

Skilled Nursing Facility Workforce Standards Program

Opt-In Process Webinar
November 6, 2024

Webinar Info

- » In addition to the Microsoft Teams webinar, members of the public may call in to +1 279-895-6425 and enter phone conference ID: 424 965 935#.
- » Please visit the [WSP webpage](#) for meeting materials.

Introductions

- » **Aditya Voleti**, Chief, Fee-For-Service Rates Development Division
- » **Brian Fitzgerald**, Branch Chief, Long-Term Care Rates
- » **Loressa Hon**, Section Chief, Long-Term Care Rates
- » **Samantha Schradle**, Health Program Specialist II, WSP

Today's Agenda

- » Today's webinar will cover questions and answers for the WSP Opt-In Process received by DHCS as of October 30, 2024.
- » Today's presentation provides clarification of the requirements of the WSP, but does not have the effect of law or regulation and does not supersede any applicable provisions of State or Federal Law, the California Medicaid State Plan, and DHCS Policy Letters.

Workforce Standards Program General Information

What is the WSP?

- » Assembly Bill (AB) 186 (Chapter 46, Statutes of 2022) authorized the Workforce Standards Program (WSP) for Freestanding Skilled Nursing Facilities (SNF) Level-B and Adult Freestanding Subacute Facilities Level-B effective for calendar year (CY) 2024.
- » The WSP will provide an enhanced Medi-Cal per diem rate, including a workforce rate adjustment, to facilities that maintain a Collective Bargaining Agreement (CBA), participate in a statewide multi-employer labor management committee (LMC), or meet basic wages and benefit standards established by DHCS.
- » The program requirements are described in Supplement 6 of Attachment 4.19-D of the California Medicaid State Plan which is pending federal approval in [State Plan Amendment \(SPA\) 24-0004](#).

How did DHCS design the WSP?

- » DHCS consulted with stakeholders, including facility operators, organized labor, advocates for facility residents, long-term care clinicians, and academic researchers, and held nine public meetings between December 2022 and December 2023 to design the program, share proposed updates, and receive public input.
- » DHCS surveyed facilities on current wages and benefits offered to employees in 2023. DHCS received completed surveys from approximately 750 facilities, representing over two-thirds of facilities in California, and used the completed surveys to inform the design of the program.
- » DHCS provided formal public notice of SPA 24-0004's draft language on December 28, 2023 and submitted SPA 24-0004 for federal approval on March 29, 2024.

What are the qualifying WSP Pathways?

- » Facilities can qualify through one of three pathways:
 - Basic Wage & Benefit (BWB)
 - Collective Bargaining Agreement (CBA)
 - Labor-Management Committee (LMC)
- » To qualify for a rate year, the facility must meet the requirements of one of the pathways on each day during a rate year.

WSP Opt-In Process

When did DHCS start the WSP Opt-In process?

- » DHCS published [LTC Rates Policy Letter 24-001](#) on October 1, 2024 on the [WSP Website](#) providing public notice of the start of the WSP Opt-In process for Calendar Year (CY) 2024 and CY 2025.

What is the deadline to submit the WSP Opt-In Form?

- » Facilities that choose to participate in the WSP for CY 2024 and/or CY 2025 must submit an WSP Opt-in Form and all required supplemental documents no later than **December 1, 2024**.

What do I need to opt-in via the BWB Pathway?

By December 1, 2024:

WSP Opt-In Form

- By signing WSP Opt-In Form, the facility agrees to the legally binding terms and conditions of WSP Opt-in Agreement.

Schedule 1: Employers

- Excel file uploaded with WSP Opt-In Form

Schedule 2.1 and/or 2.2: Health Benefit Benchmark Plan

- Excel file uploaded with WSP Opt-In Form

105 days after DHCS updates rate on file reflecting opt-in decision:

BWB Opt-In Compliance Attestation Form

What do I need to opt-in via the LMC Pathway?

By December 1, 2024:

- WSP Opt-In Form
 - By signing WSP Opt-In Form, the facility agrees to the legally binding terms and conditions of WSP Opt-in Agreement.
- Schedule 1: Employers
 - Excel file uploaded with WSP Opt-In Form
- Make sure your facility is listed on the roster of a Certified LMC

What do I need to opt-in via the CBA Pathway?

By December 1, 2024:

WSP Opt-In Form

- By signing WSP Opt-In Form, the facility agrees to the legally binding terms and conditions of WSP Opt-in Agreement.

Schedule 1: Employers

- Excel file uploaded with WSP Opt-In Form

Schedule 3: CBAs

- Excel file uploaded with WSP Opt-In Form

Signed CBA term of agreement and signature pages

- PDF uploaded with WSP Opt-in Form

Where can I access official WSP Opt-In forms and materials?

- » All WSP Opt-In Forms, blank copies of the WSP Opt-In Schedules, the terms and conditions of the WSP Opt-In Agreement, and other related forms and materials are available on the WSP Website at:

<https://www.dhcs.ca.gov/services/medi-cal/Pages/FFSRDD-LTC/SNFWSP.aspx>

How can I submit the WSP Opt-In Form?

- » The WSP Opt-In Form can only be submitted via the online form on the WSP Website.
- » All required materials must be uploaded via the WSP Opt-In Form.
- » DHCS will not accept WSP Opt-in Forms that are emailed or by other means.

