

DATE: April 16, 2024

LTC RATES POLICY LETTER 23-002

TO: FREESTANDING SKILLED NURSING FACILITIES

SUBJECT: CHANGE IN OWNERSHIP RATES

PURPOSE:

This Long-Term Care (LTC) Rates Policy Letter implements the Medi-Cal reimbursement rate calculation for Freestanding Nursing Facility Level-B (FS/NF-B) and Freestanding Adult Subacute (FS/SA) units with a pending or recently completed change of ownership or licensed operator (CHOW) for Calendar Year (CY) 2023 rates, effective January 1, 2023. This Policy Letter aligns CHOW reimbursement policy with statutory requirements related to LTC ratesetting enacted by Assembly Bill (AB) 186 (Chapter 42, Statutes of 2022) and proposed State Plan Amendment (SPA) 23-0006, as well as new statutory requirements related to the CHOW process enacted by AB 1502 (Chapter 578, Statutes of 2022).

BACKGROUND:

The Medi-Cal Long-Term Care Reimbursement Act (Article 3.8 of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code (WIC), beginning with section 14126) and the California Medicaid State Plan (Supplement 4 of Attachment 4.19-D) establish a cost-based, facility-specific reimbursement rate methodology for FS/NF-Bs and FS/SAs. WIC section 14126.027 authorizes the Department of Health Care Services (DHCS) to implement the Medi-Cal Long-Term Care Reimbursement Act by means of provider letters or other similar instruction, without taking regulatory action, notwithstanding Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

The Medi-Cal Long-Term Care Reimbursement Act was most recently amended by AB 186. Changes to the California Medicaid State Plan necessary to effectuate the changes made by AB 186 to the calculation of the CY 2023 FS/NF-B and FS/SA are pending federal approval in proposed SPA 23-0006. DHCS issued LTC Rates Policy Letter 23-001 to implement the ratesetting calculations for CY 2023. LTC Rates Policy Letter 23-001 did not include provisions applicable to the calculation of rates for facilities with pending or recently completed CHOWs.



CHOWs are reviewed and approved by the California Department of Public Health (CDPH). Historically, several years could elapse between the time a facility applied for a CHOW and the time the CHOW was completed. During this time, the prospective owner or operator could assume temporary management of the facility operating under the license of the previous owner or operator. AB 1502 amended various statutory provisions governing CDPH's review and approval of CHOWs effective for applications submitted after July 1, 2023. Notably, AB 1502 requires CDPH to make a determination on a submitted CHOW within 120 calendar days and prohibits the practice of the prospective owner or operator assuming temporary management of the facility before the CHOW is approved.

The CHOW process affects Medi-Cal ratesetting.¹ Historically, DHCS interpreted statutory provisions governing CHOW ratesetting to require that upon initiating a CHOW, the facility's reimbursement rate on file would not be updated until the CHOW was completed and the minimum number of months of cost report data were audited to calculate a prospective rate. However, to maintain parity with other facilities, DHCS updated the rate on file by applying an inflation factor to the entire rate and updating certain state mandated fees.

AB 186 requires the establishment of dual aggregate growth limits for labor and non-labor rate components for Medi-Cal ratesetting beginning in CY 2023. Furthermore, AB 186 requires the labor rate component to be utilized for the Workforce Standards Program in CY 2024. Pursuant to WIC section 14126.033(c)(18), for facilities that meet the workforce standards, the rate adjustment for the labor cost category "shall not have a percentage growth limit applied to the facility's audited costs within the labor cost category trended to the 2024 calendar year." The workforce standards rate adjustment is intended to "rebase" the labor cost component for facilities that meet the standards, to reflect large shifts in the labor market following the COVID-19 Public Health Emergency (PHE). The workforce standards rate adjustment is timed to begin following the expiration of the COVID-19 PHE temporary rate increase on December 31, 2023, pursuant to WIC section 14126.033(c)(15).

The dual cost growth limits established by AB 186 require DHCS to update labor and non-labor rate components separately. This requirement conflicts with the historic CHOW methodology of updating the prior owner's rate for facilities undergoing a

¹ Reimbursement for facilities undergoing a CHOW is governed by WIC section 14126.023(c)(4). Substantially similar language is also reflected in the California Medicaid State Plan at Paragraph 4 of Section VIII of Supplement 4 of Attachment 4.19-D.

CHOW by applying an inflation adjustment to the entire rate, which does not include a calculation of separate labor and non-labor rate components. Furthermore, the most recently-audited cost reports available will most accurately reflect post-PHE labor costs. Thus, in order to uniformly implement AB 186, DHCS will update each rate component separately for CHOWs, pursuant to the applicable State Plan methodology and utilizing the latest available audited cost report with the minimum number of months as required by WIC section 14126.023(c)(4)(A)-(B).

POLICY:

DHCS adopts the following policy to calculate rates for facilities with pending or recently completed CHOWs for rate years beginning on or after January 1, 2023. The provisions of LTC Rates Policy Letter 23-001 shall apply to the calculation of CY 2023 rates for facilities with pending or completed CHOW except as otherwise provided in this Policy Letter.

1. A facility that has a CHOW will continue to receive the "prior owner's rate" until DHCS calculates a "newly established rate" pursuant to paragraph 3.
2. During a pending CHOW, DHCS will continue to annually update the prior owner's rate pursuant to the applicable State Plan methodology, utilizing the latest available audited cost report with the required minimum number of months of cost data. Pursuant to the State Plan and WIC section 14126.023(c)(4), the required minimum number of months of audited Medi-Cal cost data is 12 months for FS/SA units and 6 months for all other FS/NF-Bs.
3. Once a CHOW is completed, DHCS will consider a facility's rate to be "newly established" for the application of the rate growth limit methodology, as detailed in LTC Rates Policy Letter 23-001 once the prospective rate is established using an audited cost report for a reporting period beginning after completion of the CHOW and with the required minimum number of months. In the CY 2023 rate year only, DHCS shall consider a facility's rate to be newly established if the facility had a pending CHOW rate in CY 2022.
4. In the CY 2023 rate year only, DHCS will hold the rate of a facility subject to this methodology harmless relative to the facility's rate in CY 2022. The hold-harmless rate will not carry forward into the calculation of rates in future years.

DHCS will recompute and publish CY 2023 rates for facilities with pending or completed CHOWs utilizing the methodology described in this Policy Letter. Recomputations made pursuant to this Policy Letter will not result in changes to the adjustment factors,

statewide and peer group weighted averages, and peer group percentile limits calculated prospectively at the time of the initial rate study, as specified in LTC Rates Policy Letter 23-001.

This Policy Letter applies to rate years beginning on or after January 1, 2023, and supersedes all prior guidance, bulletins, instructions, and regulations issued by DHCS on the matters described herein. DHCS reserves the right to modify, waive, or rescind any provision of this Policy Letter. This methodology described in this Policy Letter is contingent upon, and may be revised to obtain, any necessary federal approvals. This Policy Letter is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

A copy of this Policy Letter is posted on the Medi-Cal Long Term Care Reimbursement website at <https://www.dhcs.ca.gov/services/medi-cal/Pages/AB1629/LTC.aspx>. If you have any questions regarding this Policy Letter, please contact the Medi-Cal Long Term Care Reimbursement Inbox at AB1629@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY ALEK KLIMEK

Alek Klimek, Interim Chief

Fee-For-Service Rates Development Division