from the median determination.

(E) If the facility has an interim reimbursement rate as specified in (C), when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section 14170(a)(1), the Department shall adjust the facility's projected reimbursement rate retroactively to August 1[begin

strikeout]~~, 2003~~[end strikeout] [begin underline]of the effective rate year[end underline], to reflect the cost determined pursuant to such audit, or to reflect the cost in the cost report in the event that cost report is deemed true and correct. The Department shall notify the provider of the revised rates within 45 days of issuance of the audit report.

(F) Interest will accrue from August 1[begin strikeout]~~, 2003~~[end strikeout] [begin underline]of the effective rate year,[end underline] and be payable on any such underpayment or overpayment at a rate equal to the monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code, Section 14171) during the month the audit report is issued.

(G) If a provider appeals an audit pursuant to Welfare and Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate, but the resulting reimbursement rate shall not exceed the prospective median rate as provided in subsection (a)(2) [begin strikeout]~~(A)~~[end strikeout].

(H) Payment under subsection (a)(2) shall only be made for services authorized pursuant to conditions set forth in Section 51335 for patients determined to need Level B services for other than post-surgical rehabilitation or therapy services.

(3) Reimbursement to any state-operated facility shall be based on its actual allowable costs.

(4) For facilities that are designated as swing bed facilities, the [begin strikeout]~~rate is $229.96.~~ [end strikeout] [begin underline]rates are listed in the chart below:

Swing Bed Facilities

Effective Rate Year

2004 through 05 $229.96

Swing Bed Facilities

Effective Rate Year

2005 through 06 $250.04

Swing Bed Facilities

Effective Rate Year

2006 through 07 $269.26[end underline]

(5) Reduced for leave of absence provided pursuant to Section 51535.

(6) Reduced for bed hold provided pursuant to Section 51535.1.

(b) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2, 14110.6, 14110.7[begin strikeout]~~,~~[end strikeout] [begin underline]and [end underline]14124.5 [begin strikeout]~~ and 14126.023~~[end strikeout], Welfare and Institutions Code. Reference: Sections 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14123 and 14171, Welfare and Institutions Code[begin strikeout]~~ and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout][begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(6) Amend Section 51511.5 to read as follows:

§ 51511.5. Nursing Facility Services – Subacute Care Reimbursement.

(a)(1) For the 2003-04 [begin underline], 2004-05, and 2005-06[end underline] rate year [begin underline]s[end underline], the prospective rate of reimbursement, which shall be the all-inclusive per diem rates of reimbursement for subacute services as defined in Section 51335.5(a), shall be the lesser of the facility's costs as projected by the Department or the rate based on the class median rates continued from the prior year, as set forth below:

Type of Licensure Hospital-Based

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2004 through 05[end underline]

[begin strikeout]~~$580.07~~[end strikeout]-[begin underline]$580.07[end underline]

Type of Licensure Hospital-Based

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2005 through 06 $614.11[end underline]

Type of Licensure Hospital-Based

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2006 through 07 $704.88[end underline]

Type of Licensure Freestanding

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2004 through 05[end underline] [begin strikeout]$409.72[end strikeout] [begin underline]$409.72[end underline]

Type of Licensure Freestanding

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2005 through 06[end underline] [Blank]

Type of Licensure Freestanding

Type of Patient Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2006 through 07[end underline] [Blank]

Type of Licensure Hospital-Based

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2004 through 05

[begin strikeout]$553.15[end strikeout]-[begin underline]$553.15[end underline]

Type of Licensure Hospital-Based

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2005 through 06 $584.97[end underline]

Type of Licensure Hospital-Based

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2006 through 07 $674.05[end underline]

Type of Licensure Freestanding

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2004 through 05[end underline]

[begin strikeout]$381.45[end strikeout]-[begin underline]$381.45[end underline]

Type of Licensure Freestanding

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2005 through 06[end underline] [Blank]

Type of Licensure Freestanding

Type of Patient Non-Ventilator Dependent

Class Median Based Rate

[begin underline]Per Rate Year 2006 through 07[end underline] [Blank]

[begin underline]For freestanding adult subacute facilities only, payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.21.[end underline]

(2)(A) For [begin strikeout]the 2003-04[end strikeout] [begin underline]each effective[end underline] rate year, a facility that experienced a reduction in projected facility costs, which would result in a reduced subacute reimbursement rate for the [begin strikeout]2003-04[end strikeout] [begin underline]effective[end underline] rate year pursuant to subsection (a)(1), shall have its subacute prospective reimbursement rate for[begin strikeout] 2003-04[end strikeout] [begin

underline]the effective rate year[end underline] set at its [begin strikeout]~~2002-03~~[end strikeout] [begin underline]prior year's [end underline]rate.

