

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO THE MEDICAID SUSTAINABILITY PROGRAM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The healthcare system in the State faces major  
2 financial challenges in ensuring access to quality healthcare  
3 for Hawaii residents due to the COVID-19 pandemic and related  
4 financial and budgetary pressures. Additional federal funding  
5 to help financially sustain Hawaii's healthcare system and  
6 medicaid program may be accessed through a provider fee.

7           Provider fees are used in forty-nine states and the  
8 District of Columbia as a means of drawing down federal funds to  
9 sustain state medicaid programs due to rising state budget  
10 deficits, increasing health care costs, and expanding medicaid  
11 enrollment. Of these, sixteen states use health insurer  
12 provider fees to draw down federal funds.

13           Medicaid is jointly financed by federal and state  
14 governments by statutory formula. The federal government pays  
15 between fifty per cent and seventy-four per cent of medicaid  
16 costs incurred by a state for care delivered to its medicaid  
17 beneficiaries. Federal assistance percentages vary by state,  
18 with states that have lower per capita incomes receiving higher

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1 federal matching rates. Under federal rules, the state share  
2 must be paid through public funds that are not federal funds.

3 Provider fees, which are collected from specific categories  
4 of health care providers, may be imposed on different classes of  
5 health care services, including the revenue of health insurers.

6 In Hawaii, a medicaid sustainability fee assessed on health  
7 insurers would help guarantee access to critical medicaid  
8 benefits such as supportive housing, behavioral health,  
9 vaccinations, preventive health, primary care, and home- and  
10 community-based services at a time when constraints on the  
11 State's budget due to the COVID-19 pandemic may force reductions  
12 in payments. As such, the provider fee would help preserve  
13 access to health care for the medicaid population, which would  
14 benefit health insurers in the State. Medicaid coverage helps  
15 reduce uncompensated care costs that lead to higher costs for  
16 health care insurance premiums. Medicaid helps sustain the  
17 State's entire healthcare system as a whole.

18 The purpose of this Act is to ensure access to health care  
19 for medicaid recipients by:

- 20 (1) Establishing a medicaid sustainability fee assessed on  
21 health insurers;



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1 "Fiscal year" means a twelve-month period from July 1 of a  
2 particular calendar year to June 30 of the following calendar  
3 year, inclusive.

4 "Health insurer" means a self-insured plan, a group health  
5 plan as defined in section 607(1) of the Employee Retirement  
6 Income Security Act of 1974, a health service benefit plan, a  
7 mutual benefit society, a health maintenance organization, a  
8 managed care organization, or other party that is, by statute,  
9 contract, or agreement, legally responsible for payment of a  
10 claim for a health care item or service.

11 "Member month" means the total number of individuals for  
12 whom the health insurer has recognized revenue for one month.  
13 If revenue is for only part of a month for an individual, a  
14 prorated partial member month may be counted. Member months are  
15 determined by the insurance division of the department of  
16 commerce and consumer protection and do not include individuals  
17 enrolled in short-term medical, noncomprehensive medical,  
18 specified disease, limited benefit, accident only, accidental  
19 death and dismemberment, disability income, long-term care,  
20 medicare supplemental, stand-alone dental, dental, pharmacy  
21 benefit manager, medicare, medicare advantage, medicare part D,  
22 vision, prescription, tri-care, other federal insurance, and  
23 other individual medical insurance.

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1       **§ -4 Medicaid sustainability program special**

2 **fund.** (a) There is created in the state treasury the medicaid  
3 sustainability program special fund to be administered by the  
4 department into which shall be deposited all moneys collected  
5 under this chapter.

6       (b) Moneys in the medicaid sustainability program special  
7 fund shall consist of:

8       (1) All revenue received by the department from the  
9            medicaid sustainability fee;

10       (2) All federal medicaid funds received by the department  
11            as a result of matching expenditures made with the  
12            medicaid sustainability fee;

13       (3) Any interest or penalties levied in conjunction with  
14            the administration of this chapter; and

15       (4) Any designated appropriations, federal funds,  
16            donations, gifts, or moneys from any other sources.

17       (c) Moneys in the medicaid sustainability program special  
18 fund shall be used exclusively to fund healthcare services  
19 covered under medicaid and operations to support the  
20 administration of the medicaid program.

