State of California—Health and Human Services Agency
Department of Health Care Services

MICHELLE BAASS
DIRECTOR

GAVIN NEWSOM
GOVERNOR

March 28, 2022

Mr. James G. Scott, Director
Division of Program Operations
Medicaid and CHIP Operations Group
Centers for Medicare & Medicaid Services
601 East 12th Street, Suite 0300
Kansas City, MO 64106-2898

STATE PLAN AMENDMENT 22-0012: CONTINUE AND AMEND RATE SETTING METHODOLOGY FOR SKILLED NURSING FACILITY (LEVEL-B) AND FREESTANDING ADULT SUBACUTE FACILITIES

Dear Mr. Scott:

The Department of Health Care Services (DHCS) is submitting the enclosed State Plan Amendment (SPA) 22-0012 for your review and approval. DHCS seeks an effective date of January 1, 2022, for this SPA.

Assembly Bill (AB) 81 (Chapter 13, Statutes of 2020) extended the facility-specific rate setting methodology for Freestanding Nursing Facility Level-B (FS/NF-B) and Freestanding Adult Subacute (FSSA) facilities, the Quality Assurance Fee, and QASP Program through December 31, 2022. AB 81 also requires DHCS to make other revisions to the methodology. Accordingly, DHCS is submitting this SPA to seek federal approval to establish calendar year 2022 as a rate period and provide a 2.4 percent increase in the statewide weighted average Medi-Cal reimbursement rate for FS/NF-B and FSSA facilities, among other changes.

DHCS is submitting the following SPA documents for your review and approval:

- CMS 179 – Transmittal and Notice of Approval of State Plan Material
- Supplement 4 to Attachment 4.19-D – Pages 5, 5a, 17a (Clean)
- Supplement 4 to Attachment 4.19-D – Pages 5, 5a, 17a (Redline)
- Standard Funding Questions
- Federal Budget Impact Methodology

A notice of Proposed State Plan Amendment notifying the public about proposed renewal and changes to the rate setting methodology was published on December 21, 2021.

On February 23, 2022, CMS informed DHCS that a tribal notice was not required for this SPA.

If you have any questions regarding this SPA, please contact Mr. Phi Long Nguyen, Unit Chief, Fee-For-Service Rates Development Division, at (916) 345-8708.

Sincerely,

[redacted]

Jacey Cooper
State Medicaid Director
Chief Deputy Director
Health Care Programs

Enclosures

cc: Ms. Lindy Harrington
Deputy Director
Health Care Financing
Department of Health Care Services
Lindy.Harrington@dhcs.ca.gov

Mr. Phi Long Nguyen
Unit Chief
Long Term Care Section
Fee-For-Service Rates Development Division
Department of Health Care Services
PhiLong.Nguyen@dhcs.ca.gov

Ms. Saralyn M. Ang-Olson, JD, MPP
Chief Compliance Officer
Office of Compliance
Department of Health Care Services
Saralyn.Ang-Olson@dhcs.ca.gov

Mr. Aaron Toyama
Senior Advisor
Health Care Programs
Department of Health Care Services
Aaron.Toyama@dhcs.ca.gov

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 22-0012

2. STATE: CA

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT: (●) XIX ( ) XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
January 1, 2022

5. FEDERAL STATUTE/REGULATION CITATION
Title 42 § CFR 447 Subpart B & C

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2022 $ 2,100,205,572
b. FFY 2023 $ 700,068,524

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Supplement 4 to Attachment 4.19-D pages 5, 5a, 17a

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Supplement 4 to Attachment 4.19-D pages 5, 17a

9. SUBJECT OF AMENDMENT
Continue and amend rate setting methodology for Skilled Nursing Facilities (Level-B) and Freestanding Adult Subacute Facilities, effective calendar year 2022.

10. GOVERNOR'S REVIEW *(Check One)*
( ) GOVERNOR'S OFFICE REPORTED NO COMMENT
( ) COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
( ) NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
(●) OTHER, AS SPECIFIED:
Please note: The Governor's Office does not wish to review the State Plan Amendment.

11. SIGNATURE OF STATE AGENCY OFFICIAL
[redacted]

12. TYPED NAME
Jacey Cooper

13. TITLE
State Medicaid Director

14. DATE SUBMITTED
March 28, 2022

15. RETURN TO
Department of Health Care Services
Attn: Director's Office
P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413

FOR CMS USE ONLY

16. DATE RECEIVED

17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL

21. TITLE OF APPROVING OFFICIAL

22. REMARKS

Instructions on Back

reimbursement rate prospectively over the intervening year(s) between audits. The amount a cost category is adjusted will be determined by an error factor that reflects a ratio of the difference between the reported cost and the audited expenditures for each cost category, consistent with the methodology specified in this Supplement.

