



# AB 186 Nursing Facility Financing Reform

February 1, 2023

Stakeholder Meeting

Department of Health Care Services

# Introductions

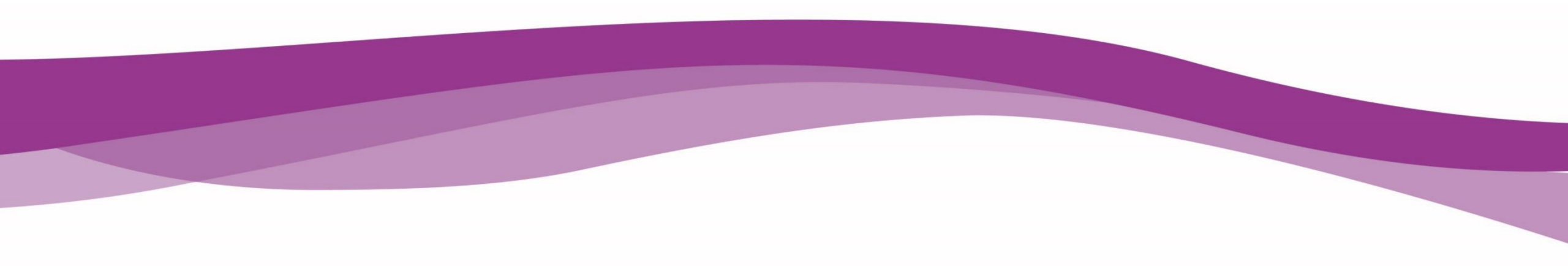
- » Lindy Harrington, Deputy Director, Health Care Financing
- » Alek Klimek, Chief, Fee-For-Service Rates Development Division

# Agenda

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

AB 186 Program Components	Development Timeline	Implementation Timeline
<p><b>Workforce &amp; Quality Incentive Program (WQIP).</b> DHCS will provide directed payments to facilities to incentivize workforce and quality. This program succeeds the former Quality and Accountability Supplemental Payment (QASP) program.</p>	<p>September 2022 - December 2022</p>	<p>Payments made to facilities in early 2024 based on Calendar Year (CY) 2023 utilization</p>
<p><b>Workforce Standards Program.</b> 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 - April 2023</p>	<p>Rate augmentation effective for CY 2024. Facility reporting required in mid-2023.</p>
<p><b>Accountability Sanctions Program.</b> DHCS is authorized to sanction facilities that do not meet quality standards established by DHCS on a per Medi-Cal bed basis.</p>	<p>April 2023 - November 2023</p>	<p>Quality standards will be effective for CY 2024.</p>

# WQIP Update



# 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 Subacute Staffing Hour Minimum

- » At the December 21, 2022 stakeholder meeting, DHCS proposed that the WQIP Total Staffing, Weekend Staffing, and Certified Nursing Assistant (CNA) Staffing metrics would incorporate daily compliance with minimum benchmarks of 3.5 Total Hours Per Patient Day (HPPD) and 2.4 CNA HPPD for all facilities without regard to CDPH staffing waivers.
- » Based on stakeholder feedback submitted after December 21, 2022, DHCS is analyzing an option to apply alternative minimum benchmarks for Subacute units of 5.8 Total HPPD and 2.0 CNA HPPD to align with CDPH All Facility Letter 21-11 and California Code of Regulations Title 22, Section 51215.5. CDPH's staffing audit program excludes Subacute units. DHCS notes that AB 186 does not require the WQIP to use the same minimum benchmarks as CDPH's staffing audits program.