21       **§ -5 Medicaid sustainability fee.** (a) Effective

22 July 1, 2021, or the effective date of any necessary federal  
23 approvals, whichever date is later, the department shall charge

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1 and collect provider fees, to be known as the medicaid  
2 sustainability fee, on health insurers.

3 (b) The medicaid sustainability fee shall be based on the  
4 number of member months of health insurers located within this  
5 State, during the year ending December 31 of the preceding year.

6 (c) The department shall assess fees based on the four  
7 tiers of member months as follows: tier 1 is zero to 75,000  
8 member months; tier two is 75,001 to 375,000 member months; tier  
9 three is 375,001 to 500,000 member months; and tier four is  
10 500,000 to 4,000,000 member months.

11 (d) The department shall adopt rules on the health insurer  
12 fees. The fees may be assessed up to \$12 for tier one per  
13 medicaid member months and up to \$15 for tier two medicaid  
14 member months; and \$1.00 for tier one non-medicaid member  
15 months.

16 (e) The department may modify the fees assessed for the  
17 medicaid sustainability program if such modification is  
18 necessary to obtain federal waiver approval consistent with the  
19 requirements of 42 Code of Federal Regulations section  
20 433.68(e)(2).

21 **§ -6 Medicaid sustainability fee assessments.** (a)  
22 Health insurers shall pay the medicaid sustainability fee to the  
23 department in accordance with this chapter. The fee shall be

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1 divided and paid in twelve equal installments on a monthly  
2 basis.

3 (b) The department shall collect, and each health insurer  
4 shall pay, the medicaid sustainability fee not later than the  
5 thirtieth day after the end of each calendar month.

6 § -7 **Federal approval.** The department shall seek  
7 waivers and any additional approvals from the Centers for  
8 Medicare and Medicaid Services that may be necessary to  
9 implement the medicaid sustainability program.

10 § -8 **Penalties for failure to pay the medicaid**  
11 **sustainability fee.** If a health insurer fails to pay the full  
12 amount of any medicaid sustainability fee when due, the health  
13 insurer shall pay a penalty equal to prime plus two per cent of  
14 the fee that was not paid when due. Any subsequent payments  
15 shall be credited first to unpaid fee amounts beginning with the  
16 most delinquent installment rather than to penalty or interest  
17 amounts. The department may waive the fees of this section for  
18 reasonable cause.

19 § -9 **Special designation of medicaid sustainability**  
20 **program special fund.** Notwithstanding section 37-53, and any  
21 law or any administrative rule to the contrary, the specific  
22 purposes set out in section -4(c) are established as being  
23 the exclusive uses of the medicaid sustainability program

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1 special fund. The medicaid sustainability program special fund  
2 shall not and may not be used for any other purposes,  
3 notwithstanding any authority granted to the governor or any  
4 other state official by any other statutory provisions relating  
5 to the allocation or reallocation of funds."

6 SECTION 3. Section 36-27, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Except as provided in this section, and  
9 notwithstanding any other law to the contrary, from time to  
10 time, the director of finance, for the purpose of defraying the  
11 prorated estimate of central service expenses of government in  
12 relation to all special funds, except the:

- 13 (1) Special out-of-school time instructional program fund  
14 under section 302A-1310;
- 15 (2) School cafeteria special funds of the department of  
16 education;
- 17 (3) Special funds of the University of Hawaii;
- 18 (4) State educational facilities improvement special fund;
- 19 (5) Convention center enterprise special fund under  
20 section 201B-8;
- 21 (6) Special funds established by section 206E-6;
- 22 (7) Aloha Tower fund created by section 206J-17;

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- 1           (8) Funds of the employees' retirement system created by
- 2                    section 88-109;
- 3           (9) Hawaii hurricane relief fund established under chapter
- 4                    431P;
- 5           (10) Hawaii health systems corporation special funds and
- 6                    the subaccounts of its regional system boards;
- 7           (11) Tourism special fund established under section 201B-
- 8                    11;
- 9           (12) Universal service fund established under section 269-
- 10                   42;
- 11           (13) Emergency and budget reserve fund under section 328L-
- 12                   3;
- 13           (14) Public schools special fees and charges fund under
- 14                    section 302A-1130;
- 15           (15) Sport fish special fund under section 187A-9.5;
- 16   [+] (16) [+] Neurotrauma special fund under section 321H-4;
- 17   [+] (17) [+] Glass advance disposal fee established by section
- 18                    342G-82;
- 19   [+] (18) [+] Center for nursing special fund under section 304A-
- 20                    2163;
- 21   [+] (19) [+] Passenger facility charge special fund established
- 22                    by section 261-5.5;

