



AB 186 Nursing Facility Financing Reform

March 10, 2023

Stakeholder Meeting

Department of Health Care Services

Introductions

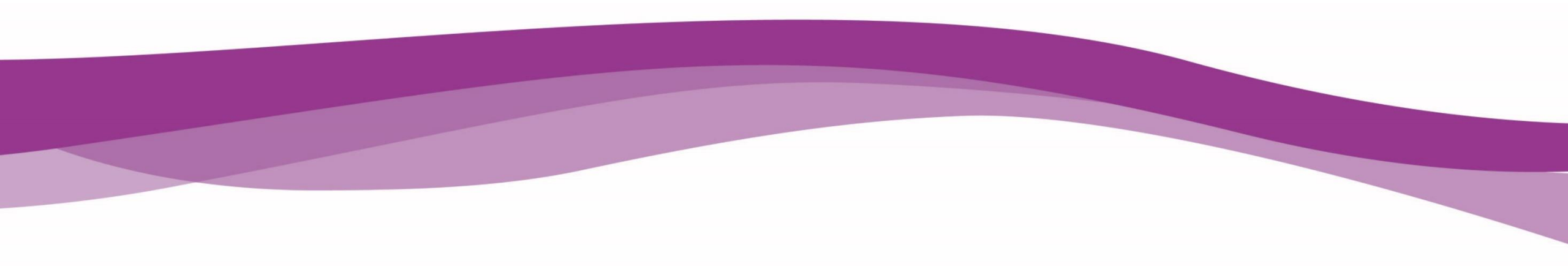
- » Lindy Harrington, Deputy Director, Health Care Financing
- » Alek Klimek, Chief, Fee-For-Service Rates Development Division

Agenda

1. AB 186 Overview
2. Workforce & Quality Incentive Program (WQIP) Update
3. Workforce Standard Program (WSP) Ongoing Policy Development
4. Public Comment

AB 186 Program Components	Development Timeline	Implementation Timeline
<p>Workforce & Quality Incentive Program (WQIP). DHCS will provide directed payments to facilities to incentivize workforce and quality. This program succeeds the former Quality and Accountability Supplemental Payment (QASP) program.</p>	<p>September 2022 - December 2022</p>	<p>Payments made to facilities in early 2024 based on Calendar Year (CY) 2023 utilization</p>
<p>Workforce Standards Program. DHCS will establish workforce standards such as maintaining a collective bargaining agreement or paying prevailing wage. DHCS will provide facilities that meet these standards with a workforce augmentation to the base per diem rate effective for CY 2024.</p>	<p>December 2022 - June 2023</p>	<p>Rate augmentation effective for CY 2024. Facility reporting required in mid-2023.</p>
<p>Accountability Sanctions Program. DHCS is authorized to sanction facilities that do not meet quality standards established by DHCS on a per Medi-Cal bed basis.</p>	<p>July 2023 - November 2023</p>	<p>Quality standards will be effective for CY 2024.</p>

WQIP Update



WQIP CMS Approval

- » DHCS submitted the WQIP Directed Payment Preprint for federal approval to the Centers for Medicare & Medicaid Services (CMS) on December 30, 2022 based on the program design outlined at the December 21, 2022 Stakeholder Meeting.
- » CMS review of the WQIP Preprint is anticipated to take several months. DHCS will update stakeholders on any substantive changes through further stakeholder meetings

WQIP Subacute Staffing Hour Minimum

- » The WQIP workforce measures include (but are not limited to) acuity-adjusted Total Staffing, Weekend Staffing, and Certified Nursing Assistant (CNA) Staffing Hours Per Patient Day (HPPD).
- » The score for these metrics incorporates daily compliance with minimum benchmarks of 3.5 Total HPPD and 2.4 CNA HPPD for all facilities without regard to CDPH staffing waivers using Payroll Based Journal (PBJ) data.
- » At the February 1, 2023 stakeholder meeting, DHCS was analyzing an option to apply alternative minimum benchmarks for Subacute units of 5.8 Total HPPD and 2.0 CNA HPPD to align with California Code of Regulations Title 22, Section 51215.5.