# WQIP Subacute Staffing Hour Minimum

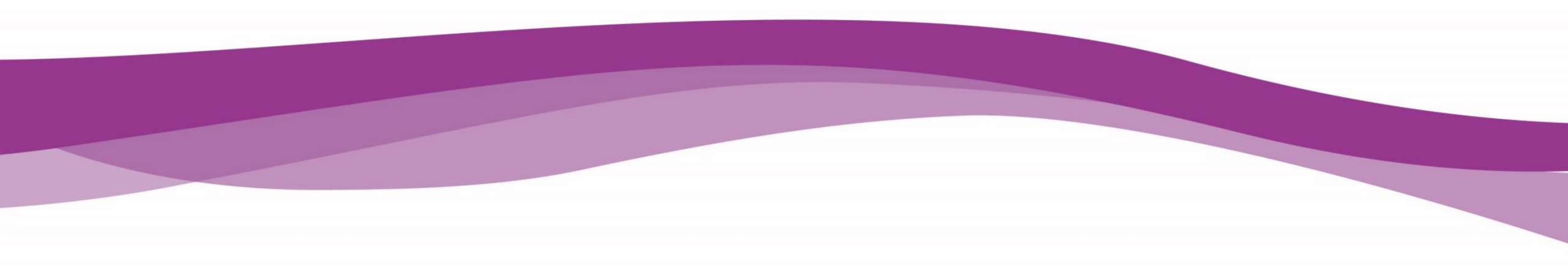
- » DHCS is analyzing staffing hour data to understand how this increase in program complexity would substantively impact projected WQIP scores.
- » DHCS requests stakeholder input on applying alternative minimum benchmarks to Subacute facilities of 5.8 Total HPPD and 2.0 CNA hours in WQIP.
- » Please provide comments in writing to [AB186Comments@dhcs.ca.gov](mailto:AB186Comments@dhcs.ca.gov) by **February 15, 2023**.



# WQIP Program Manual

- » DHCS is developing a WQIP Program Manual to provide technical specifications in greater detail and address common questions.
- » DHCS will provide an opportunity for stakeholders to review and provide input on the WQIP Program Manual through future stakeholder meetings.

# 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 Development

- » Today's presentation overviews a general framework for the WSP based on AB 186 and initial stakeholder feedback and identifies areas for further policy development.
- » Based on further stakeholder feedback, DHCS will develop more detailed policies. DHCS will present updates at stakeholder meetings scheduled for March 10 and April 12.

# 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 further of 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 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 5% 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 5% 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 & Compliance

- » DHCS will require facilities to opt into 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.
- » 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 for one or more days during a 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 require facilities to report compliance with the workforce standards as part of the annual financial audit. 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: Maintain a collective bargaining agreement (CBA) or participate in a bona fide 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.
  - » Provide health care benefits to full-time employees with a minimum actuarial value and premium affordability exceeding the Affordable Care Act employer mandate.
  - » Provide paid sick leave in addition to the 3 days required by state law.
  - » Provide training and development opportunities, such as paid time and tuition for continuing education requirements.
  - » Maintain a ratio of median direct care worker to executive pay established by DHCS.

# Additional WSP Requirements

Additionally, DHCS proposes to require facilities 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 beginning with financial reports ending in CY 2023.

# Labor-Management Cooperation Pathway

DHCS requests further stakeholder input on the following:

- » In addition to CBAs and LMCs, should DHCS recognize any other types of labor-management agreements? Should DHCS recognize agreements that are not yet finalized by the beginning of the rate year?
- » How should DHCS define an LMC? DHCS is not aware of any state or federal laws which specifically designate an organization as a bona fide LMC.
  - » Should LMCs have minimum requirements for the number of facilities or represented workers on a state-wide or regional basis? Should LMCs with a single employer be recognized?
  - » What composition and governance requirements should apply to LMCs?
- » How should the Labor-Management Cooperation pathway treat facilities with LMCs or CBAs that represent only some, but not all, bargaining units?