D. In the event that the FS/NF-B's labor costs are incorrectly reported on facility cost reports or supplemental schedules, the Department will prospectively adjust the facility's reimbursement rate, in the same manner as described in Section IV.C.2. of this Supplement. Those adjustments received after computation of the annual labor study will be excluded from that study.

E. Compliance by each FS/NF-B with state laws and regulations regarding staffing levels will be documented annually, either through supplemental reports or through the annual licensing inspection process specified in Health and Safety Code section 1422.

F. Overpayments to any FS/NF-B will be recovered in a manner consistent with applicable recovery procedures and requirements of state and federal laws and regulations. Overpayment recovery regulations are described in the California Code of Regulations, title 22, section 51047. Overpayments referred to in this Section do not include those situations described above in Paragraphs IV.C.2. or IV.D.

G. Providers have the right to appeal audit or examination findings that result in an adjustment to Medi-Cal reimbursement rates. Specific appeal procedures are contained in Welfare and Institutions Code, section 14171, and in Division 3, Subdivision 1, Chapter 3, Article 1.5 (Provider Audit Appeals) of the California Code of Regulations, title 22, sections 51016 through 51048.

H. For FS/NF-Bs that obtain an audit appeal decision that results in revision of the facility's allowable costs used to calculate a facility's reimbursement rate, the Department will make a retroactive adjustment in the facility-specific reimbursement rate.

I. Beginning January 1, 2022, the Department's regular financial audits of FS/NF-Bs and subacute care units of FS/NF-Bs pursuant to this Section may include audits of facility costs and revenues associated with the COVID-19 Public Health Emergency declared pursuant to Section 247d of Title 42 of the United States Code on January 30, 2020, and any renewal of that declaration. The Department will recoup amounts of Medi-Cal payments associated with COVID-19 that the Department finds were not adequately used by the facility for allowable costs. Allowable costs include patient care, additional labor costs attributable to the COVID-19 Public Health Emergency including, but not limited to, increased

wages or benefits, shift incentive payments, staff retention bonuses, pay differential for workers employed by more than one facility, and overtime payments to nonmanagerial workers, and other appropriate costs that support the delivery of patient care. Other appropriate costs that support delivery of patient care include, but are not limited to, personal protective equipment, COVID-19 testing, infection control measures and equipment, and staff training.

J. Beginning with the calendar year 2022 rate year, and continuing each rate year thereafter, a skilled nursing facility shall demonstrate its compliance with the following requirements upon request by, and in the form and manner specified by, the Department:

1. Direct care service hours per patient day requirements in Section 1276.65 of the Health and Safety Code and as enforced pursuant to Section 14126.022 of the Welfare and Institutions Code;

2. Applicable minimum wage laws; and

3. Wage passthrough requirements in Section 14110.6 of the Welfare and Institutions Code and Section 1338 of the Health and Safety Code.

V. Methods and Standards for Establishing FS/NF-B Reimbursement Rates

A. Effective August 1, 2005, a FS/NF-B's actual reimbursement rate (per diem payment) is the amount the Department will reimburse to a FS/NF-B for services rendered to an eligible resident for one resident day. The per diem payment is calculated prospectively on a facility-specific basis using facility-specific data from the FS/NF-B's most recent cost report period (audited or adjusted), supplemental schedules, and other data determined necessary by the Department.

O. Beginning with the rate period of August 1, 2020, through December 31, 2020, the increase in the weighted average Medi-Cal reimbursement rate shall be 3.62 percent of the weighted average rate from the previous rate year, plus the projected FS/NF-B Medi-Cal cost of complying with new state or federal mandates. Total Medi-Cal reimbursement shall not exceed any applicable federal upper payment limit.

P. For the calendar year 2021 rate year, the increase in the weighted average Medi-Cal reimbursement rate shall be 3.5 percent of the weighted average rate from the previous rate period, plus the projected FS/NF-B Medi-Cal cost of complying with new state or federal mandates. Total Medi-Cal reimbursement shall not exceed any applicable federal upper payment limit.

Q. For the calendar year 2022 rate year, the increase in the weighted average Medi-Cal reimbursement rate shall be 2.4 percent of the weighted average rate from the previous rate period, plus the projected FS/NF-B Medi-Cal cost of complying with new state or federal mandates. Total Medi-Cal reimbursement shall not exceed any applicable federal upper payment limit.

1. For the calendar year 2022 rate year, a facility's receipt of the annual increase in the weighted average Medi-Cal reimbursement rate may be conditioned on the facility's good faith compliance with any requirements in All Facility Letters issued by the California Department of Public Health that are related to the COVID-19 Public Health Emergency declared pursuant to Section 247d of Title 42 of the United States Code on January 30, 2020, and any renewal of that declaration.