WQIP Subacute Staffing Hour Minimum

- » DHCS has determined that an alternative minimum benchmark for subacute units is not feasible.
- » PBJ staffing data is reported at the facility level and is unable to be disaggregated for subacute units.
- » DHCS modeled alternative benchmarks using licensed subacute bed capacity as a proxy. This modeling did not result in substantive changes in the projected WQIP scores of facilities with subacute units.
- » The acuity-adjustment factor in the metrics accounts for the higher acuity levels in facilities with subacute units.

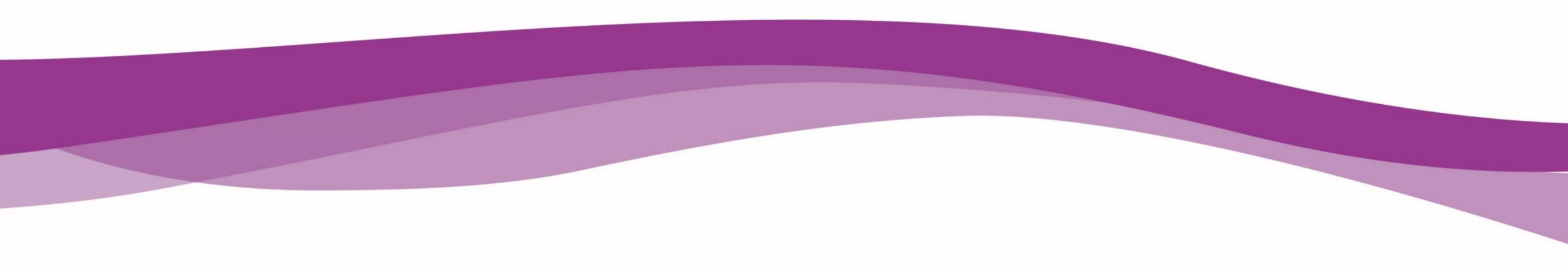
WQIP Program Manual

- » DHCS is developing a WQIP Program Manual to provide technical specifications in greater detail and address common questions.
- » DHCS anticipates to share a draft version of the WQIP program manual with stakeholders in April 2023.
- » DHCS will provide an opportunity for stakeholders to review and provide input on the WQIP Program Manual.

WQIP Eligibility for PACE Plans

- » Pursuant to Welfare & Institution Code (WIC) Section 14126.024(I)(1) all Medi-Cal Managed Care Plans will be required to participate in SNF WQIP.
- » The Program of All-Inclusive Care for the Elderly (PACE) plans are excluded from the program as they do not meet the qualifications of a Medi-Cal Managed Care Plan as stated in WIC14126.024(I)(1).

Workforce Standards Program



Workforce Standards Overview

- » AB 186 requires DHCS to establish a Workforce Standards Program (WSP) for Freestanding Skilled Nursing / Subacute Facilities Level-B. Facilities that meet the standards will receive a workforce rate adjustment starting in CY 2024.
- » AB 186 provides DHCS with broad authority to develop and define the workforce standards such as maintaining a collective bargaining agreement or paying prevailing wage.
- » The workforce rate adjustment will be made to base Fee For Service (FFS) Per Diem rates via a State Plan Amendment. Managed Care Plans (MCPs) will be required to pay the workforce adjustment through the FFS Equivalent Directed Payment.

Workforce Standards Development

- » At the February 1, 2023 stakeholder meeting, DHCS provided a general framework for the WSP based on AB 186 and initial stakeholder feedback
- » Today's presentation includes further refinements to the proposed WSP framework based on further stakeholder feedback and analysis.
- » DHCS will present further updates at the stakeholder meeting scheduled for April 12. DHCS may schedule additional meetings in May and June.