How can I submit the WSP Opt-In Schedules?

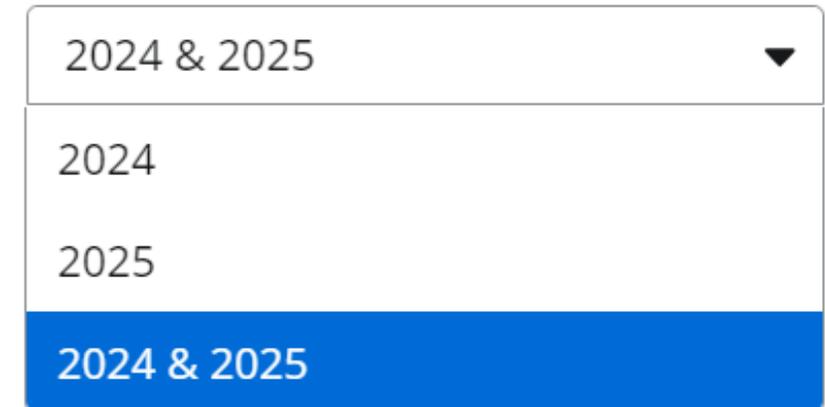
- » The WSP Opt-In Schedules can only be submitted the original Excel workbook format through the online WSP Opt-In Form.
- » Do not submit the Schedules by email or through other means.
- » Do not convert to other file types, such as a PDF, Apple Numbers, or Google Sheets.
- » Download a clean copy of the WSP Opt-In Schedules from the WSP Website.
- » DHCS will not accept schedules that are incomplete or modified in any other way including modifying locked cells, modifying or adding worksheets, or modifying or adding columns.

What rate years does the current Opt-In Period apply to ?

- » The current opt-in process applies to CY 2024 and CY 2025.
- » On the WSP Opt-in Form, the facility may choose to opt-into only CY 2024, only CY 2025, or both.
- » The opt-in process for CY 2024 and CY 2025 is consolidated, and there will not be a separate opt-in period for CY 2025.

2. Opt-In Rate Year

Rate Year *



A screenshot of a web form showing a dropdown menu for 'Rate Year'. The menu is open, displaying four options: '2024 & 2025', '2024', '2025', and '2024 & 2025'. The last option, '2024 & 2025', is highlighted in blue. A small downward arrow is visible on the right side of the dropdown box.

Please refer to the [CNE WSD website](#) for a blar

WSP Opt-In Form

Will I have to opt-in again for CY 2026?

- » Facilities will be required to opt-in for CY 2026 and each subsequent rate year to continue in the program.
- » DHCS will begin the CY 2026 Opt-In process later in 2025.

If I don't opt-in for CY 2024 and/or CY 2025, can I apply for CY 2026?

- » Facilities that do not participate in a CY 2024 and/or CY 2025 may newly opt-in for CY 2026.

Can I opt-out of WSP?

- » Yes, a facility may opt-out of the WSP for a given rate year by providing written notice to the DHCS at any time.
- » Upon receipt of an opt-out notice, DHCS will retroactively adjust the facility's rate to the basic per diem rate for the entire duration of the applicable rate year.

Who can sign the WSP Opt-in Form?

- » The WSP Opt-in Form can only be signed by the licensed facility administrator.
- » [California Health & Safety Code Section 1416.2](#) provides that the nursing home administrator is charged with the general administration of a nursing home, regardless of whether he or she has an ownership interest.
- » Facilities may designate an Authorized Representative in addition to the Facility Administrator. DHCS will direct all official communications to both the Facility Administrator and Authorized Representative.

Does each facility have to complete a separate WSP Opt-in Form?

- » Yes, each facility must complete a separate WSP Opt-in Form including any required schedules.

Is ... facility type eligible?

- » Pursuant to AB 186, only Freestanding Skilled Nursing Facilities and Freestanding Adult Subacute Facilities are eligible for WSP. These facilities pay the SNF Quality Assurance Fee (QAF).
- » Distinct Part Nursing Facilities, Distinct Part Subacute Facilities, Pediatric Subacute Facilities, and Institution for Mental Disease are not eligible. These facilities do not pay the SNF QAF.

How does a change in ownership (CHOW) impact WSP participation?

- » The WSP is designed on a rate year basis, meaning that a facility must qualify on all dates of the rate year to receive the enhanced per diem for all dates in the rate year.
- » A new owner who has a CHOW effective in the middle of the rate year automatically succeeds to the prior owner's participation in the WSP for the rate year if applicable. The new owner may switch pathways or opt-out by notifying DHCS within any required timelines.
- » DHCS is reviewing feedback and considering the feasibility of additional policies related to CHOWs.

What is the status of SPA 24-0004? How will federal approval impact the opt-in process?

- » DHCS expects to receive final federal approval of SPA 24-0004 in the upcoming weeks. At this time, DHCS does not expect any modifications to the proposed program to the framework described in pending SPA 24-0004 submitted to CMS on March 29, 2024.
- » Please note that federal approval of SPA 24-0004 may occur after the opt-in period ends.
- » DHCS will not extend or re-open the opt-in period unless DHCS determines, in its sole discretion, that CMS approval required significant modifications to the proposed program.

What happens after CY 2026?