(a)(2)(B) – (d) No change

(e) For purposes of this section, the [begin underline]effective[end underline] rate year is August 1[begin underline]st[end underline][begin strikeout]~~, 2003~~[end strikeout] through July 31[begin underline]st[end underline] [begin strikeout]~~, 2004~~[end strikeout].

(f)(1) The facility's projected costs for purposes of [begin underline]sub[end underline]section (a) shall be based on the audit report findings of cost reports with fiscal periods ending January 1[begin strikeout]~~, 2000~~[end strikeout] through December 31, [begin underline]three calendar years prior to the effective rate year[end underline] [begin strikeout]~~2000~~[end strikeout]. In the event that a facility's audit report finding does not include subacute ancillary costs, the facility's projected ancillary costs will be based on the median of the subacute ancillary costs of facilities that had audited ancillary costs.

(2) If the audit of a cost report as described in subsection (f)(1) is not issued by July 1[begin strikeout]~~, 2003~~[end strikeout] [begin underline]of the effective rate year[end underline], the Department shall establish the facility's interim costs based on the cost report with a fiscal period ending January 1, [begin strikeout]~~2000~~[end strikeout] [begin underline]three calendar years prior to the effective rate year,[end underline] through December 31, [begin strikeout]~~2000~~[end strikeout] [begin underline]three calendar years prior to the

effective rate year[end underline], adjusted by an audit disallowance factor [begin strikeout]~~of .96101.~~[end strikeout] [begin underline]as listed in the chart below:

Type of Licensure

Subacute Care Reimbursement

Audit Disallowance Factor

Per Rate Year 2004 through 05 .95566

Type of Licensure

Subacute Care Reimbursement

Audit Disallowance Factor

Per Rate Year 2005 through 06 .95211

Type of Licensure

Subacute Care Reimbursement

Audit Disallowance Factor

Per Rate Year 2006 through 07 .95211[end underline]

(3) The Department will use the facility's interim costs as the facility's projected costs for purposes of subsection (a). In addition, facilities that did not provide subacute care services to Medi-Cal patients during the cost report period, facilities that combine subacute and distinct part nursing facility Level B costs, and/or facilities with less than a full year's reported cost shall not be included for purposes of establishing the projected class median costs.

(4) If the facility's interim costs, as specified in subsection (f)(2), are established for a facility when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section

14170(a)(1), the Department shall adjust the facility's reimbursement rate retroactively to August 1[begin strikeout]~~, 2003~~[end strikeout] [begin underline]of the effective rate year,[end underline] to reflect the facility's costs determined pursuant to such an audit, or to reflect the costs in the cost report in the event that the cost report is deemed true and correct.

(5) Interest will accrue from August 1[begin strikeout]~~, 2003~~[end strikeout] [begin underline]of the effective rate year,[end underline] and be payable on any underpayment or overpayment resulting from the application of subsection (f)(4) at a rate equal to the monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code Section 14171) during the month the audit report is issued.

(6) If a provider appeals an audit adjustment pursuant to Welfare and Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate but the resulting reimbursement rate shall not exceed the prospective rate of reimbursement as provided in subsection (a).

(g) Payment under subsection (a) shall only be made for services authorized pursuant to conditions set forth in Section 51335.5 for patients determined to need subacute care services.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapter 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapter 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(7) Amend Section 51511.6 to read as follows:

§ 51511.6. Nursing Facility Services – Pediatric Subacute Care Reimbursement.

(a) The per diem rates of reimbursement for pediatric subacute services as defined in Section 51335.6(a) shall be as follows:

Licensure

Hospital Based

Type of Patient

Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2004 through 05[end underline]

[begin strikeout]~~$719.71~~[end strikeout] [begin underline]$719.71[end underline]

Licensure

Hospital Based

Type of Patient

Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2005 through 06 $762.95[end underline]

Licensure

Hospital Based

Type of Patient

Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2006 through 07 $785.01[end underline]

Licensure

Hospital Based

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2004 through 05[end underline]

[begin strikeout]~~$660.52~~[end strikeout][begin underline]$660.52[end underline]

Licensure

Hospital Based

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2005 through 06 $700.10[end underline]

Licensure

Hospital Based

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2006 through 07 $720.20[end underline]

Licensure

Freestanding

Type of Patient

Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2004 through 05[end underline]

[begin strikeout]~~$673.08~~[end strikeout][begin underline]$673.08[end underline]

