

DATE: June 20, 2025

TO: FREESTANDING SKILLED NURSING FACILITIES

SNF ASP POLICY LETTER 25-001

SUBJECT: Appeal and Waiver Procedures for Skilled Nursing Facility Accountability Sanctions Program (SNF ASP)

PURPOSE:

This Policy Letter (PL) provides detailed procedures to Freestanding Skilled Nursing Facilities (FS/SNFs) regarding the appeal and waiver processes pursuant to Welfare and Institutions Code (W&I) Section 14126.026.

BACKGROUND:

Assembly Bill (AB) 186 (Chapter 46, Statutes of 2022)¹ amended the Medi-Cal Long-Term Care Reimbursement Act to reform the financing methodology applicable to Freestanding Skilled Nursing Facilities Level-B and Adult Freestanding Subacute Facilities Level-B.

W&I Section 14126.026 authorizes the Department of Health Care Services (DHCS) to implement SNF Accountability Sanctions Program (ASP), which imposes monetary sanctions on FS/SNFs that fail to meet one or more quality measures established by DHCS.

W&I Section 14126.026(b)² states that for each measure an FS/SNF fails to meet or exceed in a single rating period, DHCS may assess a sanction of up to five dollars (\$5) for each Medi-Cal bed day (MCBD) within the rating period. For each measure, the aggregate sanction assessed shall not exceed one hundred fifty thousand dollars (\$150,000.00) in a single rating period.

¹ [W&I Section 14126.026](#)

² [W&I Section 14126.026, subdivision \(b\)](#)

W&I Section 14126.026(c) further states that the Director may identify findings of noncompliance through any means, including, but not limited to, findings in audits, investigations, compliance reviews, quality improvement monitoring, routine monitoring, facility site surveys, encounter and provider data submissions, grievances and appeals, reviews of utilization data, fair hearing decisions, complaints from beneficiaries and other stakeholders, whistleblowers, and self-disclosures.

APPEAL PROCESS

Pursuant to W&I Section 14126.026(h), if an FS/SNF disputes any sanction assessed under ASP, the FS/SNF (Facility) must submit a request for appeal (Appeal) to DHCS within 30 calendar days of the FS/SNF's receipt of the Notice of Intent to Impose Monetary Sanctions.

The Appeal will be adjudicated by the Office of Administrative Hearings and Appeals (OAHA) to provide a fair and impartial appeal process for an FS/SNF to dispute any sanction made pursuant to DHCS' authority found in W&I Section 14126.026.

OAHA will hear a timely filed Appeal and issue a decision as follows:

1. The hearing shall commence within 60 calendar days from the date of receipt by DHCS of the Facility's timely request for Appeal.
2. OAHA shall issue a decision within 120 calendar days from the date of receipt by DHCS of the Facility's timely request for Appeal.
3. The decision of the OAHA Hearing Officer, when issued, shall be the final decision.

If the decision is in favor of DHCS, the FS/SNF must pay the sanctions to DHCS within 30 calendar days of the FS/SNF's receipt of the decision.

Definitions

The following definitions will be used throughout this letter unless otherwise noted:

- "Notice of Intent to Impose Monetary Sanctions" means the initial notice of imposition of monetary sanctions sent by DHCS to an FS/SNF for its failure to meet the minimum performance benchmarks of measures established by DHCS.
- "Notice of Imposition of Monetary Sanctions" means the final notice of imposition of monetary sanctions sent by DHCS to an FS/SNF for its failure to meet the minimum performance benchmarks of measures established by DHCS.
- "Timely Request for Appeal" means a request for appeal that is submitted to DHCS and OAHA in accordance with the requirements in this PL within 30

calendar days of a Facility's receipt of a sanction assessment from DHCS. The submission date will be determined by the postmark or analogous electronic date stamp.

- "Notice of Deficiency" means a written notice issued by OAHA informing a Facility of missing required information in its Appeal request.

Notices of Sanctions

DHCS will issue a written Notice of Intent to Impose Monetary Sanctions and a Notice of Imposition of Monetary Sanctions to facilities subject to sanctions via Email.

Sanction Assessment Appeals

Pursuant to W&I Section 14126.026(h), if a Facility disputes any sanctions made pursuant to W&I Section 14126.026, it may submit a request for Appeal.

A Facility must timely submit its request for Appeal in accordance with all of the following requirements in this PL. There is no appeal process for a late or substantially incomplete Appeal.

