



AB 186 Nursing Facility Financing Reform

April 12, 2023

Stakeholder Meeting

Department of Health Care Services

Introductions

- » Alek Klimek, Chief, Fee-For-Service Rates Development Division

Agenda

1. AB 186 Overview
2. Workforce & Quality Incentive Program (WQIP) Update
3. Workforce Standard Program (WSP) Ongoing Policy Development
4. Public Comment

AB 186 Program Components	Development Timeline	Implementation Timeline
<p>Workforce & Quality Incentive Program (WQIP). DHCS will provide directed payments to facilities to incentivize workforce and quality metrics. This program succeeds the former Quality and Accountability Supplemental Payment (QASP) program.</p>	<p>September 2022 - December 2022</p>	<p>Initial payments made to facilities in early 2024 based on Calendar Year (CY) 2023 utilization</p>
<p>Workforce Standards Program. DHCS will establish workforce standards such as maintaining a collective bargaining agreement or paying prevailing wage. DHCS will provide facilities that meet these standards with a workforce augmentation to the base per diem rate effective for CY 2024.</p>	<p>December 2022 - June 2023</p>	<p>Rate augmentation effective for CY 2024. Facility reporting required in mid-2023.</p>
<p>Accountability Sanctions Program. DHCS is authorized to sanction facilities that do not meet quality standards established by DHCS on a per Medi-Cal bed basis.</p>	<p>July 2023 - November 2023</p>	<p>Quality standards will be effective for CY 2024.</p>

WQIP Update

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WQIP CMS Approval

- » DHCS submitted the WQIP Directed Payment Preprint for federal approval to the Centers for Medicare & Medicaid Services (CMS) on December 30, 2022 based on the program design outlined at the December 21, 2022 Stakeholder Meeting.
- » CMS review of the WQIP Preprint is anticipated to take several months. DHCS will update stakeholders on any substantive changes through further stakeholder meetings

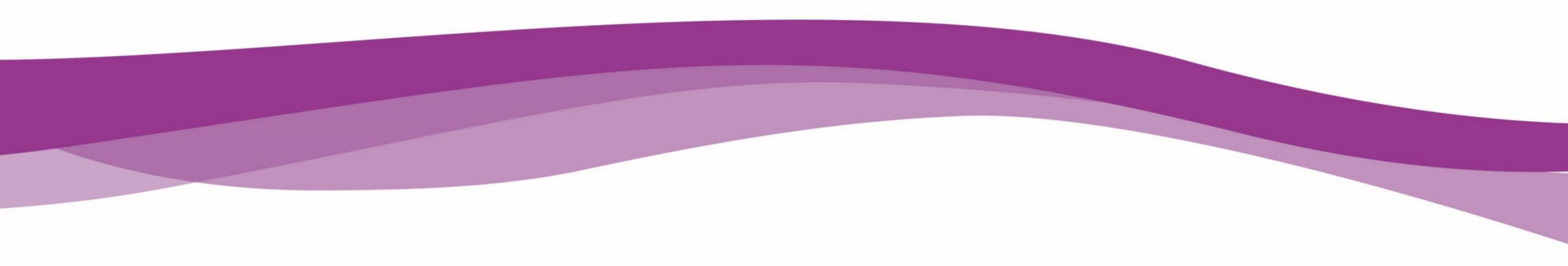
WQIP Program Manual

- » DHCS is developing a WQIP Program Manual to provide technical specifications in greater detail and address common questions.
- » DHCS anticipates to share a draft version of the WQIP program manual with stakeholders in April 2023.
- » DHCS will provide an opportunity for stakeholders to review and provide input on the WQIP Program Manual.
- » DHCS has posted the WQIP Prospective Benchmarks for Calendar Year 2023 Program on [DHCS.ca.gov/AB186](https://dhcs.ca.gov/AB186).

WQIP Contracted Days Transparency

- » Pursuant to the program design, WQIP directed payments will be calculated based on the contracted network provider utilization reported by managed care plans to DHCS by specified deadlines each program year.
- » In response to stakeholder feedback, DHCS will require managed care plans to provide facilities with information on the number of days reported to DHCS so that facilities have the opportunity to resolve any concerns directly with the plan.
- » Managed care plans are ultimately responsible for reporting accurate data to DHCS. Facilities and managed care plans may include additional procedures in network provider agreements.