Workforce Standards Scope

- » The WSP is focused on labor-management cooperation and setting basic standards for worker's wages and other benefits.
- » In contrast, the WQIP includes workforce metrics incentivizing higher per patient staffing hours and lower staff turnover.
- » The SNF COVID-19 PHE 10 percent temporary rate increase is set to expire on December 31, 2023. The workforce rate adjustment is broadly intended to supplant this funding while holding facilities accountable for investing these funds in the workforce.

Workforce Standards Guiding Principles

DHCS proposes to design the WSP based on the following guiding principles:

- » Hold SNFs accountable for using increased Medi-Cal funding to provide fair compensation and benefits to workers. Fair compensation and benefits will enable SNFs to recruit and retain a workforce that will provide high quality care to Medi-Cal beneficiaries.
- » Focus the Workforce Standards primarily on lower-wage workers who are the core of the SNF workforce and have less economic power.
- » Encourage the development of fair compensation and benefits through labor-management cooperation and collective bargaining in furthering the above goals.
- » Develop policies that align with and build on existing practices in the SNF industry, and which maintain the fiscal sustainability of SNFs.

Workforce Rate Adjustment Amount

- » AB 186 requires DHCS to calculate a facility-specific workforce rate adjustment by “rebas ing” audited costs within the labor cost category trended for inflation to CY 2024 without applying historic cost growth limits.
- » If a facility does not meet the workforce standards, AB 186 limits the Medi-Cal rate increase for the labor cost category to five percent in CY 2024 over CY 2023.

Future Rate Years

- » In CY 2025 and CY 2026, rate increases for the labor cost category will be limited to five percent for each year over the previous year.
- » If a facility falls out of compliance with the workforce standards for CY 2025 or CY 2026, the rate for that year will revert down to what it would have been had the facility not received the workforce adjustment in prior years.
- » If a facility becomes newly compliant with the workforce standards for CY 2025 or CY 2026, the rate for that year will be adjusted up to what it would have been had the facility received the workforce adjustment in prior years.

WSP Eligibility

- » DHCS will require facilities to opt into the WSP for CY 2024 in mid-2023. DHCS will also set opt-in deadlines for facilities newly participating in CY 2025 and CY 2026.
- » DHCS will provide facilities with at least 60 days to opt-in from the date that the Workforce Standards policy is finalized by DHCS. DHCS aims to finalize the standards by June 2023 pending further stakeholder engagement.
- » Facilities that have completed a Change in Ownership may opt into the WSP mid-year in alignment with the re-computation of the new owner's rate.

WSP Compliance

- » Facilities will be required to comply with the workforce standards for the duration of the rate year. If a facility is found to be noncompliant during the rate year, DHCS will recoup the workforce rate adjustment for the entire rate year and may disqualify the facility for the following rate year.
- » DHCS will provide facilities with a grace period not exceeding 60 days per year for good cause as determined by the department, and will require facilities to provide workers with backpay where applicable. Facilities will be required to report any non-compliance within 15 days of becoming aware of the noncompliance.
- » DHCS will require facilities to report compliance with the workforce standards as part of the annual financial audit or through a supplemental reporting schedule. DHCS may also perform mid-year reviews based on complaints.

Workforce Standards Pathways

DHCS proposes to allow SNFs to qualify for the WSP through one of two pathways:

- » Labor-Management Cooperation Pathway: Either:
 - » Maintain a collective bargaining agreement (CBA)
 - » Participate in a statewide multi-employer labor-management committee (LMC).
- » Basic Wage and Benefit Pathway: Meet all the following requirements:
 - » Pay at least a basic wage to indirect and direct care workers, based on regional median wages for comparable occupations.
 - » Provide health care benefits to full-time employees with a minimum actuarial value of 85 percent and employer share of 80 percent of the premium.
 - » Provide paid sick leave totaling 10 days (including the three days required by state law)
 - » Provide paid time and tuition for continuing education requirements for lower wage workers, including CNAs.

