

**State of California
Office of Administrative Law**

In re:
Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections:

**Amend sections: 51510, 51510.1, 51510.2,
51510.3, 51511, 51511.5,
51511.6, 51535, 51535.1,
54501**

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2013-1216-04 E


This emergency regulatory action by the Department of Health Care Services amends sections of Title 22 of the California Code of Regulations to reflect reimbursement rates established by the Department for specific types of facilities providing long term care services to Medi-Cal beneficiaries, as required by Welfare and Institutions Code section 14105.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/24/2013 and will expire on 6/24/2014. The Certificate of Compliance for this action is due no later than 6/23/2014.

Original Signed

Date: 12/24/2013


Beverly J. Johnson
Deputy Director

For: DEBRA M. CORNEZ
Director

Original: Toby Douglas
Copy: Ben Carranco

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2013-1216-04E

For use by Office of Administrative Law (OAL) only

ENDORSED FILED
IN THE OFFICE OF
2013 DEC 24 PM 12:58

2013 DEC 16 PM 2:45
OFFICE OF
ADMINISTRATIVE LAW

Original Signed
DEBRA BOWEN
SECRETARY OF STATE

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Department of Health Care Services	AGENCY FILE NUMBER (if any) DHCS-09-013E
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Long-Term Care Reimbursement	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, and 54501
TITLE(S) 22
REPEAL

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Ben Carranco	TELEPHONE NUMBER (916) 440-7766	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) ben.carranco@dohcs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Original Signed Toby Douglas, Director	DATE 11/26/13
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For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 24 2013

Office of Administrative Law

(1) Amend Section 51510 to read as follows:

§ 51510. Nursing Facility Level A Services.

(a) – (d) No change

(e) Payment to nursing facilities or public institutions providing Level A services in accordance with Section 51120 shall be as follows:

(1) For facilities in the following counties the base rate is:

<u>Effective</u> <u>Rate Year</u>	<i>Los Angeles</i> <i>County</i>	<i>Alameda,</i> <i>Contra Costa,</i> <i>Marin, Napa,</i> <i>San</i> <i>Francisco,</i> <i>San Mateo,</i> <i>Santa Clara &</i> <i>Sonoma</i> <i>Counties</i>	<i>All Other</i> <i>Counties</i>
<u>2004-05</u>	<u>\$80.62</u>	<u>\$80.62</u>	<u>\$67.94</u>
<u>2005-06</u>	<u>\$87.18</u>	<u>\$87.18</u>	<u>\$67.94</u>
<u>2006-07</u>	<u>\$99.38</u>	<u>\$99.38</u>	<u>\$67.94</u>

(2) For facilities with licensed bed capacities of 100 beds or more, effective August 2, 2003, each facility shall receive a rate of \$89.54 until such time the prospective county rate for their geographic location based on the categories listed above exceeds that amount. At that time, those facilities shall receive the rate for all facilities within that geographic location.

(3) For a leave of absence, the base rate shall be reduced pursuant to Section 51535.

(4) For bed holds, the base rate shall be reduced pursuant to Section 51535.1.

(f) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14110.6, 14110.7, and 14124.5 and 14126.023, Welfare and Institutions Code. Reference: Sections, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7 and 14123, Welfare and Institutions Code; and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890 Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(2) Amend Section 51510.1 to read as follows:

§ 51510.1. Intermediate Care Services for the Developmentally Disabled.

(a) – (c) No change

(d) Skilled nursing facilities and intermediate care facilities with the licensed bed capacities shown below meeting the standards and criteria established for intermediate care facility services for the developmentally disabled, as defined in Sections 76301 through 76413, Article 3, Chapter 8, Division 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

Total Licensed Beds

7/1/03 — 7/31/03

1-59	60+	60+ w/Distinct Part
\$141.19	\$120.69	\$120.69
8/1/03		
\$143.95	\$123.87	\$123.87

Total Licensed Beds

<u>Effective Rate Year</u>	<u>1-59</u>	<u>60+</u>	<u>60+ w/Distinct Part</u>
<u>2004-05</u>	<u>\$143.95</u>	<u>\$123.87</u>	<u>\$123.87</u>
<u>2005-06</u>	<u>\$158.58</u>	<u>\$134.46</u>	<u>\$134.46</u>
<u>2006-07</u>	<u>\$158.58</u>	<u>\$147.03</u>	<u>\$147.03</u>

(1) Reduced for leave of absence for all patients receiving intermediate care facility services for the developmentally disabled in accordance with Section 51535.