A Facility's Appeal must be submitted to the following two addresses:

California Department of Health Care Services
Office of Administrative Hearings and Appeals
Incoming Appeals
3831 North Freeway, Suite 200
Sacramento, CA 95834

AND

California Department of Health Care Services
Quality and Population Health Management
Accountability Sanctions Program
SNFASP@dhcs.ca.gov

The Appeal must be in writing and must include a detailed statement describing the reason for the appeal, and all supporting documents the Facility will present at the hearing. The supporting documents should be relevant documents that directly support the Facility's Appeal. An example of relevant documents includes spreadsheets comparing the sanction amount calculated by DHCS and the Facility.

The Appeal must be signed by the Facility administrator; list the physical address, mailing address, email address, and telephone number of the Facility; and list the name and the contact information of the agent authorized to act on the Facility's behalf in handling the Appeal, including any questions related to the Facility's Appeal.

At its sole discretion, OAHA reserves the right to collect additional facts or information to aid in the resolution of any Appeal.

Grounds for Appeal

Appeals are limited to the disputes regarding the sanction amount.

Notice of Deficiency

Only timely and complete Appeals that comply with the instructions herein may be considered.

If the Appeal lacks any required information, OAHA will issue a written Notice of Deficiency to the Facility identifying the deficiencies and providing a timeline for remediation. If the Facility fails to respond timely or does not satisfactorily correct the deficiencies within the timeframe provided, its Appeal will be denied, and no hearing will be scheduled.

Late Appeals

- If a request for Appeal is untimely, it will be denied and the sanction deemed final unless the Facility establishes in writing good cause for the late Appeal within 10 calendar days from the date of notice of the untimely Appeal.
- If the Facility establishes good cause, which will be determined at the sole discretion of OAHA, the Appeal shall be deemed timely as of the date of OAHA's good cause determination.

Documents Provided by DHCS

Within 30 calendar days of DHCS receipt of the Facility's timely and complete Appeal, DHCS will submit to the Facility and OAHA its responsive arguments and all supporting documents that DHCS will present at the Hearing to the address provided on the Facility's Appeal.

Notice of Time and Place of Hearing

OAHA will provide a Notice of Hearing to the Facility and DHCS at least 10 calendar days prior to the hearing. This period may be shortened with both parties' consent.

The hearing may be conducted virtually, at the hearing officer's discretion.

Conduct of Hearing

- Testimony will be taken under oath, affirmation, or under penalty of perjury. The hearing will be electronically recorded. Each party may examine and cross-examine witnesses and present arguments in support of or against a particular position or resolution.
- The Hearing Officer will determine the order of presentation of evidence or issues and may question any party or witness. Additionally, a Hearing Officer may refuse to allow any person to participate in any hearing when the person engages in unethical, disruptive or contemptuous conduct, or intentionally fails to comply with the Hearing Officer's instructions.

Decision

The Hearing Officer will issue a decision within 120 days from the date of receipt of the Facility's timely Appeal. The decision of the Hearing Officer, when issued, will be the final decision of DHCS. Pursuant to W&I Section 14126.026(h)(4), the Appeal shall be exempt from Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The provisions of Sections 100171 and 131071 of the Health and Safety Code do not apply to the Appeal. A copy of the decision will be served on the parties.

Payment of Sanctions

If the Hearing Officer's decision is in favor of DHCS, the Facility must pay the sanctions within 30 calendar days of the Facility's receipt of the Hearing Officer's decision.

WAIVER PROCESS

Pursuant to W&I Section 14126.026(f)³, DHCS may waive all or a portion of a Facility's assessed sanction if the Facility petitions for a waiver (Waiver) and DHCS determines, in its sole discretion, that the Facility meets both of the following:

- (1) The Facility has demonstrated to DHCS' satisfaction that sufficient corrective action has been taken to remediate the underlying deficiency.
- (2) The Facility has demonstrated to DHCS' satisfaction that imposing the full amount of the sanction under ASP has a high likelihood of creating an undue

³ [W&I Section 14126.026, subdivision \(f\)](#)

financial hardship for that Facility or creates a significant difficulty in providing services to Medi-Cal beneficiaries.

If a Facility decides to request a Waiver, it must submit all the required documents to DHCS, Quality and Population Health Management, Skilled Nursing Facility Accountability Sanctions Program, within 30 calendar days of receiving the Notice of Sanction at the following address:

California Department of Health Care Services
Quality and Population Health Management
Accountability Sanctions Program
SNFASP@dhcs.ca.gov

The Waiver request should use the email subject line: *Waiver Request Submission for SNF ASP*. Additionally, the Waiver request must be signed by the FS/SNF administrator; list the physical address, mailing address, email address, and telephone number of the FS/SNF; and list any agent authorized to act on the FS/SNF's behalf. At its sole discretion, DHCS reserves the right to collect additional facts or information to aid in the decision of Waiver request.