- » AB 186, including the WSP, is authorized through December 31, 2026 and is subject to reauthorization by the State Legislature.

Workforce Rate Adjustment

Where can I see what my rate will be if I do or do not opt-into in the WSP?

- » On October 1, 2024 DHCS published the final CY 2024 rate studies online at: <https://www.dhcs.ca.gov/services/medical/Pages/AB1629/LTC.aspx>.
- » The CY 2024 rate studies calculate both the basic and enhanced per diem rates for each facility.
- » Facilities that do not participate in the WSP will receive the basic per diem rate.
- » Facilities that participate in the WSP will receive the enhanced per diem rate that includes the basic rate plus Workforce Rate Adjustment.

Does the Workforce Rate Adjustment apply to...?

Bedhold and ventilator days?

» Yes. The Workforce Rate Adjustment applies to all days.

Days paid by Managed Care Plans (MCPs)?

» Yes. Depending on county, MCPs must either reimburse SNFs at exactly or no less than the Medi-Cal Fee Schedule rate including the Workforce Rate Adjustment.

When will DHCS update the rates on file reflecting the opt-in process?

- » DHCS will process WSP Opt-In Forms in one or more batches, and will publish updated rates on file contingent upon federal approval of SPA 24-0004. Facilities and MCPs will be notified when updated rates on file are published.
- » While review of a facility's WSP Opt-In Form is pending, CY 2023 will remain the latest rate on file.
- » As of October 31, DHCS has received only 44 Opt-in Forms. We are assuming that most facilities will submit towards the end of the opt-in period, which may delay processing into early 2025. DHCS intends to process WSP Opt-In Forms on a first-come-first-served basis.

What will happen to my CY 2024 rate if I don't opt-in?

- » If DHCS does not receive a completed WSP Opt-In Form for CY 2024 by December 1, 2024, DHCS will update the facility's rate on file for dates of services beginning January 1, 2024 to the CY 2024 basic per diem rate.
- » The basic per diem rate includes an up to 5% increase for the labor rate component and a 1% increase for the non-labor rate component relative to CY 2023 rates, but does not include the Public Health Emergency (PHE) 10% Temporary Rate Increase which has expired for dates of service after December 31, 2023.
- » If applicable, DHCS and MCPs may recoup the difference between the CY 2024 basic per diem rate and the CY 2023 rate on file for dates of service on or after January 1, 2024.

When are MCPs required to pay the updated rates on file?

- » DHCS released updated guidance to MCPs in All Plan Letter (APL) [24-009](#) and [24-010](#).
- » MCPs must implement payment of the updated per diem rate on a prospective basis for all claims with applicable dates of service, received on or after 30 Working Days of being notified by DHCS that the updated rates on file are published.
- » If additional amounts are owed retroactively on any claims for applicable dates of service that were processed prior to the MCP implementing the updated per diem rates on a prospective basis, then MCPs must pay any necessary retroactive adjustments within 45 Working Days after being notified by DHCS that the updated rates on file are published.

Will a facility's participation in WSP in 2024 and/or 2025 affect the possible workforce rate adjustment in CY 2026?

- » No, the amount of the basic and WSP-enhanced per diem rates is not influenced by a facility's participation in a prior rate year.
- » DHCS will calculate the basic and WSP-enhanced per diem rates for each facility every rate year regardless of participation in the prior rate year.

When will CY 2025 rates be published?

- » DHCS is working to publish a public review draft of CY 2025 rates before the beginning of the year.
- » SPA 24-0004 describes the exact calculation methodology that will be used for CY 2024, CY 2025, CY 2026. DHCS does not expect major methodological changes to the calculation of rates relative to the CY 2024 Rate Study.
- » Generally, each facility's CY 2025 rate will increase by the following amounts from CY 2024, unless the facility had a decrease in audited costs or a CHOW:
 - 5% for the labor rate component and WSP rate adjustment
 - 1% for non-labor rate component

Applicable Workers

Who is an “Applicable Worker”?

- » “Applicable worker” means, with respect to a facility, an employee of the facility or an employee of a related employer of the facility who meets all the following criteria:
 - Is a direct care or indirect care worker
 - Is not exempt from an overtime rate of compensation pursuant to state or federal law,
 - Primarily works on the premises of the licensed facility,
 - Is not primarily employed by a non-related entity for the provision of services on the premises of the licensed facility.

Who is a “Related Employer”?

- » “Related employer” means a person who both:
 - Directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person primarily working on the premises of a facility.
 - Is related to the facility as defined in Section 413.17(b) of Title 42 of the Code of Federal Regulations.

Does “Applicable Worker” include...?

Temporary staff?

- » To the extent they meet the other parts of the definition of an “Applicable Worker”.

Registry staff?

- » To the extent they meet the other parts of the definition of an “Applicable Worker”. Staff primarily employed by a non-related entity for the provision of services on the premises of the licensed facility are generally excluded.

Does “Applicable Worker” include...?

Workers who have jobs at other facilities?

- » Yes, the definition of “Applicable Worker” should be read with respect of the employment relationship the worker has with the facility opting into the WSP.
- » For example, a person working two separate jobs at two facilities could be an Applicable Worker with respect to Facility A opting into the WSP notwithstanding holding a separate job at Facility B that is not participating in the WSP.

Does “Applicable Worker” include...?