Workforce Standards Program



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.
- » AB 186 provides DHCS with broad authority to develop and define the workforce standards such as maintaining a collective bargaining agreement or paying prevailing wage.
- » 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 Scope

- » The WSP is focused on labor-management cooperation and setting basic standards for worker's wages and other benefits.
- » In contrast, the WQIP includes workforce metrics incentivizing higher per patient staffing hours and lower staff turnover.
- » The SNF COVID-19 PHE 10 percent temporary rate increase is set to expire on December 31, 2023. The workforce rate adjustment is broadly intended to supplant this funding while holding facilities accountable for investing these funds in the workforce.

Workforce Standards Guiding Principles

DHCS proposes to design the WSP based on the following guiding principles:

- » 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 SNFs.

Workforce Standards Development

- » At the March 10, 2023 stakeholder meeting, DHCS proposed a draft framework for the WSP based on AB 186 and stakeholder feedback
- » DHCS is continuing to analyze data and stakeholder feedback. DHCS is releasing a mandatory Wage & Benefit Survey which will be due **May 15, 2023**.
- » DHCS will use data collected in the survey along with updated wage and inflation data to calibrate the proposed workforce standards.
- » DHCS will present further updates at the stakeholder meeting scheduled for May 22 and June 22. DHCS expects to finalize the program design at the July 28 stakeholder meeting and to require facilities to opt-in by September 30, 2023.

Mandatory Wage & Benefit Survey

- » DHCS is surveying Freestanding Skilled Nursing Facilities Level-B (FS/NF-B) and Freestanding Adult Subacute Facilities (FS/SA) on wages and benefits offered to employees. Pursuant to Welfare & Institutions Code Sections 10740 and 14126.027, participation in this survey is required for all FS/NF-Bs and FS/SAs certified to participate in the Medi-Cal program
- » The survey will be posted to dhcs.ca.gov/services/med-cal/Pages/AB1629/LTCAB1629.aspx and sent out as a newsflash to all Medi-Cal SNF providers.
- » Facilities are required to submit survey responses no later than **May 15, 2023**. Failure to complete the Minimum Wage Survey may impact facilities' Calendar Year 2024 rates.
- » Data collected in this survey will be utilized by DHCS in the Medi-Cal ratesetting process to reimburse providers for the projected costs of new state and/or federal mandates in Calendar Year 2024. Additionally, the information collected in this survey will inform the development of the Workforce Standards Program.

Workforce Rate Adjustment Amount

- » AB 186 requires DHCS to calculate a facility-specific workforce rate adjustment by “rebas ing” audited costs within the labor cost category trended for inflation to CY 2024 without applying historic cost growth limits.
- » If a facility does not meet the workforce standards, AB 186 limits the Medi-Cal rate increase for the labor cost category to five percent in CY 2024 over CY 2023.

Future Rate Years

- » In CY 2025 and CY 2026, rate increases for the labor cost category will be limited to five percent for each year over the previous year.
- » If a facility falls out of compliance with the workforce standards for CY 2025 or CY 2026, the rate for that year will revert down to what it would have been had the facility not received the workforce adjustment in prior years.
- » If a facility becomes newly compliant with the workforce standards for CY 2025 or CY 2026, the rate for that year will be adjusted up to what it would have been had the facility received the workforce adjustment in prior years.

WSP Eligibility

- » DHCS will require facilities to opt in to the WSP for CY 2024 in mid-2023. DHCS will also set opt-in deadlines for facilities newly participating in CY 2025 and CY 2026.
- » DHCS will provide facilities with at least 60 days to opt-in from the date that the Workforce Standards policy is finalized by DHCS. DHCS aims to finalize the standards by June 2023 pending further stakeholder engagement.
- » Facilities that have completed a Change in Ownership may opt into the WSP mid-year in alignment with the re-computation of the new owner's rate.

