

AB 1629 REFORM RECOMMENDATIONS NOVEMBER 2021

STOP PAYING MEDI-CAL RATES BASED ON INFLATED MEDICARE COSTS.

The AB 1629 system vastly overpays SNFs by allowing operators to include costs of serving Medicare funded residents for rate setting purposes. SNF spending on Medicare-covered residents is multiple times higher than spending on Medi-Cal residents due to far higher Medicare rates. Yet, the AB 1629 system does not distinguish between Medicare-related costs and Medi-Cal related costs in setting rates, resulting in Medi-Cal rates that likely reimburse SNFs collectively by hundreds of millions of dollars annually beyond their spending on Medi-Cal covered residents. Doing so comes at great expense to taxpayers, while giving operators perverse financial incentives to siphon off Medi-Cal payments without the risk of reducing their Medi-Cal rates. This practice endangers residents on Medi-Cal, who are routinely segregated in sections of SNFs with dangerously low staffing levels and inferior care and accommodations.

- The AB 1629 rate system should be reformed to require that SNF Medi-Cal rates be based on spending on residents whose care is paid for by Medi-Cal.

BAN SELF-DEALING SCHEMES TO PREVENT DIVERSION OF PUBLIC FUNDS INTENDED FOR CARE AND STAFFING.

Wealthy nursing home operators are able to systematically loot the AB 1629 system through self-dealing schemes in which they divert public funds to related parties they own or control.

Loopholes in AB 1629 and accountability systems have allowed related party spending to grow astronomically in recent years, at great expense to resident health and safety. California should adopt reforms to close the loopholes and strengthen accountability, including, but not limited to, the following measures:

- Prohibit licensees from contracting with management or administrative service companies to circumvent their responsibilities to operate SNFs in accordance with state and federal requirements. Such arrangements are often being used to enrich operators by funneling Medi-Cal payments to unregulated, unaccountable companies they own or control.
- Close related party loopholes: A 2020 administrative appeal decision narrowed the meaning of “related party” and expanded opportunities to hide profits and avoid transparency.
- Impose strict caps on rents and lease back arrangements. Operators commonly charge inflated rents or lease payments, often using layers of shell companies, to hide profits and maximize reimbursement.
- End taxpayer reimbursement for worthless related party insurance. Operators are paying exorbitant premiums to themselves for insurance provided by related parties. Reimbursement for insurance should be limited to fair market rates and only for policies from independent insurers that provide real liability coverage.
- Prevent reimbursement of excessive interest rates. Nursing home owners can profit at residents’ expense by making loans to nursing home operating companies they control at excessive rates – some even at 10 percent or more.

- Eliminate nursing home ownership draws. Currently, owners may draw or take any amount out of the nursing home operating budget at their discretion, reducing available funds to care for residents and hiding profit taking by operators.
- Prohibit reimbursement of nursing home association dues. Nursing home associations are basically lobby organizations for the industry that are used to seek increased state funding, restrict state oversight and diminish enforcement. California should not pay for these dues.

REPEAL THE QUALITY AND ACCOUNTABILITY SUPPLEMENTAL PAYMENT (QASP) PROGRAM.

The current QASP system should be eliminated because it has failed to improve the quality of nursing home care in California. The system's measures primarily rely on unaudited, self-reported data by nursing homes, which research has shown to be unreliable. Nursing homes have a strong incentive to inflate performance data related to these measures to get better ratings on the CMS Care Compare 5-star system and to qualify for supplemental payments. The existing measures are highly susceptible to manipulation. Falls with injuries and pressure ulcers are under-reported compared with the hospital-based data. Pain is an easily misreported measure because it is difficult to verify the reporting. Physical restraints are reported very infrequently so most nursing homes meet this measure. The same is true for the Influenza and pneumococcal vaccination measure because SNFs are required to offer vaccines to residents.

- Repeal the QASP system because it creates the illusion that payments are connected to quality without ensuring better care or staffing in SNFs that receive bonus payments.

REPLACE THE QASP PROGRAM WITH PAYMENTS TO SUPPORT SAFE STAFFING LEVELS, FINANCIAL INCENTIVES TO SUPPORT LIVING WAGES AND ENFORCEMENT MEASURES ON STAFFING COMPLIANCE.

Nothing matters more to the quality of residents' care than having sufficient staff who are qualified and able to meet their needs. Yet few nursing homes have sufficient staff and even fewer offer living wages and benefits to their workers. Average staff turnover is high, retention rates are low, California's minimum staffing requirement is manifestly unsafe and enforcement of staffing standards is weak. All of these factors have made California nursing homes dangerous places to live and work both before and during the pandemic. Incentive payments should focus on improving staffing and wage levels in California nursing homes.