Staff primarily working on the premises of a licensed facility that does not opt-into the WSP program but is related to another facility that did opt-into the WSP?

- » Generally no. “Applicable Worker” only includes someone working primarily on the premises of a facility that opts-into the WSP.
- » However, “Applicable Worker” would include someone who works primarily on the premises of a facility that opted-into the WSP even if they are technically on the payroll of a related facility that did not opt-in.

Does “Applicable Worker” include...?

Workers whose job requires them to work at multiple related facilities?

- » Yes, to the extent the worker’s job requires them to work primarily on the premises of one or more related facilities that have opted-into the WSP.
- » For example, a consider person whose job requires them to work on the premises of three related facilities:
 - 15 hours/week @ Facility C, which opted-into WSP
 - 10 hours/week @ Facility D, which opted-into WSP
 - 15 hours/week @ Facility E, which did not opt-into WSP
- » This person would be considered an Applicable Worker with respect to Facilities C and D.

What job classifications are considered direct and indirect workers?

- » These definitions match those used for LTC cost reports and Medi-Cal ratesetting as described in [Welfare and Institutions Code section 14126.023\(d\)](#).
- » Direct workers: A worker at a facility who is primarily responsible for any of the following: nursing services, social services, or activities, and other duties related to direct care.
- » Indirect workers: A worker at a facility who is primarily responsible for any of the following: housekeeping, laundry and linen, dietary, medical records, in-service education, plant operations, or maintenance, and other duties related to supporting the delivery of patient care.

Schedule 1: Employers

Do I need to complete Schedule 1 if...?

The facility is the only employer of everyone working on the premises?

- » Yes. In this case, please complete only one line reporting the workers for the facility itself.

I'm opting in through the BWB, CBA or LMC pathway?

- » Yes, all facilities opting into the WSP must complete Schedule 1 without regard to pathway. DHCS is collecting this information for program integrity purposes.

Do I need to report non-applicable workers on Schedule 1?

- » Yes, facilities must report any person who works primarily on the premises of the facility, even if they are not an applicable worker. This may include exempt managers and employees of non-related entities.
- » Please note, the workforce standards generally do not apply to non-applicable workers. However, DHCS is collecting this information for program integrity purposes.

Am I required to list the names and information for non-related employers on Schedule 1?

- » Yes, facilities must report the identity of any entity that employs any person primarily working on the premises of a facility and the projected number of workers employed by each such reportable employer.
- » Please note, the workforce standards generally do not apply to non-related employers. However, DHCS is collecting this information for program integrity purposes.

Do worker counts on Schedule 1 need to include workers already separated from the facility or reportable employer prior to opting in?

- » Facilities should complete Schedule 1 with the best available projections for CY 2024 available at the time the WSP Opt-In Form is submitted, without regard to whether the facility is opting into only CY 2024, only CY 2025, or both CY 2024 and CY 2025.
- » Schedule 1 may reflect the point-in-time worker counts at the time the facility submits the form if this point-in-time is generally reflective of the facility in CY 2024. Alternatively, the facility may utilize a projected average for CY 2024.

Am I required to list the names and information of shareholders or parent entities on Schedule 1 since they “indirectly” control wages, hours, and working conditions?

- » Each person primarily working on the premises of the facility should be reported under only one employer on Schedule 1, generally matching the employer who is reflected for payroll purposes.
- » Generally, a facility would not need to report the name of individual shareholders or parent entities for workers who are otherwise reported under the name of a corporate or subsidiary entity.
- » A facility would have to report the name of an individual shareholder or parent entity, if there is a person primarily working on the premises of the facility who works for the shareholder or parent entity without appearing on a different employer’s payroll.

BWB Pathway

Which workers must be covered by the BWB Standards?

- » The Basic Wage Standard applies to all applicable workers.
- » The Paid Sick Leave Standard applies to all applicable workers, subject to a 90-day probationary period for new employees.
- » The Health Benefit Standard applies to full-time applicable workers, subject to a 90-day probationary period for new employees.
- » The Training & Education Standard applies to all applicable workers who are certified nursing assistants.

When is the “Applicable Date”?

- » For CY 2024, the Applicable Date is the day that DHCS publishes the facility’s CY 2024 rate on file on the [Freestanding Skilled Nursing Facilities and Subacute Units website](#) reflecting the facility’s opt-in decision.
- » DHCS will note the applicable date for CY 2024 in the rate file published online and notify the facility.
- » The Applicable Date is **NOT** the date DHCS opened the opt-in process and is **NOT** the date the WSP Opt-In Form is submitted.
- » For future rate years, the applicable date is January 1 of the rate year. However, if necessary, DHCS will provide an automatic extension so that the all CY 2025 compliance deadlines are no sooner than the CY 2024 compliance deadlines.

When do I have to come into compliance with the BWB standards?

- » The facility must begin paying and providing basic wages and benefits prospectively within 30 days of the applicable date.
- » The facility must provide payment and credit of the basic wages and benefits retroactive to the first day of the rate year the facility opted into, within 90 days of the applicable date for the rate year.
- » The facility must submit the [Basic Wage and Benefit Opt-In Compliance Attestation Form](#) within 105 days of the applicable date to certify that the facility met the above requirements.

Can I have an extension for the compliance timeline?

