

AB 186 Nursing Facility Financing Reform

July 27, 2023
Stakeholder Meeting

Call-in Number

- » In addition to the Microsoft Teams webinar, members of the public may call in to +1 279-895-6425 and enter phone conference ID: 552 756 269#.

Introductions

- » Alek Klimek, Chief, Fee-For-Service Rates Development Division, Health Care Financing
- » Jeffrey Norris, M.D., Chief, Value-Based Payments, Quality and Population Health Management
- » Sural Shah, M.D., Chief, Quality & Health Equity Evaluation and Monitoring, Quality and Population Health Management
- » Samantha Schradle, Health Program Specialist II, Fee-For-Service Rates Development Division, Health Care Financing

Program Inboxes

DHCS is discontinuing the single AB 186 email inbox, and has established an inbox for each program:

- » Workforce & Quality Incentive Program (WQIP)
 - SNFWQIP@dhcs.ca.gov
- » Accountability Sanctions Program (ASP)
 - SNFASP@dhcs.ca.gov
- » Workforce Standards Program (WSP)
 - SNFWSP@dhcs.ca.gov

Agenda

1. Workforce & Quality Incentive Program (WQIP)
2. Accountability Sanctions Program (ASP)
3. Workforce Standards Program (WSP)
4. Public Comment

Workforce & Quality Incentive Program (WQIP)

WQIP

- » DHCS is currently reviewing feedback to the [Skilled Nursing Facility Workforce & Quality Incentive Program: 2023 Technical Program Guide Public Review Draft](#). The public review period ended July 15, 2023.
- » CMS review of the WQIP Preprint is pending and anticipated to take several months. DHCS will update stakeholders on any substantive changes through further stakeholder meetings.

Accountability Sanctions Program (ASP)

Accountability Sanctions Program

- » Today's presentation overviews a general framework for the ASP based on AB 186 and baseline data. It also identifies areas for further policy development.
- » DHCS will implement ASP for measurement year 2024. DHCS is developing a SNF Policy Letter to implement the ASP before the beginning of the measurement year.
- » Based on further stakeholder feedback, DHCS will develop more detailed policies. DHCS will present updates at stakeholder meetings scheduled in August, 2023.

What is the Accountability Sanctions Program?

- » Assembly Bill (AB) 186 added [Welfare & Institutions Code Section 14126.026](#) authorizing DHCS to assess sanctions on SNFs that fail to meet or exceed one or more of the accountability measures developed by the department
- » For each measure a skilled nursing facility fails to meet or exceed in a single rating period, the department may assess a sanction of \$5 for each Medi-Cal bed day within the rating period up to a maximum of \$150,000 in a single rate period. The rating period is a calendar year.
- » Facilities may dispute and appeal sanctions through an administrative hearing process pursuant to statute. DHCS may waive sanctions in limited circumstances authorized by statute.

ASP Timeline



Appeals and Waivers

- » Statute establishes a process for facilities to dispute and appeal any sanctions assessed within 30 days of receipt of the sanction notification through an administrative hearing.
- » The department may waive all or a portion of the sanction assessed under this section if a facility petitions for a waiver and the department determines, in its sole discretion, that the petitioning facility meets **both of the following**:
 - The facility has demonstrated to the department's satisfaction that sufficient corrective action has been taken to remediate the underlying deficiency

AND

- The facility has demonstrated to the department's satisfaction that imposing the full amount of the sanction under this section has a high likelihood of creating an undue financial hardship for that facility or creates a significant difficulty in providing services to Medi-Cal beneficiaries
- » DHCS will develop detailed guidelines and definitions in the SNF Policy Letter.

General Sanctions Process Outlined in AB 186



SNF - Day 0	SNF - 30 Days receipt of Sanction Notification
SNF receives DHCS Notification of Sanction	SNF either pays Sanction or submits a request for appeal to DHCS within 30 days

Appeals Process



SNF - Day 0	SNF - 30 Days Receipt of Sanction Notification	DHCS - 30 Days of Receipt of Appeal Request	DHCS - 60 Days of Receipt of Appeal Request	DHCS - 120 Days of Receipt of Appeal Request	SNF - 30 Days of Receiving Upheld Sanction Decision
SNF receives DHCS Notification of Sanction	SNF either pays Sanction or submit a request for appeal to DHCS within 30 days	DHCS submits to the SNF its responsive arguments and all supporting documents that the department will present at the hearing	Hearing shall commence within 60 days from the date of receipt by the department of the facility's timely request for appeal	DHCS shall issue a decision within 120 days from the date of receipt by the department of the facility's timely request for appeal	SNF shall pay the sanctions to the department within 30 days of the facility's receipt of the decision.

Sanction Measure Considerations

DHCS is developing the accountability measures taking into consideration:

- » High impact/priority areas
- » Readily available data with established metric definitions
- » Use of baseline data to set reasonable thresholds
- » Strategically align with but not duplicate California Department of Public Health (CDPH) oversight authority

Potential Accountability Measures

» Finalized measures to be developed with stakeholder input.