Licensure

Freestanding

Type of Patient

Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2005 through 06 $713.10[end underline]

Licensure

Freestanding

Type of Patient

Ventilator Dependent

Rate of Reimbursement

Effective Rate Year

[begin underline]2006 through 07 $733.52[end underline]

Licensure

Freestanding

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2004 through 05[end underline]

[begin strikeout]~~$613.89~~[end strikeout][begin underline]$613.89[end underline]

Licensure

Freestanding

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2005 through 06 $650.25[end underline]

Licensure

Freestanding

Type of Patient

Non-Ventilator Dependent

Rate of Reimbursement

[begin underline]Effective Rate Year 2006 through 07 $668.71[end underline]

(b) The per diem rate of reimbursement for supplemental rehabilitation therapy services shall be [begin strikeout]~~$43.13.~~[end strikeout] [begin underline]as described below:

Effective Rate Year 2004 through 05

Per Diem Rate $43.13

Effective Rate Year 2005 through 06

Per Diem Rate $46.05

Effective Rate Year 2006 through 07

Per Diem Rate $47.46[end underline]

This rate shall include payment for physical therapy, occupational therapy and speech therapy services provided in accordance with Section 51215.10(i) through (m).

(c) The per diem rate of reimbursement for ventilator weaning services shall be [begin strikeout]~~$40.21.~~ [end strikeout] [begin underline]as described below:

Effective Rate Year 2004 through 05

Per Diem Rate $40.21

Effective Rate Year 2005 through 06

Per Diem Rate $42.94

Effective Rate Year 2006 through 07

Per Diem Rate $44.25[end underline]

This rate shall include respiratory care practitioner and nursing care services provided in accordance with Section 51215.11.

(d) – (f) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(8) Amend Section 51535 to read as follows:

§ 51535. Leave of Absence.

(a) – (c) No change

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled-habilitative, and intermediate care facilities for the developmentally disabled-nursing for patients who are on approved leave of absence shall be at the appropriate facility daily rate less [begin strikeout]~~$5.05~~[end strikeout][begin underline]the amount specified in the chart below[end underline] for raw food costs, except for state operated institutions.

[begin underline]Leave of Absence

Effective Rate Year

2004 through 05 $5.07

Leave of Absence

Effective Rate Year

2005 through 06 $5.18

Leave of Absence

Effective Rate Year

2006 through 07 $5.30[end underline]

NOTE: Authority cited: Section 20, Health and Safety Code: and Sections 10725, 14105, 14108, 14108.1, 14108.2 and 14124.5, Welfare and Institutions Code; and Section 1275.3, Health and Safety Code. Reference: Sections 14108, 14108.1, 14108.2, 14109.5 and 14110.1, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(9) Amend Section 51535.1 to read as follows:

§ 51535.1. Bed Hold for Acute Hospitalization.

(a) - (c) No Change

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities for the developmentally disabled; intermediate care facilities for the developmentally disabled-habilitative, and intermediate care facilities for the developmentally disabled-nursing for beneficiaries who are on bed hold for acute hospitalization shall be at the appropriate facility daily rate less [begin strikeout]~~$5.05~~[end strikeout] [begin underline]the amount specified in the chart below [end underline]for raw food costs, except for state operated institutions.

[begin underline]Bed Hold

Effective Rate Year 2004 through 05 $5.07

Bed Hold

Effective Rate Year 2005 through 06 $5.18

Bed Hold

Effective Rate Year 2006 through 07 $5.30[end underline]

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5 and 14124.5, Welfare and Institutions Code; and Sections 20 and 1275.3, Health and Safety Code. Reference: Sections 14087.3, 14105.981, 14108, 14108.1, 14108.2, 14110.1, 14123 and 14132.22, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline] Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline].

(10) Amend Section 54501 to read as follows:

§ 54501. Adult Day Health Care Services.

(a) No Change

(b) The maximum all-inclusive rate per day of attendance for each approved Medi-Cal participant shall be [begin strikeout]~~$69.58~~[end strikeout] [begin underline]the amount specified in the chart below.

All-Inclusive Max. Daily Rate

Effective Rate Year

2004 through 05 69.58

All-Inclusive Max. Daily Rate

Effective Rate Year

2005 through 06 73.56

All-Inclusive Max. Daily Rate

Effective Rate Year

2006 through 07 76.22[end underline]

(c) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14124.5 and 14570, Welfare and Institutions Code. Reference: Section 14571, Welfare and Institutions Code; [begin strikeout]~~and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~[end strikeout] [begin underline]Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890[end underline]; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).