- » Facilities may file a [Compliance Extension Request Form](#).
- » The approval of extension requests is in DHCS's sole direction. Facilities must provide clear and convincing evidence of good cause.
 - The compliance timeline was designed to align with the updated MCP payment requirements to ensure facilities have sufficient cash flow.
 - DHCS expects facilities to make a good faith effort to resolve any delays with MCPs and include documentation of communications as part of the extension request.
 - In evaluating good cause, DHCS will consider that the CY 2023 rate on file which includes the former PHE 10% temporary rate increase.
- » DHCS expects facilities to submit an Extension Request Form before the expiration of any required deadline or previously requested extended deadline.

If I receive a compliance extension, when is the Compliance Attestation Form due?

- » If a facility receives a compliance extension, the Compliance Attestation Form is due no later than 15 days after the extended deadline.

What happens if I don't submit the Compliance Attestation Form or Extension Request by the required deadlines?

- » Facilities that fail to submit the Compliance Attestation Form or a Compliance Extension Request Form by the required deadlines may be removed from the Workforce Standards Program and default to the basic per diem rate without the workforce rate adjustment.

Am I required to retroactively pay or credit the BWB requirements to former employees?

- » The facility is not responsible for retroactive payments or credits for workers who are no longer employed by the facility or any of the facility's related corporate entities as of the applicable date.

If the CY 2024 applicable date is on or after 1/1/2025 does this impact any requirements?

- » No, this does not impact any requirements to provide retroactive payments or credits for all of CY 2024 within 90 days of the applicable date.

What documentation is required to demonstrate compliance?

- » The Facility Administrator must certify under penalty of perjury that information submitted on the WSP Opt-In Form, Opt-In Schedules, and Compliance Attestation Forms is true, correct, and in compliance with all applicable state and federal laws, regulations, and provisions of the California Medicaid State Plan.
- » Facilities should maintain appropriate internal documentation demonstrating compliance in case of state or federal audit.
- » DHCS may, at a later time, require facilities to report data for program evaluation and audit purposes after the end of each rate year.

Am I responsible for meeting the BWB Standards for days qualifying under the CBA or LMC Pathways?

- » No, a facility is not required to meet the BWB Standards for any dates that qualify under the CBA or LMC Pathways.

What is the dollar amount of the Basic Wage Standard?

- » The basic wage standard is county-specific and varies for direct and indirect care workers. The basic wage standard is updated annually based on inflation, up to 5%.
- » DHCS has posted the basic wage standards for each county on the WSP Website:
 - [CY 2024 Basic Wage Standard](#)
 - [CY 2025 Basic Wage Standard](#)

Health Benefit Standard

Which workers must be covered by the Health Benefit Standard?

- » The facility must offer a qualifying health benefit plan to every full-time applicable worker.
- » The facility must make the required employer contribution only to those full-time applicable workers who enroll in a plan through the facility.
- » “Full-time worker” means a worker who is employed an average of at least 30 hours per week within a calendar month, or at least 130 hours per calendar month.

What minimum Actuarial Value (AV) do I have to offer?

- » Effective with the facility's first health benefit year beginning on or after July 1, 2024, a facility shall offer a health benefit with a minimum AV of 80 percent including all essential health benefits to all full-time applicable workers.
- » There is no minimum AV for health benefit years beginning prior to July 1, 2024.
- » Facilities are not prohibited from offering a lower AV plan.

How do I calculate the Actuarial Value (AV) of our health benefit plan?

- » The AV of a health benefit plan is calculated as determined pursuant to the Actuarial Standard of Practice No. 50 "[Determining Minimum Value and Actuarial Value under the Affordable Care Act](#)" adopted by the [Actuarial Standards Board September 2015](#).
- » This standard itself refers to the CMS-published Actuarial Value (AV) calculator and Minimum Value (MC) calculator which varies depending on which markets the plan is offered in. This definition ensures that DHCS uses the same calculator that is required by the federal Department of Health & Human Services and Internal Revenue Service for the same plan.
- » The Facility should take all appropriate due diligence submitting the WSP Opt-In Form such as consulting with an insurance professional.

What is the required employer contribution?

- » The required employer contribution is a fixed dollar amount for each applicable worker based on the AV and gross premium of that applicable worker's benchmark plan. The required employer contribution is based on:
 - 70% of an 80 AV plan in CY 2024
 - 75% of an 80 AV plan in CY 2025
 - 80% of an 80 AV plan in CY 2026
- » The formula proportionally adjusts up the required employer contribution percentage for lower AV benchmark plans and down for higher AV benchmark plans.
- » Please see Section 6.2 of Supplement 6 in SPA 24-0004 for the precise formula.
- » The required employer contribution must be paid to each full-time applicable worker enrolled an employer-sponsored health benefit regardless of plan selection.

What is the “Benchmark Plan”?

- » Benchmark Plan means the employee-only health benefit plan offered by the facility or related employers to a full-time applicable worker with an actuarial value (AV) of at least 80 with the lowest cost gross premium.
- » For health benefit periods beginning prior to July 1, 2024, if the facility or a related employer do not offer a plan with an AV of at least 80 to a full-time applicable worker, the benchmark plan is the employee-only health benefit plan offered by the facility or related employer to the full-time applicable worker with the highest gross premium.

Do I have to make an employer contribution for a worker not enrolled in our health benefit?