For Facilities also requesting an Appeal, the deadline for the Waiver request is extended to 30 calendar days from the Facility's receipt of the Appeal decision. The Facility will be considered to have forfeited the opportunity to appeal if DHCS only receives the Waiver request within 30 calendar days of the Facility's receipt of the Notice of Sanction. If a Waiver is denied or a partial Waiver is granted, the Facility must pay the sanctions to DHCS within 30 calendar days of the Facility's receipt of the decision. The decision on the Waiver is not subject to administrative appeal.

Sufficient Corrective Action (SCA)

W&I Section 14126.026(f)(1) states the Facility must demonstrate to DHCS' satisfaction that sufficient corrective action (SCA) has been taken to remediate the underlying deficiency. SCA will be determined, in part, by assessing whether there has been sufficient improvement in the Facility's performance on the sanctioned measure(s) during the measurement year when compared to the Facility's performance for that measure(s) in the prior SNF ASP measurement year or prior calendar year.

The degree of improvement achieved by a Facility will be determined utilizing gap closure between the Facility's prior-year measurement rate for the sanctioned measure and the 90th percentile benchmark utilized for the measurement year for which the waiver is being petitioned. The difference between the Facility's prior-year rate and 90th

percentile benchmark will be calculated to derive the Facility's prior-year gap. The difference between the Facility's measurement-year rate and its prior-year rate will be calculated to derive the Facility's improvement value. For the *Percent of Long-Stay Residents Who Received an Antipsychotic Medication* measure, the 75th percentile benchmark will be used instead of the 90th percentile benchmark to calculate gap closure. The Facility's improvement value will be divided by the Facility's prior-year gap to determine the percentage of gap closure achieved by the Facility.

The Facility must achieve at least a 10 percent (%) gap closure in order for performance on a measure to be considered SCA. The waiver factor that will be applied to a sanction on a measure will be determined based on the following degrees of improvement:

Table 1 – Sufficient Corrective Action Evaluation

Degree of Improvement	Rate of Gap Closure	Waiver Factor	Waiver Amount
Slight Improvement	10.00% - 12.49%	0.8	20%
Minimal Improvement	12.50% - 14.99%	0.6	40%
Moderate Improvement	15.00% - 17.49%	0.4	60%
Moderately Significant Improvement	17.50% - 19.99%	0.2	80%
Significant Improvement	≥ 20.00%	0.0	100%

For a Facility that is able to meet criteria for both SCA and financial hardship, the final reduced sanction amount will be calculated by multiplying the sanction amount assessed on a respective measure by the Waiver factor corresponding to the degree of improvement achieved by the Facility.

Financial Hardship

W&I Section 14126.026(f)(2) states that the petitioning Facility must demonstrate to DHCS' satisfaction that imposing the full amount of the sanction has a high likelihood of creating an undue financial hardship.

For the purposes of determining whether a waiver may be granted pursuant to W&I Section 14126.026(f), the financial hardship is defined as that there is a substantial doubt about the Facility's ability to continue as a going concern for a reasonable period of

time, not to exceed one year beyond the date of the financial statements being audited.^{4,5}

The Facility must submit the following documents to demonstrate that imposing the full amount of the sanction under ASP has a high likelihood of negatively affecting the Facility's ability to continue as a going concern or creates a significant difficulty in providing services to Medi-Cal beneficiaries. The financial documents are required to be attested to by an independent Certified Public Accountant before they are submitted to DHCS.

- A letter outlining the Facility's financial status and explaining why imposing the full amount of the sanction 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.
- Copies of the most recent year audited financial statements. The financial documents needed are the Statement of Income and the Balance Sheet.
- Copies of the 2 most recent federal income tax returns and schedules.
- Copies of the 2 most recent bank statements.
- Copies of the internally prepared year-to-date financial statements for the current year.
- A certified statement from the home offices or a lender, if applicable, showing reasonable efforts to borrow funds to pay the sanction was attempted and denied.

If the Waiver request lacks any required information, DHCS may, at its sole discretion, issue a written Notice of Deficiency to the Facility identifying the deficiencies and providing a timeline for remediation. If the Facility fails to timely respond or does not satisfactorily correct the deficiencies within the timeframe provided, its Waiver request will not be considered.

When a Facility submits all the required documents, DHCS will determine whether the Facility meets the criteria for financial hardship and potentially qualifies for a waiver of the sanction based on the point-based system shown in the chart below. Each criterion and sub-criterion are defined below, along with an explanation of the calculation formulas and the point system used to assess financial hardship. More points indicate greater financial hardship.