Clinical Metrics
<i>WQIP clinic metric domains</i>
Percent of High-Risk Residents with Pressure Ulcers, Long Stay
Percent of Residents Who Received Antipsychotic Medications, Long Stay
<i>Other clinical metrics</i>
Percent of Residents Who Received Influenza Vaccine
Equity Measures
Racial and Ethnic Data Completeness Metric <ul style="list-style-type: none">• Incentive area for measurement year 2023 if data completeness 90 percent or more• Sanction area for measurement year 2024 if data completeness less than 90 percent

Next Steps

- » DHCS welcomes stakeholder input on the design of the Accountability Sanctions Program. Please provide comments in writing to SNFASP@dhcs.ca.gov by August 11, 2023, to inform the next phase of policy development.
- » DHCS will present an updated program framework at the August stakeholder meeting

Workforce Standards Program (WSP)

Workforce Standards Overview

- » AB 186 requires DHCS to establish a Workforce Standards Program (WSP) for Freestanding Skilled Nursing / Subacute Facilities Level-B. Facilities that meet the standards will receive a workforce rate adjustment starting in CY 2024.
- » The workforce rate adjustment will be made to base Fee For Service (FFS) Per Diem rates via a State Plan Amendment. Managed Care Plans (MCPs) will be required to pay the workforce adjustment through the FFS Equivalent Directed Payment.

Workforce Standards Development

- » DHCS published the mandatory 2023 SNF Wage & Benefit Survey which was due June 2, 2023. DHCS received approximately 750 responses.
- » DHCS is continuing to calibrate the workforce standards using the wage and benefit data, and will share an updated program design in an August stakeholder meeting.
- » DHCS will publish the final program design in a draft State Plan Amendment. DHCS will provide facilities with at least 60 days to opt-in from the date that the draft State Plan Amendment is published.

Workforce Standards Development

DHCS has articulated the following guiding principles for the WSP program design:

- » Hold SNFs accountable for using increased Medi-Cal funding to provide fair compensation and benefits to workers. Fair compensation and benefits will enable SNFs to recruit and retain a workforce that will provide high quality care to Medi-Cal beneficiaries.
- » Focus the Workforce Standards primarily on lower-wage workers who are the core of the SNF workforce and have less economic power.
- » Encourage the development of fair compensation and benefits through labor-management cooperation and collective bargaining in furthering the above goals.
- » Develop policies that align with and build on existing practices in the SNF industry, and which maintain the fiscal sustainability of SNF.

Workforce Standards Pathways

Facilities may qualify for the workforce standards program through one of two pathways:

- » Labor-Management Cooperation Pathway: Either:
 - Maintain a collective bargaining agreement (CBA).
 - Participate in a statewide multi-employer labor-management committee (LMC).
- » Basic Wage and Benefit Pathway: Meet all the following requirements:
 - Pay at least a basic wage to indirect and direct care workers, based on regional median wages for comparable occupations.
 - Offer health care benefits to full-time employees with a minimum actuarial value of 85 percent and employer share of 80 percent of the premium.
 - Provide paid sick leave totaling 10 days (including the three days required by state law).
 - Provide paid time and tuition for continuing education requirements for lower wage workers, including CNAs.

Other Considerations

- » AB 186 authorizes DHCS to vary workforce standards by facility characteristics. In addition to geographic variation of the basic wage standard, should DHCS vary standards based on any other relevant facility characteristics? For example, standards could be phased-in for smaller/independent facilities. How should these categories be defined? DHCS has not received any actionable feedback.
- » DHCS is considering requiring facilities to contractually apply the basic wage standard to employees of contractors with an ongoing presence on the site of the facility. Facilities are assumed to have less ability to require contractors to meet health benefit and paid sick leave standards. DHCS requests stakeholder feedback for specific working definitions.
- » How should the Labor-Management Cooperation pathway treat facilities with LMCs or CBAs that represent only some, but not all, workers at a facility? DHCS is considering a threshold, such as 50 percent of non-exempt workers must be covered by the CBA or LMC.

Next Steps

- » DHCS welcomes stakeholder input on the design of the Workforce Standards Program. Please provide comments in writing to SNFWSP@dhcs.ca.gov.
- » DHCS will present an updated program framework at the August stakeholder meeting.
- » Please visit dhcs.ca.gov/AB186 for meeting materials and information on how to join upcoming meetings.

Public Comment

Public Comment

- » DHCS welcomes public comment. DHCS staff may briefly respond to requests for clarification on this presentation.
- » Speakers are requested to introduce themselves and their organization.
- » Audience members are muted until they are called on by the moderator. Please use the “raise hand” button in Microsoft Teams to be added to the speaker queue. Once you are called on, you must unmute yourself in Microsoft Teams. If you are calling-in please press *5 to raise your hand.