- Set a safe staffing requirement for SNFs. The minimum standard should be 4.1 total nursing hours per resident day (hrpd), including at least 0.75 RN hrpd, 0.55 LVN hrpd, and 2.8 CNA hrpd, with minimum CNA hours increasing to 3.2 hrpd for moderate resident acuity and 3.6 for high acuity residents. Require SNFs to have RNs engaged in direct care at all times.
- Redirect QASP funds to pay costs of safe staffing requirements and establish effective penalties for SNFs that do not comply. Penalties should include a ban on new admissions that is imposed until compliance is reached.
- Establish financial incentives for SNFs that pay workers a living wage.
- Establish payment incentives for SNFs that keep turnover levels below 25 percent.

- Eliminate the 95th percentile ceiling for the staffing cost center.
- Audit payroll-based journal (PBJ) staffing data and issue penalties for inaccurate and incomplete data.
- Use payroll-based journal (PBJ) data to monitor daily compliance with minimum staffing requirements and modernize staffing enforcement to ensure compliance 365 days per year.
- Eliminate all staffing waivers for nursing shortages. State personnel who process waivers should be trained and reassigned to enforce staffing requirements. The current staffing waivers resulted in poor care and high COVID infection and death rates. Moreover, they have the effect of keeping wages low and contributing to high staff turnover rates, which are also associated with higher COVID infection rates in California.

REQUIRE SNFS TO GIVE APPLICANTS ON MEDI-CAL EQUAL ACCESS TO ADMISSION.

Medi-Cal beneficiaries who seek admission to SNFs face pervasive discrimination. Each Medi-Cal certified SNF enters into a certification agreement with DHCS (DHCS 9098) in which it agrees under penalty of perjury that it “shall not discriminate against Medi-Cal beneficiaries in any manner, including, but not limited to, admission practices...” Notwithstanding this legal duty, Medi-Cal certified SNFs almost universally defy this requirement, often leaving Medi-Cal beneficiaries to choose between substandard and distant facilities or no care at all when they need nursing home care. There is no enforcement of the nondiscrimination requirement. It is outrageous that SNFs are being allowed to treat persons on Medi-Cal as third-class customers while receiving over \$5 billion annually from Medi-Cal. It is especially appalling that this discrimination has persisted during the pandemic when SNFs have routinely denied admission to individuals on Medi-Cal despite having large numbers of available beds.

- Codify the DHCS 9098 nondiscrimination agreement and establish a statutory enforcement system to promptly investigate and sanction Medi-Cal certified SNFs that fail to give applicants on Medi-Cal equal access to admission.

INVEST SOME OF THE SAVINGS FROM AB 1629 REFORM MEASURES TO EXPAND HOME AND COMMUNITY-BASED SERVICES.

Californians who need long term care overwhelmingly prefer to receive it at home or in community settings rather than in nursing homes, which are widely feared. Home and community-based services are not only more popular, they are generally far less expensive and dangerous than nursing home care.

- Expand access to home and community-based services and the assisted living waiver program for those who would otherwise need nursing home care.

FULLY BAN REIMBURSEMENT OF LEGAL FEES WHEN SNFS CHALLENGE GOVERNMENTAL ACTIONS.

Current law allows costs of legal or consultant fees in connection with a fair hearing or other litigation against any governmental agency or department when a SNF prevails, subject to cost limits for administrative costs. Nursing home operators should not be rewarded for fighting government actions to hold them accountable.

- Prohibit reimbursement of legal and consulting fees anytime a SNF challenges penalties or any other governmental action.

REPEAL THE REQUIREMENT TO REIMBURSE SNFS FOR THE COST OF NEW STATE AND FEDERAL MANDATES.

Current law entitles SNFs to direct passthrough payments of proportional Medi-Cal costs for new state and federal mandates. Does any other provider have such a guarantee? The guarantee is especially troubling now because it is a barrier to reforms. Additionally, it is concerning that SNFs could potentially receive passthrough payments for COVID-related mandates on top of California and federal relief funds they received for the same purposes.

ENSURE THAT MEDI-CAL DISALLOWANCES ON AUDIT REPORTS ARE REPAYED TO THE STATE GENERAL FUND.

California has a system for auditing nursing home expenditures but this system does not include collecting refunds on disallowances. The system is only used for setting facility specific rates in the future. It gives facilities an incentive to knowingly spend money on disallowed activities. The state is not ensuring its fiduciary duty to the taxpayers when disallowances are not collected.