(2) Reduced for bed hold for acute hospitalization for all patients receiving intermediate care facility services for the developmentally disabled in accordance with Section 51535.1.

(e) Effective October 1, 1990, state operated facilities shall be entitled to payment for services at actual allowable cost.

(e) (f) For purposes of this section, the rate year is August 1st through July 31st.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14110.6, 14110.7, and 14124.5 and 14126.023, Welfare and Institutions Code. Reference: Sections 14087.3, 14108, 14109.5, 14110.4, 14110.6, 14110.7 and 14123, Welfare and Institutions Code; Sections 1250, 1324, 1324.2, 1324.4, 1324.8, 1324.10 and 1324.12, Health and Safety Code; and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890; Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapter 48, Items 4260-101-0001 and 4260-101-0890.

(3) Amend Section 51510.2 to read as follows:

§ 51510.2. Intermediate Care Services for the Developmentally Disabled – Habilitative.

(a) Daily Reimbursement Rate – Intermediate care facilities meeting licensing and Medi-Cal standards and criteria for providing services to the developmentally disabled-habilitative as contained or referred to in Section 51164.1 through 51343.1, and Sections 76801 through 76962, Divisions 3 and 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

<u>Total Licensed Beds</u>		
<u>4-6</u>	—————	<u>7-15</u>
	7/1/03 – 7/31/03	
\$163.45		\$162.35
	8/1/03	
\$163.45		\$163.18

	<u>Total Licensed Beds</u>	
<u>Effective Rate Year</u>	<u>4-6</u>	<u>7-15</u>
<u>2004-05</u>	<u>\$163.45</u>	<u>\$163.18</u>
<u>2005-06</u>	<u>\$174.96</u>	<u>\$190.26</u>
<u>2006-07</u>	<u>\$174.96</u>	<u>\$190.26</u>

(a)(1) – (d) No change

NOTE: Authority cited: Sections 20 and 1267.7, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.2, 14110.6, 14110.7, and 14125.5 and 14126.023, Welfare and Institutions Code. Reference: Sections 1250, 1267.7, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10 and 1324.12, Health and Safety Code; Sections 14105.47, 14108, 14108.2, 14109.5, 14110.4, 14110.6 and 14123, Welfare and Institutions Code; and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890 Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(4) Amend Section 51510.3 to read as follows:

§ 51510.3. Intermediate Care Services for the Developmentally Disabled-Nursing.

(a) Daily Reimbursement Rate – Intermediate care facilities meeting licensing and Medi-Cal Standards and criteria for providing services to the developmentally disabled-nursing as contained or referred to in Sections 51164.2 through 51343.2, Division 3, and Sections 73800 through 73956, Division 5, Title 22, California Code of Regulations, shall be entitled to payment according to the following daily rates. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.2.

	<u>Total Licensed Beds</u>	
	4-6	7-15
	7/1/03 – 7/31/03	
	\$200.28	\$177.60
	8/1/03	
	\$200.28	\$177.60
	<u>Total Licensed Beds</u>	
<u>Effective Rate Year</u>	<u>4-6</u>	<u>7-15</u>
<u>2004-05</u>	<u>\$200.28</u>	<u>\$177.60</u>
<u>2005-06</u>	<u>\$203.18</u>	<u>\$202.61</u>
<u>2006-07</u>	<u>\$212.55</u>	<u>\$217.66</u>

(a)(1) – (e) No change

NOTE: Authority cited: Sections 20, 1267.7 and 1275.3, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.2, 14110.6, 14110.7, and 14125.5 and 14126.023, Welfare and Institutions Code. Reference: Sections 1250, 1267.7, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10, 1324.12 and 1324.14, Health and Safety Code; Sections 14108, 14108.2, 14109.5, 14110.4, 14110.6 and 14123, Welfare and Institutions Code; and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890 Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(5) Amend Section 51511 to read as follows:

§ 51511. Nursing Facility Level B Services.