Additional WSP Requirements

Additionally, DHCS proposes to require all facilities in WSP to:

- » Meet all existing minimum wage and wage pass through requirements.
- » Report wage and benefit data to DHCS as part of the annual audit or through a supplemental reporting schedule. DHCS will begin collecting data for CY 2023 in CY 2024 for informational purposes only.

Labor-Management Cooperation Pathway

- » A CBA or LMC agreement must be effective for the duration of the rate year. If an existing CBA or LMC agreement has expired, the parties must agree to extend the prior CBA or LMC agreement while negotiating a successor agreement.
- » DHCS will define a statewide multi-employer LMC to include at least 200 facilities in California and one or more labor organizations that are certified or recognized as the exclusive bargaining representative of workers at a combined total of 100 facilities in California.
- » Recognition of statewide multi-employer LMCs is consistent with the language of AB 186 and is best suited to advance the establishment of industry-wide workforce standards that align with the goals of the WSP.
- » DHCS will require the facility to submit a copy of the CBA or LMC agreement within 30 days of the beginning of the rate year and include an attestation from the labor organization.

Labor-Management Cooperation Pathway

DHCS requests further stakeholder input on the following:

- » Should DHCS require statewide multi-employer LMCs to meet specific composition or governance standards?
- » How should the Labor-Management Cooperation pathway treat facilities with LMCs or CBAs that represent only some, but not all, workers at a facility?

Basic Wage Standard

- » DHCS proposes establishing the basic wage standard for direct and indirect care workers at the regional median, or a percentage thereof, using a US Bureau of Labor Statistics (BLS) data for a proxy Standard Occupational Classification (SOC).
 - » For direct care workers, use SOC 31-1130 Nursing Assistants
 - » For indirect care workers, use SOC 37-2011 Janitors and Cleaner
- » DHCS will use the latest BLS data, adjusted for inflation, to set the basic wage standard for CY 2024. In subsequent years, the basic wage will be adjusted for inflation up to five percent per year in alignment with the maximum labor cost increase authorized in AB 186.
- » DHCS will use the BLS Employment Cost Index to adjust wages for inflation.

Basic Wage Standard

DHCS requests further stakeholder input on the following:

- » For the indirect care worker basic wage standard, should DHCS consider other occupations as a proxy? DHCS could use a weighted average of several occupations.
- » BLS publishes data in 28 metropolitan statistical areas (MSAs) in California. Should any of these areas be combined based on health care worker labor markets? DHCS is analyzing combining the MSAs to align with the existing SNF peer groups, but a complete match may not be feasible.

Health Benefit Standard

- » DHCS proposes a standard of providing employee-only health benefits to all direct and indirect care workers employed more than 30 hours/week which meet the Essential Health Benefits included in Covered California plans with a minimum actuarial value of 85 percent and employer share of 80 percent of the premium.
- » The proposed actuarial value and employer share of premium are aligned with national averages for all private employers. DHCS was not able to identify a data set specific to SNF workers.
- » DHCS is analyzing inclusion of vision and dental benefits. DHCS requests further stakeholder feedback on how to define these benefits, given that they are not included in Essential Health Benefits for adults.

Paid Sick Leave Standard

- » DHCS proposes a paid sick leave standard of 10 days for all direct and indirect care workers, inclusive of the three days required by state law and any days required by local laws. The required sick leave will be prorated for part-time employees.
- » This standard is intended to reduce infections in facilities and reduce worker burn out by increasing access to preventative health services.
- » Facilities can meet this standard through existing paid time off policies that can be used as sick leave.
- » DHCS will align permitted uses and accrual policies with provisions applicable to the three days of sick leave required by the Labor Code.

Training/Development Standard

- » DHCS proposes a training and development standard of providing paid time and tuition for continuing education requirements applicable lower wage workers, including CNAs.
- » DHCS requests further stakeholder input to identify lower wage job classifications which are required to complete continuing education requirements as a condition of employment.
- » DHCS requests further stakeholder input to identify potential existing industry-standard training or development programs that could be adopted as state-wide standards. The creation of entirely new training and development programs is not feasible within the WSP policy development timeline for CY 2024.