WSP Compliance

- » Facilities will be required to comply with the workforce standards for the duration of the rate year. If a facility is found to be noncompliant during the rate year, DHCS will recoup the workforce rate adjustment for the entire rate year and may disqualify the facility for the following rate year.
- » DHCS will provide facilities with a grace period not exceeding 60 days per year for good cause as determined by the department, and will require facilities to provide workers with backpay where applicable. Facilities will be required to report any non-compliance within 15 days of becoming aware of the noncompliance.
- » DHCS will require facilities to report compliance with the workforce standards as part of the annual financial audit or through a supplemental reporting schedule. DHCS may also perform mid-year reviews based on complaints.

Workforce Standards Pathways

DHCS proposes to allow SNFs to qualify for the WSP 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.

Additional WSP Requirements

Additionally, DHCS proposes to require all facilities in WSP to:

- » Meet all existing minimum wage and wage pass through requirements.
- » Report wage and benefit data to DHCS as part of the annual audit or through a supplemental reporting schedule. DHCS will begin collecting data for CY 2023 in CY 2024 for informational purposes only.

Labor-Management Cooperation Pathway

- » A CBA or LMC agreement must be effective for the duration of the rate year. If an existing CBA or LMC agreement has expired, the parties must agree to extend the prior CBA or LMC agreement while negotiating a successor agreement.
- » DHCS will define a statewide multi-employer LMC to include at least 200 facilities in California and one or more labor organizations that are certified or recognized as the exclusive bargaining representative of workers at a combined total of 100 facilities in California.
- » Recognition of statewide multi-employer LMCs is consistent with the language of AB 186 and is best suited to advance the establishment of industry-wide workforce standards that align with the goals of the WSP.
- » DHCS will require the facility to submit a copy of the CBA or LMC agreement within 30 days of the beginning of the rate year and include an attestation from the labor organization.

Labor-Management Cooperation Pathway

DHCS requests further stakeholder input on the following:

- » Should DHCS require statewide multi-employer LMCs to meet specific composition or governance standards?
 - » DHCS is continuing to analyze this area. LMCs are formed by an agreement between employers and a labor organization. The agreement may contain governance standards.
- » 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% of workers must be covered by the CBA or LMC.

Labor-Management Cooperation Pathway

- » Stakeholders have proposed recognizing employer-run committees, not affiliated with a labor organization, as part of the LMC pathway.
- » Based on a wide review of literature, DHCS has not been able to identify an instance where “Labor-Management Committee” refers to this type of arrangement in any other industry. All statutes and academic articles reviewed refer to an organization formed by employers and a labor organization.
- » The National Labor Relations Act prohibits employer-run committees from putting forward recommendations to management and from bilaterally discussing issues which would otherwise fall under collective bargaining, including wages and working conditions.
- » DHCS cannot adopt this suggestion, as employer-run committees are not consistent with the language of AB 186 and would not be able to advance the core goals of the Workforce Standards Program.

Basic Wage Standard

- » DHCS proposes establishing the basic wage standard for direct and indirect care workers at the regional median, or a percentage thereof, using US Bureau of Labor Statistics (BLS) data for a proxy Standard Occupational Classification (SOC).
 - » For direct care workers, use SOC 31-1130 Nursing Assistants
 - » For indirect care workers, use SOC 37-2011 Janitors and Cleaner
- » DHCS will use the latest BLS data, adjusted for inflation, to set the basic wage standard for CY 2024. In subsequent years, the basic wage will be adjusted for inflation up to five percent per year in alignment with the maximum labor cost increase authorized in AB 186. BLS will publish 2022 data on April 25, 2023.
- » DHCS will use the BLS Employment Cost Index to adjust wages for inflation.

Basic Wage Standard

- » Stakeholders have raised concern with setting the basic wage standard at the median wage, as by definition, half of the population is below the median. The basic wage standard could be set at a percentage of the median, or at a lower percentile. DHCS will use data collected in the Wage & Benefit Survey in order to calibrate this standard in context of the projected funding made available by the workforce rate adjustment.
- » Stakeholders have suggested additional Standard Occupational Classifications for indirect care workers: SOC 35-2012 Cooks, Institution and Cafeteria and SOC 35-3041 Food Servers, Nonrestaurant. DHCS is reviewing these classifications. DHCS intends to propose a uniform basic wage standard for all indirect care workers.
- » BLS publishes data in 28 metropolitan statistical areas (MSAs) in California. Stakeholders have suggested combining the MSAs to align with the existing SNF peer groups. Since SNF peer groups are not geographically contiguous, this approach would not be representative of local labor market conditions.