- » No, a facility or related employer is not required to pay the worker the required employer contribution if they do not enroll in a health benefit offered by the facility or related employer.

Do I have to pay the workers a stipend if the required employer contribution exceeds the gross premium of a plan selected by the worker?

- » For health benefit years beginning before July 1, 2024, the required employer contribution is capped so that it cannot exceed the gross premium (if the worker selected a lower cost plan). Therefore, for these health benefit years, no payment or credit is required for the amount by which the required employer contribution exceeds the gross premium of the plan actually selected by the employee.
- » For health benefit years beginning on or after July 1, 2024, the facility is required provide an additional stipend or deposit funds into a health benefit account equivalent to the amount that the required employer contribution (based on the benchmark plan) exceeds the gross premium cost (if the worker selects a lower cost plan).

What does “health benefit year beginning on or after July 1, 2024” mean?

- » Because some facilities have non-calendar health benefit years, DHCS designed some aspects of the standard to be based on each facility’s specific health benefit year to minimize the need for facilities to re-open enrollment.
- » For example, if a facility has a calendar health benefit year, then the first health benefit year beginning on or after July 1, 2024 is Calendar Year 2025.

What is the “Gross Premium”?

- » The gross premium is the per employee cost of the benchmark health plan, including both the employee and employer share.
- » Always report the gross premium on a monthly basis.

How do I retroactively pay or credit workers for the required employer contribution if necessary for CY 2024?

- » For retroactive compliance purposes, the facility or related employer must pay or credit the amount by which the actual employer contribution was less than the required employer contribution retroactive to January 1, 2024.
- » Because the required employer contribution is a cash-like benefit, DHCS expects the employer to provide a stipend or other cash-like credit for retroactive compliance purposes.
- » For example, DHCS would consider an employer policy to credit the amount towards the worker's share of the CY 2025 health benefit or deposit the funds in a health benefit account to meet this standard, if the policy meets the following conditions:
 - The facility obtains each applicable worker's consent.
 - The facility contractually guarantees the applicable worker that these funds will not expire.
 - The facility contractually guarantees the applicable worker that any remaining non-portable balance will be cashed out if the applicable worker separates after the applicable date.

What plans and workers should be reported on Schedule 2?

- » On Schedule 2, a single benchmark plan must be reported for all full-time applicable workers, regardless of whether the worker chooses to enroll in a different single plan, family plan, or no plan at all.
- » If the design of the benchmark plan varies for different groups of full-time applicable workers (including a different gross premium), the facility must report the benchmark plan that applies to each grouping of full-time applicable workers.
- » Facilities should not report additional plans offered to an applicable worker that are not the applicable worker's benchmark plan.
- » Please see the Schedule 2 Instructions and HBY Crosswalk chart for details on how to report plans for health benefit years ending in 2024 and 2025. Depending on your health benefit year and the rate years selected, the facility may need to fill out Schedule 2.1 and/or 2.2.

How should I fill out Schedule 2 if we have not finalized 2025 health benefits?

- » Schedule 2 includes an option to mark “Tentative Plan Design”.
- » Please answer "Yes" if the facility or related employer has not yet finalized the health benefit plan design for a health benefit period beginning after the date this form is submitted.
- » Please complete all other fields using the best available projections at the time this form is submitted.
- » DHCS may require the facility to submit the final plan design at a later time for program integrity purposes.

Do I need to re-open enrollment?

- » DHCS cannot provide facilities with advice regarding any legal or regulatory requirements to re-open enrollment. However, there is no provision of WSP which in itself requires a facility to re-open enrollment to Opt-In if the facility's health benefit already meets the WSP health benefit standard.
- » If your health benefit does not currently meet the health benefit standard, please discuss options with an insurance professional.

Paid Sick Leave Standard

What is paid sick leave?

- » “Paid sick leave” means time that is compensated at the same wage as the applicable worker normally earns during regular work hours, and is provided to an applicable worker for the purposes described in [California Labor Code Section 246.5](#).
- » Additionally, the provisions of subdivisions (c), (g), (h), (i), (k), (l), (m), (n) of California Labor Code section 246 apply to paid sick leave standard.

How does the paid sick leave need to accrue?

- » The facility must provide each applicable worker with paid sick leave at the rate of not less than one hour per every 26 hours worked during the rate year.
- » This standard is satisfied, and no accrual is required, if ten days or 80 hours of paid sick leave is available to the worker at the beginning of each year of employment, calendar year, or 12-month period.

Does unused accrued sick leave need to carry forward?

- » Accrued paid sick leave shall carry over to the following year of employment. However, the facility may limit an applicable worker's total accrued paid sick leave to a total of ten days or 80 hours.
- » No carryover is required, if ten days or 80 hours of paid sick leave is available to the worker at the beginning of each year of employment, calendar year, or 12-month period.

Does other paid time off count towards this requirement?

- » Paid leave provided pursuant to state law, local ordinance, or employer paid time off policy is credited towards the facility's obligation under the standard if the paid leave or paid time off may be used for the same purposes and under the same conditions as specified in the standard, and satisfies the accrual, carryover, and use requirements of the standard.
- » A facility may categorize time off into separate "buckets" such as sick leave and vacation, if combined, they meet the requirements of the standard.
- » Paid time off that cannot be used with the same flexibility as paid sick leave does not qualify, such as date-specific holidays.