# Basic Wage Standard

- » DHCS has identified the US Bureau of Labor Statistics (BLS) as a good data source for industry-standard wages. BLS publishes median wage data by occupation and geographic area.
- » DHCS proposes establishing the basic wage standard for direct and indirect care workers at the regional median, or a percentage thereof, using a proxy BLS 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

# Basic Wage Standard

DHCS requests further stakeholder input on the following:

- » Do any other high-quality median wage data sets exist which can be tabulated regionally for SNF direct and indirect care occupations?
- » Should the basic wage standard be set at the median, or a percentage of the median? DHCS notes that the BLS data accounts for all employers, not just SNFs.
- » BLS data is published with a one-year lag. How should DHCS adjust the published data for inflation? What inflation indexes are most applicable for SNF wages?
- » For the indirect care worker basic wage standard, should DHCS consider other occupations as a proxy?
- » BLS publishes data in 28 metropolitan statistical areas in California. Should any of these areas be combined based on health care worker labor markets?

# Health Benefit Standard

- » DHCS proposes a standard of providing employee-only health benefits to all employees working more than 30 hours/week which meet the Essential Health Benefits included in Covered California plans.
- » For reference, the Affordable Care Act requires employers with more than 50 full-time equivalent employees to offer health benefits with an actuarial value of at least 60% and a cost not exceeding 9.5% of household income to employees who work at least 30 hours/week.

# Health Benefit Standard

DHCS requests further stakeholder input on the following:

- » Appropriate actuarial value standard.
- » Appropriate premium affordability standard. Should the affordability standard could be a percentage of employee income or a percentage of the premium?
- » Inclusion of dental and vision benefits.



# Paid Sick Leave Standard

- » DHCS proposes a paid sick leave standard in addition to the 3 days required by state law. This standard is intended to reduce infections in facilities and reduce worker burn out by increasing access to preventative health services. This standard would not be additive to existing paid time off policies that can be used as sick leave, or which are required by local ordinances.
- » AB 152 (2022) required employers with 26+ employees to provide up to 80 hours of paid-sick leave in 2022 for COVID related reasons.
- » Several California cities require employers to provide paid sick leave ranging between 32 hours and 80 hours.

# Paid Sick Leave Standard

DHCS requests further stakeholder input on the following:

- » The appropriate number of paid-sick leave hours annually.
- » Permitted uses, such as caring for a family member.
- » Required documentation and/or advance notice.
- » How should paid-sick leave hours be adjusted for part-time employees?
- » How should paid-sick leave hours accrue and carry-over?

# Training/Development Standard

- » DHCS proposes a training and development standard, such as paid time and tuition for continuing education requirements.

DHCS requests further stakeholder input on the following:

- » Training and development opportunities currently offered by SNFs and continuing education requirements.
- » Job classifications for which training/development may be appropriate.
- » Opportunities for upskilling and career advancement programs for lower wage workers.
- » Opportunities to increase staff engagement, such as an annual staff survey and action plan.

# Executive Pay Ratio Standard

- » DHCS proposes developing a median direct care worker to executive pay ratio standard. While the basic wage standard would create a floor for compensation, an executive pay ratio would measure pay equity relative to fiscal capacity across the entire workforce.

DHCS requests further stakeholder input on the following:

- » What is an appropriate executive pay ratio? DHCS is analyzing data for SNFs and comparable health care entities.
- » How should SNF executive pay be defined, given complex ownership structures?
- » Should the ratio vary based on facility size, or for executives who oversee multiple facilities?

# 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?
- » Should the Workforce Standards apply to employees of contractors working in SNFs? How should this be defined?
- » Should the Workforce Standards include a requirement to maintain baseline staffing hour per patient day ratios and/or Medi-Cal bed share? Consumer advocates have raised concerns about unintended consequences. How could a baseline account for natural fluctuations and recent disruptions caused by COVID-19?

# 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](mailto:AB186Comments@dhcs.ca.gov) by **February 15, 2023** to inform the next phase of policy development.
- » DHCS will present an updated program framework at the April 12, 2023 stakeholder meeting and identify further areas for policy development.
- » Please visit [dhcs.ca.gov/AB186](https://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.