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- 1    [+] (20) [+]   Solicitation of funds for charitable purposes
- 2                   special fund established by section 467B-15;
- 3    [+] (21) [+]   Land conservation fund established by section 173A-
- 4                   5;
- 5    [+] (22) [+]   Court interpreting services revolving fund under
- 6                   section 607-1.5;
- 7    [+] (23) [+]   Trauma system special fund under section 321-22.5;
- 8    [+] (24) [+]   Hawaii cancer research special fund;
- 9    [+] (25) [+]   Community health centers special fund;
- 10   [+] (26) [+]   Emergency medical services special fund;
- 11   [+] (27) [+]   Rental motor vehicle customer facility charge
- 12                   special fund established under section 261-5.6;
- 13   [+] (28) [+]   Shared services technology special fund under
- 14                   section 27-43;
- 15   [+] (29) [+]   Automated victim information and notification system
- 16                   special fund established under section 353-136;
- 17   [+] (30) [+]   Deposit beverage container deposit special fund
- 18                   under section 342G-104;
- 19   [+] (31) [+]   Hospital sustainability program special fund under
- 20                   [+]section 346G-4[+];
- 21   [+] (32) [+]   Nursing facility sustainability program special fund
- 22                   under [+]section 346F-4[+];

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1    [+] (33) [+] Hawaii 3R's school improvement fund under section  
2                    302A-1502.4;

3    [+] (34) [+] After-school plus program revolving fund under  
4                    section 302A-1149.5; [~~and~~]

5    [+] (35) [+] Civil monetary penalty special fund under section  
6                    321-30.2[~~r~~]; and

7        (36) Medicaid sustainability program special fund under  
8        section           -4,

9 shall deduct five per cent of all receipts of all other special  
10 funds, which deduction shall be transferred to the general fund  
11 of the State and become general realizations of the State. All  
12 officers of the State and other persons having power to allocate  
13 or disburse any special funds shall cooperate with the director  
14 in effecting these transfers. To determine the proper revenue  
15 base upon which the central service assessment is to be  
16 calculated, the director shall adopt rules pursuant to chapter  
17 91 for the purpose of suspending or limiting the application of  
18 the central service assessment of any fund. No later than  
19 twenty days prior to the convening of each regular session of  
20 the legislature, the director shall report all central service  
21 assessments made during the preceding fiscal year."

22        SECTION 4. Section 36-30, Hawaii Revised Statutes, is  
23 amended by amending subsection (a) to read as follows:

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- 1        "(a) Each special fund, except the:
- 2            (1) Special out-of-school time instructional program fund
- 3                    under section 302A-1310;
- 4            (2) School cafeteria special funds of the department of
- 5                    education;
- 6            (3) Special funds of the University of Hawaii;
- 7            (4) State educational facilities improvement special fund;
- 8            (5) Special funds established by section 206E-6;
- 9            (6) Aloha Tower fund created by section 206J-17;
- 10          (7) Funds of the employees' retirement system created by
- 11                    section 88-109;
- 12          (8) Hawaii hurricane relief fund established under chapter
- 13                    431P;
- 14          (9) Convention center enterprise special fund established
- 15                    under section 201B-8;
- 16          (10) Hawaii health systems corporation special funds and
- 17                    the subaccounts of its regional system boards;
- 18          (11) Tourism special fund established under section 201B-
- 19                    11;
- 20          (12) Universal service fund established under section 269-
- 21                    42;
- 22          (13) Emergency and budget reserve fund under section 328L-
- 23                    3;

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- 1 (14) Public schools special fees and charges fund under  
2 section 302A-1130;
- 3 (15) Sport fish special fund under section 187A-9.5;
- 4 [†] (16) [†] Neurotrauma special fund under section 321H-4;
- 5 [†] (17) [†] Center for nursing special fund under section 304A-  
6 2163;
- 7 [†] (18) [†] Passenger facility charge special fund established  
8 by section 261-5.5;
- 9 [†] (19) [†] Court interpreting services revolving fund under  
10 section 607-1.5;
- 11 [†] (20) [†] Trauma system special fund under section 321-22.5;
- 12 [†] (21) [†] Hawaii cancer research special fund;
- 13 [†] (22) [†] Community health centers special fund;
- 14 [†] (23) [†] Emergency medical services special fund;
- 15 [†] (24) [†] Rental motor vehicle customer facility charge  
16 special fund established under section 261-5.6;
- 17 [†] (25) [†] Shared services technology special fund under  
18 section 27-43;
- 19 [†] (26) [†] Nursing facility sustainability program special fund  
20 established pursuant to [†]section 346F-4[†];
- 21 [†] (27) [†] Automated victim information and notification system  
22 special fund established under section 353-136;