Executive Pay Ratio Standard

- » At the February 1, 2023 stakeholder meeting DHCS proposed developing a median direct care worker to executive pay ratio standard to measure pay equity relative to fiscal capacity across the entire workforce.
- » DHCS is continuing to research this standard for inclusion in future program periods. Given the varied and complex ownership structures of SNFs, DHCS lacks data to clearly define executive compensation in a uniform manner. Most SNFs are not publicly traded companies with a clearly identified CEO.
- » The implementation of SNF ownership and financial transparency required by SB 650 (Stern, Chapter 493 Statutes of 2021) may provide additional data to establish this standard. However, this data will not be available until 2025.

Baseline Requirements

- » At the February 1, 2023 stakeholder meeting DHCS requested input on whether the WSP should include a requirement to maintain baseline staffing hour per patient day ratios and/or Medi-Cal bed share.
- » Disruptions caused by COVID-19 make using data available over the last three years unreliable for establishing a baseline. Older data would not be representative.
- » The WQIP includes staffing hour and Medi-Cal bed share metrics that will create a financial incentive against reducing staffing or Medi-Cal admissions. DHCS will use WQIP data to monitor trends for facilities participating in WSP.

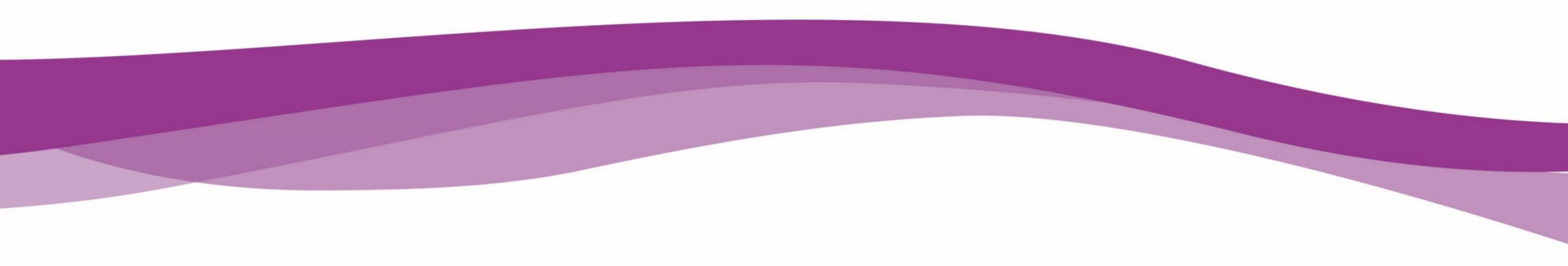
Other Considerations

- » AB 186 authorizes DHCS to vary workforce standards by facility characteristics. In addition to geographic variation of the basic wage standard, should DHCS vary standards based on any other relevant facility characteristics? For example, standards could be phased-in for smaller/independent facilities. How should these categories be defined?
- » Should the Workforce Standards apply to employees of contractors working in SNFs? How should workers of contractors be defined?

Workforce Standards Next Steps

- » DHCS welcomes stakeholder input on the design of the Workforce Standards Program. Please provide comments in writing to AB186Comments@dhcs.ca.gov by **March 23, 2023** to inform the next phase of policy development.
- » DHCS will present an updated program framework at the April 12, 2023 stakeholder meeting and identify further areas for policy development.
- » Please visit dhcs.ca.gov/AB186 for meeting materials and information on how to join upcoming meetings.

Public Comment



Public Comment

- » DHCS welcomes public comment. DHCS staff may briefly respond to requests for clarification on this presentation.
- » Speakers are requested to introduce themselves and their organization.
- » Audience members are muted until they are called on by the moderator. Please use the “raise hand” button in Microsoft Teams to be added to the speaker queue. If you are calling-in please press *5 to raise your hand.