Health Benefit Standard

- » DHCS proposed a standard of offering employee-only health benefits to all direct and indirect care workers employed more than 30 hours/week which meet the Essential Health Benefits included in Covered California plans with a minimum actuarial value (AV) of 85% and employer share of 80% of the premium.
- » DHCS is analyzing stakeholder feedback suggesting a health benefit standard requiring facilities to offer multiple plans, aligned with Covered California bronze (60% AV), silver (70% AV), and gold plans (80% AV). Employees selecting a lower AV plan would have a lower employee contribution.
- » The proposed 85% AV and 80% employer share of premium are based on national averages for all private employers. DHCS is collecting information specific to the SNF industry through the Wage & Benefit Survey in order to calibrate this standard to reflect prevailing SNF industry practices.
- » DHCS requested further stakeholder feedback on the potential inclusion of vision and dental benefits, given that they are not included in Essential Health Benefits for adults. DHCS has not received actionable feedback from stakeholders. DHCS will prioritize Essential Health Benefits for the Health Benefit Standard.

Paid Sick Leave Standard

- » DHCS proposes a paid sick leave standard of 10 days for all direct and indirect care workers, inclusive of the 3 days required by state law and any days required by local laws. The required sick leave will be prorated for part-time employees.
- » This standard is intended to reduce infections in facilities and reduce worker burn out by increasing access to preventative health services.
- » Facilities can meet this standard through existing paid time off policies that can be used as sick leave. DHCS will align permitted uses and accrual policies with provisions applicable to the three days of sick leave required by the Labor Code.
- » California employers were required to provide 10 days of COVID-19 Supplemental Paid Sick Leave in 2022 in addition to the 3 days required by state law. Facilities' 2022 cost reports, which will be used to calculate the CY 2024 workforce rate adjustment, reflect costs for these additional days.

Training/Development Standard

- » DHCS proposes a training and development standard of providing paid time and tuition for continuing education requirements applicable to lower wage workers.
- » Based on stakeholder feedback, DHCS has identified certified nursing assistant continuing education and food worker safety certifications as existing industry standards.
- » DHCS is collecting information on training offered to other workers in the SNF industry through the Wage & Benefit Survey.

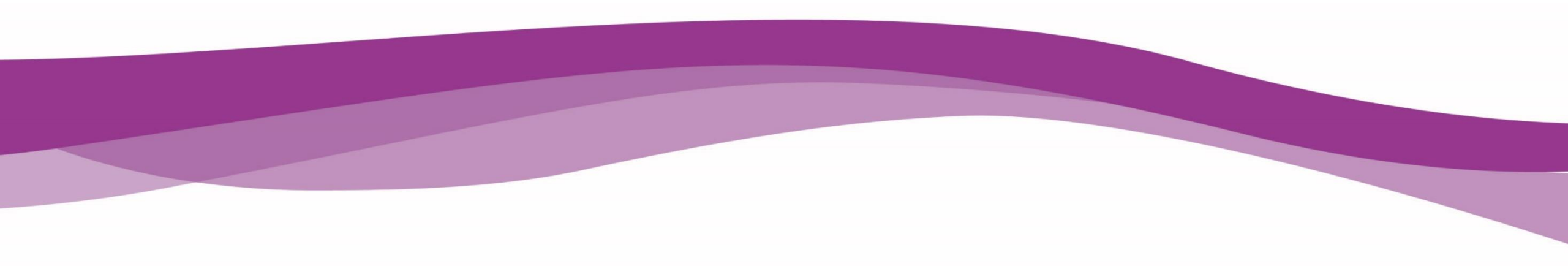
Other Considerations

- » 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.

Workforce Standards Next Steps

- » DHCS welcomes stakeholder input on the design of the Workforce Standards Program. Please provide comments in writing to AB186Comments@dhcs.ca.gov by **May 5, 2023** to inform the next phase of policy development.
- » DHCS will present an updated program framework at the May 22, 2023 stakeholder meeting and identify further areas for policy development.
- » 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. If you are calling-in please press *5 to raise your hand.