⁴ [AS 2415: Consideration of an Entity's Ability to Continue as a Going Concern](#)

⁵ [Predicting Nursing Home Financial Distress Using the Altman Z-Score](#)

Table 2 – Point System for Assessing Financial Hardship

Criteria	Sub-criteria	Possible Points	Percent of Total Score
Liquidity	Days Cash on Hand	0-5	30%
	Current Ratio	0-3	20%
	Access to Working Capital	0-1	20%
Profit/Loss Analysis	Operating Margin	0-2	10%
	Net Cash Runway	0-4	20%
Total		0-3.5	100%

Criteria 1: Liquidity

For the purposes of determining whether a Waiver should be granted under SNF ASP, *liquidity* refers to the Facility's ability to meet its short-term financial obligations and maintain operations without significant disruptions.

Sub-criteria 1.1: Days Cash on Hand

This sub-criterion assesses whether the Facility is currently struggling with liquidity and at risk of running out of working capital to maintain operations, sustain services, or pay employees. This sub-criterion is weighted 30% of the total score. The calculation is based on the formula below:

$$\text{Days Cash on Hand} = \frac{\text{Unrestricted Cash and Cash Equivalents}}{(\text{Operating Expenses} - \text{Noncash Charges}) \div 365 \text{ Days}}$$

The Facility will receive more points for having fewer days cash on hand. In other words, more points indicate greater financial hardship.

Standards	Point
30 days or less	5
31 to 45 days	4
46 to 60 days	3
61 to 75 days	2
76 to 90-days	1
Above 90-days	0

Sub-criteria 1.2: Current Ratio

This sub-criterion assesses whether the Facility can pay its short-term obligations with its current assets. This sub-criterion is weighted 20% of the total score. The calculation is based on the formula below:

$$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

The Facility will receive more points for having a lower current ratio. More points indicate greater financial hardship.

Standards	Point
Less than 1.0	3
1.0 to 1.25	2
1.26 to 1.5	1
Higher than 1.5	0

Sub-criteria 1.3: Access to Working Capital

This sub-criterion assesses whether the Facility has attempted to secure lines of credit or other working capital and has been turned down. This sub-criterion is weighted 20% of the total score.

The Facility will receive 1 point for having attempted to borrow funds from a lender and being declined, and the Facility will receive 0 points for not trying or having alternative access to working capital to pay the sanction. More points indicate greater financial hardship.

Standards	Point
Yes	1
No	0

Criteria 2: Profit/Loss Analysis

This criterion examines the Facility's financial performance in terms of profitability and operational sustainability. Facilities experiencing losses may indicate deeper financial issues.

Sub-criteria 2.1: Operating Margin

This sub-criterion determines if the Facility is experiencing operating margin or net losses, with a focus on the current year-to-date and the previous year's audited financial statements. This sub-criterion is weighted 10% of the total score. More points indicate greater financial hardship. The calculation is based on the formula below:

$$\text{Operating Margin} = \frac{\text{Net Income}}{\text{Total Revenue}}$$

Standards	Point
Both periods negative	2
One period negative and one positive	1
Both periods positive	0

Sub-criteria 2.2: Net Cash Runway

This sub-criterion measures the length of time the Facility can continue to operate with its current cash balance, given its monthly average operating loss. This sub-criterion is weighted 20% of the total score. The calculation is based on the formula below:

$$\text{Net Cash Runway} = \frac{\text{Cash Balance}}{\text{Monthly Average Operating Loss}}$$

The Facility will receive more points for having fewer months to continue operating with its current cash balance. In other words, more points indicate greater financial hardship.

Standards	Point
Less than 6 months (< 6)	5
6 to 12 months ($6 \leq x < 12$)*	4
12 to 18 months ($12 \leq x < 18$)	3
18 to 24 months ($18 \leq x < 24$)	2
24 months or higher (≥ 24)	1
No operating loss	0

* "x" indicates the calculated number of months the Facility can continue to operate with its current cash balance.

Threshold

Based on the point system and the respective weight of each criterion, the highest possible score that a Facility can receive is 3.5 (see the calculation below), and the lowest is 0. The threshold is the minimum score a Facility must achieve to be considered as experiencing financial hardship and potentially qualifying for a waiver. Only Facilities that score equal to or above 3.3 are eligible for consideration of financial hardship.

$$\text{Highest Score} = 5 \times 30\% + 3 \times 20\% + 1 \times 20\% + 2 \times 10\% + 5 \times 20\% = 3.5$$

Only Facilities that meet both the criteria of Sufficient Corrective Action and the threshold of Financial Hardship may be eligible for a partial or full waiver. Facilities must submit a Waiver request, along with supporting documents, to the DHCS SNF

Accountability Sanctions Program at SNFASP@dhcs.ca.gov in accordance with the requirements set forth herein.

If you have any questions regarding this Policy Letter, please contact us at SNFASP@dhcs.ca.gov.

DRAFT