

DATE: May 15, 2024

TO: FREESTANDING SKILLED NURSING FACILITIES

SNF ASP POLICY LETTER 24-001 (*REVISED*)
SUPERSEDES SNF ASP POLICY LETTER 23-001

SUBJECT: Skilled Nursing Facility Accountability and Sanctions Program (SNF ASP),
Overview for Measurement Year 2024

PURPOSE:

The purpose of this Skilled Nursing Facility Accountability Sanctions Program (SNF ASP) Policy Letter is to provide guidance to Freestanding Skilled Nursing Facilities (FS/SNFs) regarding the sanctions requirements pursuant to Welfare and Institutions (W&I) Code section 14126.026. This policy letter provides FS/SNFs with an overview of the SNF ASP for Measurement Year 2024, as well as the appeal and waiver processes pursuant to W&I Code section 14126.026. This policy letter also provides clarifications on sanction formula modifications.

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 ASP, which imposes monetary sanctions on FS/SNFs that fail to meet one or more quality measures established by DHCS.

¹ [W&I Section 14126.024](#)

W&I Section 14126.026(b) states that for each measure a FS/SNF fails to meet in a single rating period, DHCS may assess a sanction of 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) in a single rating period.

POLICY:

In accordance with the W&I Code section 14126.026 requirements, DHCS will sanction FS/SNFs that fail to meet the minimum performance benchmarks of measures established by DHCS. DHCS reserves the right to modify and adjust the established measures used for sanctions as a part of SNF ASP with prior notice to the FS/SNFs.

Measures

For Measure Year (MY) 2024 (January 1, 2024 - December 31, 2024), DHCS has established the following set of quality measures.

Clinical Measures:

- Percentage of Long-Stay Residents Experiencing One or More Falls with Major Injury (MDS)²
- Percentage of Long-Stay Residents Who Received Antipsychotic Medications (MDS)^{2,3}

Equity Measures:

- Racial and Ethnic Data Completeness (MDS)²

DHCS may sanction FS/SNFs that fail to meet the established minimum performance benchmarks set forth below.

Data Collection and Analysis

The following data will be used for SNF ASP sanction determination:

MDS 3.0 Data

Data from the MDS 3.0 national database will be used to evaluate facility performance on these measures. These data will be used to calculate the MDS Clinical Measures and

² [MDS 3.0 Quality Measures USER'S MANUAL \(v16.0\) \(cms.gov\)](#)

³ Pursuant to CMS long stay nursing home residents with schizophrenia, Tourette's syndrome or history of Tourette's syndrome, and Huntington's Disease are excluded from this measure.

the MDS Racial and Ethnic Data Completeness Measure. More information on the MDS 3.0 Data can be found at [MDS 3.0 Quality Measures USER'S MANUAL \(v16.0\) \(cms.gov\)](#).

Care Compare Metrics Data

As a part of the Care Compare tool, CMS calculates a set of quality ratings and staffing rates for nursing homes. These national data were used to determine the minimum performance benchmarks for Clinical Measures. More information on the Care Compare tool can be found at [Nursing Home Compare Technical Users' Guide \(cms.gov\)](#).

Sanction Determination Methodology

For MY 2024, facility performance in clinical measures will be measured by CMS Care Compare national benchmarks in calendar year 2022 (Q1 2022-Q4 2022), shown below. For MY 2024, facility performance in equity measures will be measured by gross percentage of data completeness.

Sanctions will be determined based on the following percentile set forth below:

Benchmarks for Measures and Sanctions:

Percentage of Long-Stay Residents Experiencing One or More Falls with Major Injury (MDS)

| Minimum Performance Benchmark (Percentile) ⁴ | ≤ 5 th Percentile | 10 th Percentile | 15 th Percentile |
|---|------------------------------|-----------------------------|-----------------------------|
| National Benchmark Rate | 8.03% | 6.67% | 5.82% |
| Base Tier Sanction (per MCBBD) | \$ 5.00 | \$ 3.00 | \$ 1.00 |

⁴ Minimum Performance Benchmark (Percentile) is for reference only. Sanction determination will be based on National Benchmark Rate

Percentage of Long-Stay Residents Who Received Antipsychotic Medications (MDS)

| Minimum Performance Benchmark (Percentile) ⁵ | ≤ 5 th Percentile | 7.5 th Percentile | 10 th Percentile |
|---|------------------------------|------------------------------|-----------------------------|
| National Benchmark Rate | 31.25% | 27.90% | 25.70% |
| Base Tier Sanction (per MCBF) | \$ 3.00 | \$ 2.00 | \$ 1.00 |

For SNF ASP MY 2024, facilities with Special Treatment Programs (STP) authorized pursuant to Title 22 of the California Code of Regulations, Sections [§ 72443-72475](#) will be exempt from sanctions on this measure given the additional licensure to care for populations with behavioral health needs. However, starting in MY 2025 SNF-STP facilities will not be exempt from sanctions on this measure and DHCS will provide additional details on changes to benchmarking this measure prior to MY 2025.