(a) Payment to nursing facilities, hospitals, or public institutions providing Level B services in accordance with Section 51123 shall be as set forth in this section. As used in this section, the term “nursing facility Level B services” is defined as nursing facility services provided in accordance with Section 51123. Payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.21. Payment shall be as follows:

(1) For facilities with licensed bed capacities and located by county, for the ~~2003-04~~ 2004-05 rate year are as follows:

Bedsizes	<i>Alameda, Contra Costa</i>		
	<i>Los Angeles</i>	<i>Marin, Napa, San Francisco</i>	<i>All</i>
<i>County</i>	<i>San Mateo, Santa Clara & Sonoma</i>	<i>Counties</i>	<i>Other</i>
<i>County</i>	<i>Counties</i>	<i>Counties</i>	<i>Counties</i>
1-59	\$107.06 <u>112.79</u>	\$132.57 <u>137.95</u>	\$115.19 <u>122.90</u>
60+	\$107.20 <u>112.92</u>	\$139.34 <u>146.81</u>	\$119.60 <u>126.80</u>

(2) For nursing facilities that are distinct parts of acute care hospitals, if such facilities are not state operated, the per-diem reimbursement rate shall be the lesser of the facility's costs, as projected by the Department, or ~~\$236.82~~ as listed in the chart below:

<u>Distinct Part Nursing Facilities</u>		
<u>Effective Rate Year</u>		
<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>\$236.82</u>	<u>\$299.80</u>	<u>\$310.68</u>

(A) For purposes of this section, the rate year is August 1st, ~~2003~~, through July 31st, ~~2004~~.

(B) The facility's projected costs shall be based on the audit report findings of cost reports with fiscal periods ending January 1, ~~2001~~, through December 31, ~~2001~~ two calendar years prior to the beginning of the effective rate year. In the event the provider appeals the audit, pursuant to Welfare and Institutions Code Section 14171, and the provider notifies the Department by June 1, ~~2003~~, of the effective rate year that the audit report findings have been modified by an appeal decision or an agreement between the hospital and the Department, the facility's projected costs shall be based on the modified audit findings.

(C) If the audit of a cost report is not issued by July 1, ~~2003~~ of the effective rate year, the Department shall establish an interim projected reimbursement rate based on the cost report with a fiscal period ending January 1, ~~2001~~ through

December 31, 2004 two calendar years prior to the effective rate year, adjusted by an audit disallowance factor of ~~.96106~~ as listed in the chart below:

<u>Audit Disallowance Factor</u>		
<u>Per Rate Year</u>		
<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>.95566</u>	<u>.95211</u>	<u>.95211</u>

(D) The Department will use the facility's interim projected reimbursement rate in the computation of the prospective class median rate. Facilities that did not provide Nursing Facility Level B services to Medi-Cal patients during the cost report period and/or facilities with less than a full year's reported cost shall not be used to establish the prospective class median rate. In addition, facilities with Medi-Cal patient days representing less than 20 percent of their total patient days will be excluded from the median determination.

(E) If the facility has an interim reimbursement rate as specified in (C), when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section 14170(a)(1), the Department shall adjust the facility's projected reimbursement rate retroactively to August 1, ~~2003~~ of the effective rate year, to reflect the cost determined pursuant to such audit, or to reflect the cost in the cost report in the event that cost report is deemed true and correct. The Department shall notify the provider of the revised rates within 45 days of issuance of the audit report.

(F) Interest will accrue from August 1, ~~2003~~ of the effective rate year, and be payable on any such underpayment or overpayment at a rate equal to the

monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code, Section 14171) during the month the audit report is issued.

(G) If a provider appeals an audit pursuant to Welfare and Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate, but the resulting reimbursement rate shall not exceed the prospective median rate as provided in subsection (a)(2)(A).

(H) Payment under subsection (a)(2) shall only be made for services authorized pursuant to conditions set forth in Section 51335 for patients determined to need Level B services for other than post-surgical rehabilitation or therapy services.

(3) Reimbursement to any state-operated facility shall be based on its actual allowable costs.

(4) For facilities that are designated as swing bed facilities, the ~~rate is~~ \$229.96 rates are listed in the chart below:

<u>Swing Bed Facilities</u>		
<u>Effective Rate Year</u>		
<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>\$229.96</u>	<u>\$250.04</u>	<u>\$269.26</u>

(5) Reduced for leave of absence provided pursuant to Section 51535.

(6) Reduced for bed hold provided pursuant to Section 51535.1.

(b) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2, 14110.6, 14110.7, and 14124.5 and 14126.023, Welfare and Institutions Code. Reference: Sections 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14123 and 14171, Welfare and Institutions Code and Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890 Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(6) Amend Section 51511.5 to read as follows:

§ 51511.5. Nursing Facility Services – Subacute Care Reimbursement.