Can we limit the usage of paid sick leave per year regardless of the amount an applicable worker accrues?

- » The paid sick leave standard does not authorize a facility to limit the number of hours of accrued paid sick leave used during a year.
- » However, the paid sick leave standard does authorize the facility to limit the balance of accrued paid sick leave to a total of ten days or 80 hours at any time.
- » Furthermore, the paid sick leave standard is satisfied, and no accrual or carryover is required, if ten days or 80 hours of paid sick leave is available to the worker at the beginning of each year of employment, calendar year, or 12-month period.

Does paid sick leave need to be cashed out if a worker separates?

- » The rule contained in rule contained in California Labor Code section 246(g) applies to paid sick leave standard.
- » An employer is not required to provide compensation to a worker for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.
- » However, if a worker separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days must be reinstated.

Can the accrual of sick leave for the paid sick leave standard start after a 90-day probationary period for an applicable worker?

- » Yes, the rule contained in California Labor Code section 246(c) applies to paid sick leave standard.

How do we have to retroactively pay or credit paid sick leave?

- » The facility must either credit each applicable worker's paid sick leave balance for all paid sick leave hours earned for all hours worked on days during the rate year or make an equivalent cash payment.
- » The facility may credit the applicable worker's paid sick leave balance or make the cash payment by the retroactive compliance deadline (90 days after the applicable date). The facility may limit the total balance to a total of ten days or 80 hours.
- » DHCS would expect a facility to make a cash payment to a worker who took unpaid sick leave prior to the compliance deadline due to running out of paid sick leave balance which could have been compensated with retroactively credited balance.

CBA Pathway

Which workers must be covered by a CBA to qualify under the CBA pathway?

- » At the time of opting into the WSP at least a majority (over 50 percent) of the facility's applicable direct care workers must be covered by one or more CBAs that recognizes one or more labor unions certified by the National Labor Relations Board (NLRB) or Public Employment Relations Board (PERB) as the exclusive bargaining representative of those workers.

What documentation of the CBA is needed?

- » As part of the WSP Opt-In Form, the facility must upload signed PDF copies of the term of agreement and signature pages of any CBAs that cover any applicable direct care workers of the facility and of any of the facility's related employers at the time the form is submitted or during any portion of an applicable rate year.
- » The uploaded pages must include all of the following:
 - The name of the employer.
 - The name of the labor union.
 - The start and end dates of the agreement, and if applicable, any provisions that make the agreement retroactive for the purposes of the WSP.
 - The signatures, names, and titles of the employer's and labor union's authorized representatives.

Can I opt-in without a signed CBA?

- » A facility cannot opt into the WSP via the CBA Pathway if the facility does not currently have signed CBAs sufficient to qualify under CBA Pathway.
- » The facility may opt-in via a different pathway, and switch to the CBA Pathway upon signing one or more CBAs to qualify under the CBA Pathway.

Can a CBA have retroactive effect?

- » Yes, a collective bargaining agreement that is entered into or extended after the beginning of a rate year, and includes terms making it retroactively effective to an earlier date, may be considered effective retroactively to that earlier date. This retroactive period is not considered a "gap".

There is a gap in my CBA coverage in CY 2024, am I eligible for the CBA Pathway?

- » Facilities that have a “gap” in their CBA coverage in CY 2024 may opt-in via the CBA Pathway and request a CBA Coverage Gap Waiver on the Opt-In Form.
- » Waivers are granted in DHCS’s sole discretion, and DHCS may require the facility to make retroactive payments to applicable workers as a term of the waiver. The facility must demonstrate the gap was “non-willful”.

How will DHCS determine the terms of the CBA coverage gap waivers?

- » Following the receipt of the Opt-In Form, DHCS will contact the facility regarding the terms of the waiver.
- » The proposed terms of the waiver will be subject to a 30-day public review process.
- » If DHCS and the facility cannot agree to the terms of the waiver, the facility may still qualify by meeting the requirements of the BWB or LMC Pathway during the gap period.

What if I enter into a new, extended, or revised CBA after opting into WSP?

- » A facility must notify DHCS of any revised, extended, or new CBAs that cover applicable workers within 30 days of such agreement taking effect.
- » If the facility opted-in through the CBA pathway, the facility will automatically continue through the CBA pathway.
- » If the facility opted-in through the BWB or LMC Pathway, the facility may switch to the CBA Pathway by notifying DHCS within 30 days. The facility will not be responsible for meeting BWB Standards for dates that qualify under the CBA Pathway.

What if my CBA expires some time in CY 2025 and we are not able to finalize an extension?

- » If a facility ceases to meet the requirements of the CBA Pathway due to a CBA expiring without extension, the facility must notify DHCS within 30 days of the CBA expiring and during the same 30 days has a special opt-in period to request to switch to the BWB or LMC pathway.
- » If a facility fails to notify DHCS and request to switch pathways during the special opt-in period, the facility will be disqualified for the entire rate year.
- » If the facility switches to the BWB Pathway, the 30/90/105-day compliance timeline counts from the end of the 30-day special opt-in period. DHCS may extend this timeline for good cause. A facility is not responsible for meeting BWB standards on any dates that qualify under the CBA Pathway.
- » Please note that if the facility again qualifies under the CBA Pathway at a future time, it may switch back to the CBA Pathway by notifying DHCS within 30 days.

