

**DEPARTMENT OF HEALTH CARE SERVICES  
NOTICE OF REQUEST FOR PUBLIC INPUT  
RELEASE DATE: JANUARY 30, 2023**

**PROPOSED STATE PLAN AMENDMENT TO RENEW THE REIMBURSEMENT  
METHODOLOGY FOR FREESTANDING SKILLED NURSING FACILITY LEVEL-  
B & FREESTANDING SUBACUTE FACILITIES**

DHCS requests input from beneficiaries, providers, and other interested stakeholders concerning proposed State Plan Amendment (SPA) 23-0006, which is attached below.

On December 28, 2022, the Department of Health Care Services (DHCS) released a notice of public interest about proposed SPA 23-0006, which would renew and modify the existing facility-specific reimbursement methodology for Freestanding Skilled Nursing Facility Level-B (FS/NF-B) and Freestanding Subacute (FSSA) facilities, effective January 1, 2023 through December 31, 2023, in accordance with Assembly Bill (AB) 186 (Chapter 46, Statutes of 2022). You may view the December 28, 2022 public notice at [SPA 23-0006 Public Notice \(ca.gov\)](#). DHCS is now releasing the draft of SPA 23-0006 with the proposed changes for public comment.

The effective date of the proposed SPA is January 1, 2023. All proposed SPAs are subject to approval by the Federal Centers for Medicare and Medicaid Services (CMS).

**PUBLIC REVIEW AND COMMENTS**

The proposed changes included in draft SPA 23-0006 are attached to this notice for public comment. DHCS is requesting stakeholder input on the impact, if any, on access to services as a result of the proposed action.

Upon submission to CMS, a copy of proposed SPA 23-0006 will be published at the following internet address:

<https://www.dhcs.ca.gov/formsandpubs/laws/Pages/Pending-2023.aspx>

If you would like to view proposed SPA 23-0006 in person once it becomes available, please visit your local county welfare department. You may also request a copy of proposed SPA 23-0006 using the mailing or email addresses listed below.

Written comments may be sent to the following address:

Department of Health Care Services  
Fee-For-Service Rates Development Division  
Attn: Alek Klimek  
1501 Capitol Avenue, MS 4600  
Sacramento, California 95899-7417

Comments may also be emailed to [PublicInput@dhcs.ca.gov](mailto:PublicInput@dhcs.ca.gov). Please indicate SPA 23-0006 in the subject line or message.

To be assured consideration prior to submission of the SPA to CMS, comments must be received no later than March 1, 2023. Please note that comments will continue to be accepted after March 1, 2023, but DHCS may not be able to consider those comments prior to the initial submission of SPA 23-0006 to CMS.

A copy of submitted public comments to SPA 23-0006 may be requested in writing to the mailing or email addresses identified above.

The Department will recoup amounts of Medi-Cal payments associated with the COVID-19 10% per diem rate increase authorized in Section 7.4 of the State Plan 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 is not limited to, personal protective equipment, COVID-19 testing, infection control measures and equipment, and staff training.

- F. For calendar year 2023, the audit conducted pursuant to paragraph I of this Section shall include an audit of 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, and amounts equivalent to the COVID-19 10% per diem rate increase authorized in paragraph R.2 on page 17a, that are received by a facility that were spent on additional labor costs attributable to the COVID-19 Public Health Emergency. Additional labor costs attributable to the COVID-19 Public Health Emergency may include, but is 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.

Increased wages or benefits, shift incentive payments, staff retention bonuses, pay differential for workers employed by more than one facility, overtime payments to nonmanagerial workers or other additional labor costs shall qualify for purposes of this paragraph if they were either of the following:

1. Implemented prior to January 1, 2023, and continued during the 2023 calendar year, or
2. Implemented on or after January 1, 2023.

If the Department finds that a facility spent less than 85 percent of revenues associated with the COVID-19 Public Health Emergency on additional labor costs during calendar year 2023, the Department will recoup the difference between the amount spent on additional labor costs and 85 percent of Medi-Cal payments received by the facility associated with the COVID-19 10% per diem rate increase authorized in Section 7.4 of the State Plan and amounts equivalent to the COVID-19 10% per diem rate increase authorized in paragraph R.2 on page 17a.

**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/or 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.
- R. For the calendar year 2023 rate year, the increase in the weighted average Medi-Cal reimbursement rate shall be calculated separately for labor and non-labor costs, plus the projected FS/NF-B Medi-Cal cost of complying with new state or federal mandates. For the labor cost category, the annual aggregate increase shall be 5 percent of the weighted average rate attributed to labor costs from the previous year. For the non-labor cost categories, including indirect care non-labor cost, administrative cost, professional liability insurance, capital cost, and direct pass through categories, as specified in Section V, paragraph B on page 6 of this Supplement, the annual aggregate increase shall be 2 percent of the weighted average rate attributed to non-labor costs from the previous year. Total Medi-Cal reimbursement shall not exceed any applicable federal upper payment limit.
1. Within the aggregate cost category increase limits, a facility's rate will not decrease for calendar year 2023 relative to calendar year 2022, unless the facility's audited cost reports demonstrate a decrease in costs.
  2. The facility-specific rate will include the COVID-19 10% per diem rate increase authorized on pages 90g – 90l of Section 7.4 of the State Plan. In the event the COVID-19 Public Health Emergency expires prior to December 31, 2023, the rates established for the calendar year 2023 rate year, including the COVID-19 10% rate increase, will not be decreased and will continue for the duration of calendar year 2023.
  3. The COVID-19 10% per diem rate increase authorized on pages 90g – 90l of Section 7.4, or the amounts equivalent to the COVID-19 10% per diem rate increase authorized in paragraph 2 above, whichever remains in effect on

TN 23-0006

Supersedes

TN 22-0012

Approval Date \_\_\_\_\_

Effective Date January 1, 2023

December 31, 2023, shall be discontinued for dates of service on or after January 1, 2024.

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Supersedes  
TN 22-0012

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