(a)(1) For the 2003-04, 2004-05, and 2005-06 rate years, the prospective rate of reimbursement, which shall be the all-inclusive per diem rates of reimbursement for subacute services as defined in Section 51335.5(a), shall be the lesser of the facility's costs as projected by the Department or the rate based on the class median rates continued from the prior year, as set forth below:

Type of Licensure	Type of Patient	Class Median Based Rate			
		<u>Per Rate Year</u>			
		<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	
Hospital-Based	Ventilator Dependent	\$580.07	<u>\$580.07</u>	<u>\$614.11</u>	<u>\$704.88</u>
Freestanding	Ventilator Dependent	\$409.72	<u>\$409.72</u>		
Hospital-Based	Non-Ventilator Dependent	\$553.15	<u>\$553.15</u>	<u>\$584.97</u>	<u>\$674.05</u>
Freestanding	Non-Ventilator Dependent	\$381.45	<u>\$381.45</u>		

For freestanding adult subacute facilities only, payment for service includes the Quality Assurance Fee pursuant to Health and Safety Code Section 1324.21.

(2)(A) For the ~~2003-04~~ each effective rate year, a facility that experienced a reduction in projected facility costs, which would result in a reduced subacute reimbursement rate for the ~~2003-04~~ effective rate year pursuant to subsection (a)(1), shall have its subacute prospective reimbursement rate for ~~2003-04~~ the effective rate year set at its ~~2002-03~~ prior year's rate.

(a)(2)(B) – (d) No change

(e) For purposes of this section, the effective rate year is August 1~~st~~, 2003 through July 31~~st~~, 2004.

(f)(1) The facility's projected costs for purposes of subsection (a) shall be based on the audit report findings of cost reports with fiscal periods ending January 1, ~~2000~~ through December 31, three calendar years prior to the effective rate year 2000. In the event that a facility's audit report finding does not include subacute ancillary costs, the facility's projected ancillary costs will be based on the median of the subacute ancillary costs of facilities that had audited ancillary costs.

(2) If the audit of a cost report as described in subsection (f)(1) is not issued by July 1, ~~2003~~ of the effective rate year, the Department shall establish the facility's interim costs based on the cost report with a fiscal period ending January 1, ~~2000~~ three calendar years prior to the effective rate year, through December 31, ~~2000~~ three calendar years prior to the effective rate year, adjusted by an audit disallowance factor of ~~.96101~~ as listed in the chart below:

<u>Type of Licensure</u>	<u>Audit Disallowance Factor</u>		
	<u>Per Rate Year</u>		
	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>Subacute Care Reimbursement</u>	<u>.95566</u>	<u>.95211</u>	<u>.95211</u>

(3) The Department will use the facility's interim costs as the facility's projected costs for purposes of subsection (a). In addition, facilities that did not

provide subacute care services to Medi-Cal patients during the cost report period, facilities that combine subacute and distinct part nursing facility Level B costs, and/or facilities with less than a full year's reported cost shall not be included for purposes of establishing the projected class median costs.

(4) If the facility's interim costs, as specified in subsection (f)(2), are established for a facility when the audit report is issued or when the cost report is deemed true and correct under Welfare and Institutions Code Section 14170(a)(1), the Department shall adjust the facility's reimbursement rate retroactively to August 1, ~~2003~~ of the effective rate year, to reflect the facility's costs determined pursuant to such an audit, or to reflect the costs in the cost report in the event that the cost report is deemed true and correct.

(5) Interest will accrue from August 1, ~~2003~~ of the effective rate year, and be payable on any underpayment or overpayment resulting from the application of subsection (f)(4) at a rate equal to the monthly average received on investment in the Surplus Money Investment Fund (as referenced in Welfare and Institutions Code Section 14171) during the month the audit report is issued.

(6) If a provider appeals an audit adjustment pursuant to Welfare and Institutions Code Section 14171, and there is a determination that the audit findings inaccurately reflect the audited facility's projected costs, the provider shall be entitled to seek a retroactive adjustment in its reimbursement rate but the resulting reimbursement rate shall not exceed the prospective rate of reimbursement as provided in subsection (a).

(g) Payment under subsection (a) shall only be made for services authorized pursuant to conditions set forth in Section 51335.5 for patients determined to need subacute care services.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; and ~~Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~ Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapter 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapter 48, Items 4260-101-0001 and 4260-101-0890.

(7) Amend Section 51511.6 to read as follows:

§ 51511.6. Nursing Facility Services – Pediatric Subacute Care Reimbursement.