LMC Pathway

What is an LMC for the purposes of the WSP?

- » DHCS will certify Statewide Multi-employer Labor Management Committees (LMCs) that:
 - Are established to develop industry-wide workforce standards, with the aim of improving labor-management relationships, job security, organizational effectiveness, and/or enhancing economic development.
 - Are composed of at least 200 facilities in California, and one or more labor organizations that are certified or recognized as the exclusive bargaining representative of applicable workers at a combined total of 100 facilities in California.
 - Meet all the requirements outlined in Section 4 of Supplement 6 of SPA 24-004.

What are an LMC's governance requirements?

- » The LMC's governing body must be composed of an equal number of representatives of participating facilities and labor organizations.
- » The LMC must establish a process for seeking input from workers at participating facilities regarding subjects of mutual interest and concern discussed by the LMC.
- » The LMC may not interfere with the protected rights of workers under state and federal law, including the rights of workers to freely organize and bargain collectively.
- » The LMC may not engage in any anticompetitive practices in violation in state or federal laws.
- » The LMC's membership policies may not discriminate against any person in violation of state or federal law.

How can an LMC apply to be certified?

- » An LMC must submit the LMC Certification Form and Schedules to DHCS. See the [LMC Certification Website](#) for more info.
- » The certification will be effective for the duration of one rate year and must be renewed annually.
- » The LMC Schedule includes a list of all member facilities.
- » The LMC Certification Form and Schedules may be amended during the rate year.

Can I switch to the LMC Pathway mid-year?

- » If the facility opted-in through the BWB or CBA Pathway, the facility may switch to the LMC Pathway by notifying DHCS within 30 days of becoming a member of a certified LMC.
- » DHCS may consider the facility to be a member of the LMC retroactively if the LMC applies such retroactive membership to the facility.
- » The facility will not be responsible for meeting BWB or CBA Standards for dates that qualify under the LMC Pathway.

What if I leave an LMC mid-year?

- » If a facility that opted-in via the LMC pathway ceases to be a member of a certified LMC, the facility must notify DHCS within 30 days of ceasing to qualify and during the same 30 days has a special opt-in period to request to switch to the BWB or CBA pathway.
- » If a facility fails to notify DHCS and request to switch pathways during the special opt-in period, the facility will be disqualified for the entire rate year.
- » If the facility switches to the BWB Pathway, the 30/90/105-day compliance timeline counts from the end of the 30-day special opt-in period. DHCS may extend for good cause. A facility is not responsible for meeting BWB standards on any dates that qualified under the LMC Pathway.

Notices & Reporting Requirements

How will DHCS provide official information to facilities?

- » DHCS will publish official information on the [WSP Website](#) and memorialize new program policies in official LTC Rates Policy Letters published online.
- » DHCS may send official notifications to the Facility Administrator and Authorized Representative.

How can I sign up to be notified of updates?

- » Stakeholders can sign up for the AB 186 email list serve on the [AB 186 website](#).
- » Stakeholders can also sign up for the Medi-Cal Subscription Service at [Medi-Cal Subscription Services \(MCSS\)](#).

How should I notify DHCS of changes?

- » DHCS is continuing to develop additional forms and notification templates. Until such time these forms are published, facilities should submit any required requests or notifications in writing to SNFWSP@dhcs.ca.gov.

How should I provide, “notice to applicable workers regarding the Workforce Standards Program, at the time and in a manner specified by the Department?”

- » DHCS has not required facilities to provide any specific notices at this time.
- » DHCS will communicate any required notices as part of the opt-in approval or subsequent official Policy Letters published on the WSP Website.

Noncompliance

How will DHCS address noncompliance?

- » DHCS will investigate complaints and take appropriate action to remove facilities found to be non-compliant from the WSP and retroactively adjust the facility's rate to the basic per diem rate without the workforce rate adjustment.
- » DHCS will provide a facility at least 30 days' notice of its findings and intent to deem the facility out of compliance. As described in the WSP Opt-in Agreement, facilities facing removal may file a Notice of Dispute within 30 calendar days.
- » Compliance is determined on a rate year basis. If DHCS determines that a facility has failed to comply with any of the workforce standards during any part of a rate year, the facility is out of compliance for the entire rate year.
- » DHCS may refer findings to the Attorney General, Labor Commissioner, and California Department of Public Health for appropriate action.

How can I correct noncompliance?

- » Facilities are required to report any noncompliance within 15 days of becoming aware.
- » DHCS may, in its sole discretion, waive noncompliance for:
 - Non-willful noncompliance if the facility promptly notifies the department upon becoming aware of the noncompliance and makes a prompt good faith effort to remediate the noncompliance.
 - As otherwise necessary to preserve the health and safety of facility residents.
- » As a term of a waiver DHCS may require the facility to:
 - Make retroactive and/or prospective payments to applicable workers.
 - Take other appropriate actions to identify, remediate, or prevent noncompliance
- » Prior to granting a waiver, DHCS will post the request for the waiver and the proposed terms of the waiver on its internet website for at least 30 days.

Make sure to Opt-in by December 1, 2024!

**Please visit the [WSP Website](#) for latest info
and send any additional questions to
SNFWSP@dhcs.ca.gov**