Racial and Ethnic Data Completeness (MDS)

| Benchmark Rate (Percentage) | Data Completeness ≤ 70% | Data Completeness 75% | Data Completeness 80% | Data Completeness 85% | Data Completeness 89.99% |
|-----------------------------|-------------------------|-----------------------|-----------------------|-----------------------|--------------------------|
| Base Tier Sanction | \$ 5.00 | \$ 4.00 | \$ 3.00 | \$ 2.00 | \$ 1.00 |

Responses including “Resident unable to respond” and “Resident declines to respond” will be considered as completed data for evaluation purposes of this measure. However, each FS/SNFs must make good-faith effort to obtain necessary data from each resident.

Calculation of Sanction Amounts

For measures established by DHCS for MY 2024, a **continuous model**, which factors in the specific level of facility measure performance, will be used to calculate the sanction amount, based on the following formula:

⁵ Minimum Performance Benchmark (Percentile) is for reference only. Sanction determination will be based on National Benchmark Rate

Sanction Amount =

$$\left(\text{Base Tier Fine} + \left(\frac{\text{Facility Performance Rate} - \text{Upper Benchmark Rate}}{\text{Lower Benchmark Rate} - \text{Upper Benchmark Rate}} \right) \times (\text{Upper Tier Sanction} - \text{Lower Tier Sanction}) \right) \times \text{MCBD}$$

The formula provided in SNF ASP Policy Letter 23-001 inadvertently did not include the correct formula used in calculating the sanctions amount. The updated sanctions formula accurately accounts for instances in which the difference between base tier sanctions across tier levels exceeds \$1. For example, the *Percentage of Long-Stay Residents Experiencing One or More Falls with Major Injury (MDS)* measure tiers are separated by \$2 per MCBBD (\$1, \$3, and \$5 per MCBBD). Because the performance benchmarks remain the same, this formula clarification will not impact which facilities will be sanctioned on this measure for SNF ASP MY 2024.

Pursuant to W&I Code section 14126.026(b), DHCS reserves the right to sanction a FS/SNF five dollars (\$5) per Medi-Cal bed day per DHCS measure. For each measure a FS/SNF fails to meet or exceed, DHCS will not assess an aggregate sanction that exceeds one hundred fifty thousand dollars (\$150,000.00) per measure in a single rating period. Accordingly, the maximum sanction that DHCS may sanction a FS/SNF for these three DHCS measures for MY 2024 will not exceed four hundred fifty thousand dollars (\$450,000.00).

DHCS continues to reserve the right to modify the methodologies used for sanctions as a part of SNF ASP with prior notice to the FS/SNFs.

Sanction Payments

If DHCS determines that a FS/SNF is subject to monetary sanctions under ASP, DHCS will provide a written Notice to the FS/SNF. The FS/SNF must respond to DHCS in accordance with the instructions and deadlines specified in the Notice.

Pursuant to W&I Code section 14126.026(d), with prior written notice, DHCS reserves the right to deduct the amount of the assessed sanction for a FS/SNF from any Medi-Cal payments to that FS/SNF until the sanction is paid in full. DHCS reserves the right to take into account the financial condition of the FS/SNF, and may apply that deduction over a period of time.

If there is a merger, acquisition, or change of ownership involving a FS/SNF that has an outstanding sanction under ASP, the successor FS/SNF must be responsible for paying

to DHCS the full amount of the outstanding sanction attributable to the FS/SNF for which it was assessed, upon the effective date of that transaction.⁶

Appeal Process

Pursuant to W&I Section 14126.026(h), if a FS/SNF disputes any sanction assessed under ASP, the FS/SNF must submit a request for appeal to DHCS within 30 calendar days of the FS/SNF's receipt of the Notice. The request must include a detailed statement describing the reason for appeal and include all supporting documents the FS/SNF will present at the hearing.

Within 30 calendar days of DHCS' receipt of the FS/SNF's request for appeal, DHCS will provide to the FS/SNF all responsive arguments and supporting documents that DHCS will present at the hearing.

DHCS will hear a timely 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) DHCS 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 DHCS' hearing officer, when issued, shall be the final decision of DHCS.

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.

Waivers

Per W&I Code section 14126.026 (f), DHCS may waive all or a portion of a FS/SNF's assessed sanction if the facility petitions for a waiver and DHCS determines, in its sole discretion, that the petitioning 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 financial

⁶ [W&I 14126.026 \(e\)](#)

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

DHCS will issue more detailed policies and procedures on the SNF ASP Sanction appeals and waivers in a future Policy Letter.

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

Sincerely,

Original signed by Sarah Lahidji

Sarah Lahidji
Division Chief, Quality and Health Equity
Quality and Population Health Management
Department of Health Care Services