(a) The per diem rates of reimbursement for pediatric subacute services as defined in Section 51335.6(a) shall be as follows:

Licensure	Type of Patient		Rate of Reimbursement		
			<u>Effective Rate Year</u>		
			<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
Hospital-Based	Ventilator Dependent	\$719.74	<u>\$719.71</u>	<u>\$762.95</u>	<u>\$785.01</u>
Hospital-Based	Non-Ventilator Dependent	\$660.52	<u>\$660.52</u>	<u>\$700.10</u>	<u>\$720.20</u>
Freestanding	Ventilator Dependent	\$673.08	<u>\$673.08</u>	<u>\$713.10</u>	<u>\$733.52</u>
Freestanding	Non-Ventilator Dependent	\$643.89	<u>\$613.89</u>	<u>\$650.25</u>	<u>\$668.71</u>

(b) The per diem rate of reimbursement for supplemental rehabilitation therapy services shall be ~~\$43.13~~ as described below:

<u>Effective Rate Year</u>	<u>Per Diem Rate</u>
<u>2004-05</u>	<u>\$43.13</u>
<u>2005-06</u>	<u>\$46.05</u>
<u>2006-07</u>	<u>\$47.46</u>

This rate shall include payment for physical therapy, occupational therapy and speech therapy services provided in accordance with Section 51215.10(i) through (m).

(c) The per diem rate of reimbursement for ventilator weaning services shall be ~~\$40.21~~, as described below:

<u>Effective Rate Year</u>	<u>Per Diem Rate</u>
<u>2004-05</u>	<u>\$40.21</u>
<u>2005-06</u>	<u>\$42.94</u>
<u>2006-07</u>	<u>\$44.25</u>

This rate shall include respiratory care practitioner and nursing care services provided in accordance with Section 51215.11.

(d) – (f) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; and ~~Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~ Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(8) Amend Section 51535 to read as follows:

§ 51535. Leave of Absence.

(a) – (c) No change

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities, intermediate care facilities for the developmentally disabled, intermediate care facilities for the developmentally disabled-habilitative, and intermediate care facilities for the developmentally disabled-nursing for patients who are on approved leave of absence shall be at the appropriate facility daily rate less ~~\$5.05~~ the amount specified in the chart below for raw food costs, except for state operated institutions.

Leave of Absence

Effective Rate Year

<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>\$5.07</u>	<u>\$5.18</u>	<u>\$5.30</u>

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2 and 14124.5, Welfare and Institutions Code; and Section 1275.3, Health and Safety Code. Reference: Sections 14108, 14108.1, 14108.2, 14109.5 and 14110.1, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; and ~~Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~ Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(9) Amend Section 51535.1 to read as follows:

§ 51535.1. Bed Hold for Acute Hospitalization.

(a) - (c) No Change

(d) Payment to skilled nursing facilities, swing bed facilities, intermediate care facilities for the developmentally disabled; intermediate care facilities for the developmentally disabled-habilitative, and intermediate care facilities for the developmentally disabled-nursing for beneficiaries who are on bed hold for acute hospitalization shall be at the appropriate facility daily rate less ~~\$5.05~~ the amount specified in the chart below for raw food costs, except for state operated institutions.

Bed Hold

Effective Rate Year

<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>\$5.07</u>	<u>\$5.18</u>	<u>\$5.30</u>

NOTE: Authority cited: Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5 and 14124.5, Welfare and Institutions Code; and Sections 20 and 1275.3, Health and Safety Code. Reference: Sections 14087.3, 14105.981, 14108, 14108.1, 14108.2, 14110.1, 14123 and 14132.22, Welfare and Institutions Code; Section 1275.3, Health and Safety Code; and ~~Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890~~ Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

(10) Amend Section 54501 to read as follows:

§ 54501. Adult Day Health Care Services.

(a) No Change

(b) The maximum all-inclusive rate per day of attendance for each approved Medi-Cal participant shall be ~~\$69.58~~ the amount specified in the chart below.

All-Inclusive Max. Daily Rate

Effective Rate Year

<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
<u>\$69.58</u>	<u>\$73.56</u>	<u>\$76.22</u>

(c) – (j) No Change

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14124.5 and 14570, Welfare and Institutions Code. Reference: Section 14571, Welfare and Institutions Code; and ~~Statutes of 2003, Chapter 457, Items 4260-101-0001 and 4260-101-0890~~ Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).