

**OFFICE OF THE DIRECTOR
ATTACHMENT F****Revised August 2024**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 tiered structure calculated from each county's annual IST determinations compared to the baseline. This 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%.

The rate applied for each county will be determined by the types of felony IST treatment programs activated in the county by June 30th of each FY.

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

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

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After the Rate Structure is applied and DSH calculates the total proposed penalty fees according to the Rate Application, DSH will apply an additional adjustment to total based upon a statewide median IST rate calculation. That calculation will be applied by using data from the Department of Finance (DOF) and will be based on the immediately preceding FY. The statewide median IST rate and application will be determined by:

1. Calculating an IST rate for each county based on the number of IST determinations for every 100,000 of the county's total population (IST determination count / county's total population x 100,000). The total county population will be based on data published by the DOF report entitled '[P-2A Total Population for California and Counties](#)'.
2. After each county's IST rate is established, DSH will calculate the statewide median IST rate.
3. For any county subject to IST Growth Cap penalty fees, DSH will evaluate if the county's IST rate is above or below the statewide median IST rate.
4. For those counties whose IST rate falls below the statewide median IST rate, the final penalty amount will be adjusted down based on proportionate value of their county IST rate compared to the statewide median IST rate.
5. For counties that exceed the statewide median IST rate, the penalty amount initially calculated by DSH will remain unchanged.