

**OFFICE OF THE DIRECTOR
ATTACHMENT F**

Ref. DL 23-003: INCOMPETENT TO STAND TRIAL GROWTH CAP AND PENALTY
PAYMENTS-WELFARE & INSTITUTIONS CODE (WIC) 4336

**PENALTY RATE AND TIERED PENALTY RATE STRUCTURE**

The base penalty rate established for the Growth Cap and Penalty Payments will be calculated each FY and use the current published daily bed rate at a state hospital multiplied by the average length of stay (ALOS) of an IST patient admitted to a state hospital. For FY 2022-23, DSH is using the pre-COVID three-year state hospital ALOS so that the penalty rate is not disproportionately impacted by pandemic-related increases in DSH's IST ALOS. DSH will reassess the ALOS on an annual basis and will notify counties of any change in the methodology.

BASE PENALTY RATE

- FY 2022-23 Bed Rate: \$728 per day
- FY 2016-17 through FY 2018-19 ALOS: 155 days
- FY 2022-23 Penalty Rate per Individual: \$113,000

TIERED PENALTY RATE

Penalties to be assessed by DSH will be based on a new tiered structure calculated from each county's annual IST determinations compared to the baseline. This new rate structure accounts for a county's participation in a DSH-funded IST treatment program by interpreting "per individual rate set forth by DSH hospital treatment for individuals found IST on a felony charge" to include treatment funded by DSH for IST individuals in either a Jail-Based Competency Treatment Program (JBCT) or Community Based Restoration (CBR) and/or Diversion program.

The rates to be applied to each county are separated into four tiers. The Tier 1 base rate defined above will be applied to counties that do not operate any felony IST treatment program beds. For Tiers 2 and 3, counties that operate either a JBCT or CBR and/or Diversion program, the base rate would be adjusted to reflect the statewide proportion of felony IST individuals admitted to a treatment bed in one of these programs during FY 2021-22 multiplied by the cost of treatment in those programs (i.e. daily cost multiplied by the ALOS). Tier 4 uses the same methodology as Tier 2 and 3 and is applied to counties that operate both a JBCT and a CBR and/or Diversion program.

For counties that operate an Early Access and Stabilization Service (EASS) program in the jail the tiered rates will be reduced by an additional 10%.

Below is a visual of the assumptions using the base rate and explanation of the tiered rate structures that will be applied:

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Rate Assumptions

IST Program	Cost Assumption	Value	ALOS	# of Days
State Hospital (SH)	2021-22 SH Daily Cost	\$728.00	3 yr. Avg. 2016-17 to 2018-19	155
JBCT	2021-22 JBCT Daily Cost	\$425.00	3 yr. Avg. 2016-17 to 2018-2020	71
CBR/ Diversion	2022-23 IST Solutions Budgeted Daily Rate	\$229.00	New IST Solutions budgeted assumption (one-half of 545 days, the anticipated average length of stay)	272.5

Rate Structure

Tier	Description	Rate ¹	Rate w/ EASS
1	County does not operate a DSH-funded program	\$ 113,000	\$ 102,000
2	County operates a CBR and/or Diversion Program	\$ 107,000	\$ 96,000
3	County operates a JBCT program	\$ 83,000	\$ 75,000
4	County operates a CBR and/or Diversion & a JBCT	\$ 77,000	\$ 69,000

Rate Application

FY 2022-23 through FY 2025-26	
For FY 2022-23 through FY 2025-26, any county that exceeds its baseline IST determination count shall pay penalties as follows:	
For the fifth, sixth, and seventh IST determinations over the baseline	County shall pay 50% of the penalty rate per IST.
For the eighth and ninth IST determinations over the baseline	County shall pay 75% of the penalty rate per IST.
For the tenth and all subsequent IST determinations over the baseline	County shall pay 100% of the rate penalty rate per IST.
FY 2026-27 and Ongoing	
Beginning in FY 2026-27, counties shall pay penalties for the third and subsequent felony IST that exceeds the baseline as follows:	
<u>Counties with</u> a DSH-funded Diversion or CBR contract:	County shall pay 100% of the rate.
<u>Counties without</u> a DSH-funded Diversion or CBR contract:	County shall pay 150% of the rate.

¹ Rates are rounded to the nearest thousand