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1    ~~[+]~~ (28) ~~[+]~~ Hospital sustainability program special fund under  
2                                   ~~[+]~~section 346G-4~~[+]~~; ~~[and]~~

3    ~~[+]~~ (29) ~~[+]~~ Civil monetary penalty special fund under section  
4                                   321-30.2~~[+]~~; and

5       (30) Medicaid sustainability program special fund under  
6       section                   -4,

7 shall be responsible for its pro rata share of the  
8 administrative expenses incurred by the department responsible  
9 for the operations supported by the special fund concerned."

10       SECTION 5. There is appropriated out of the medicaid  
11 sustainability program special fund the sum of \$100,000,000 or  
12 so much thereof as may be necessary for fiscal year 2021-2022  
13 and the same sum or so much thereof as may be necessary for  
14 fiscal year 2022-2023 for the purposes of the medicaid  
15 sustainability program.

16       The sums appropriated shall be expended by the department  
17 of human services for the purposes of this Act.

18       SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20       SECTION 7. This Act, upon its approval, shall take effect  
21 on July 1, 2021, and shall be repealed on December 31, 2023;  
22 provided that section           -4, Hawaii Revised Statutes, in  
23 section 2 of this Act and section 3 and section 4 of this Act

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1 shall be repealed on June 30, 2024, and section 36-27(a) and 36-  
2 30(a), Hawaii Revised Statutes, shall be reenacted on June 30,  
3 2024, in the form in which they read on the day before the  
4 effective date of this Act.

5

6

INTRODUCED BY:

*M. N. H.*

7

BY REQUEST

8

**S .B. NO. 1132**

1 **Report Title:**

2 Medicaid Sustainability Program; Appropriation

3

4 **Description:**

5 Establishes the Medicaid Sustainability Program for two years.

6 Appropriates funds out of the Medicaid Sustainability Program

7 Special Fund for fiscal years 2021-2022 and 2022-2023.

8

9 *The summary description of legislation appearing on this page is for informational*  
10 *purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE MEDICAID SUSTAINABILITY PROGRAM.

PURPOSE: To establish a Medicaid Sustainability Program by assessing a provider fee on health insurers and establishing a special fund exempted from the central service expenses assessment and the administrative expenses assessment under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, respectively.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS) and amend sections 36-27(a) and 36-30(a), HRS.

JUSTIFICATION: In Hawaii, a Medicaid sustainability fee assessed on health insurers would help guarantee access to critical Medicaid benefits such as supportive housing, behavioral health, vaccinations, preventive health, primary care, and home- and community-based services at a time when constraints on the State's budget due to the COVID-19 pandemic may force a reduction in payments. As such, the provider fee would help preserve access to health care for the Medicaid population and sustain the State's entire healthcare system.

Medicaid is jointly financed by the federal and state governments by statutory formula; the federal government pays between fifty percent and seventy-four percent of Medicaid costs incurred by states for care delivered to their Medicaid beneficiaries. Under federal rules, the state share must be paid through public funds that are not federal funds.

Provider fees, which are collected from specific categories of health care providers, may be imposed on different

classes of health care services, including the revenue of health insurers. Such fees can help offset possible cuts to Medicaid beneficiary benefits, provider rates or other Medicaid programs.

Impact on the public: Hawaii residents benefit by having a more sustainable Medicaid program so that health care services for low-income, vulnerable residents will be maintained.

Impact on the department and other agencies: The Department of Human Services will benefit by receiving funds to support its programs.

GENERAL FUND: None.

OTHER FUNDS: \$100,000,000 Medicaid Sustainability Program Special Fund for fiscal year 2021-2022 and \$100,000,000 for fiscal year 2022-2023.

PPBS PROGRAM DESIGNATION: HMS 401.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2021.