

---

---

# A BILL FOR AN ACT

RELATING TO THE HOSPITAL SUSTAINABILITY PROGRAM.

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

1           SECTION 1. The legislature finds that the hospital  
2 sustainability program, established by Act 217, Session Laws of  
3 Hawaii 2012, has served a critical role in strengthening the  
4 health care system in Hawaii. In the nine years since its  
5 inception, the hospital sustainability program has helped acute  
6 care facilities treat the most vulnerable patients in the State,  
7 especially low-income individuals who require hospital services.  
8 The program has been carried out in a public-private partnership  
9 to ensure that patients in Hawaii can access quality, affordable  
10 care.

11           The legislature further finds that, even with this program,  
12 hospitals in the State face major financial challenges. These  
13 challenges are due in part to the health and financial pressures  
14 related to the coronavirus disease 2019 (COVID-19) pandemic.  
15 Medicaid is jointly financed by the federal and state  
16 governments by statutory formula. The federal government pays  
17 between fifty per cent and seventy-four per cent, with



1 assistance levels determined by each state's per capita income.  
2 States with the lowest per capita income receive higher federal  
3 matching rates. Under federal rules, the state share must be  
4 paid from public funds that are not federal funds. The  
5 legislature finds that provider fees may be established to  
6 provide public funding to help financially sustain Hawaii's  
7 hospitals.

8 The legislature further finds that provider fees are used  
9 in forty-nine states and the District of Columbia to draw down  
10 federal funds to sustain medicaid programs. The fees have been  
11 employed due to rising state budget deficits, increasing health  
12 care costs, and expanding medicaid enrollment. Provider fees,  
13 which are collected from specific categories of health care  
14 providers that agree to the fee, may be imposed on nineteen  
15 different classes of health care services, including inpatient  
16 and outpatient hospital and nursing facility services.

17 The legislature therefore finds that, in Hawaii, a hospital  
18 provider fee can result in substantial increases in medicaid  
19 payments without putting additional constraints on the State's  
20 budget. The additional federal funds obtained via the fee  
21 program authorized by the hospital sustainability program can



1 maintain access to care for medicaid recipients. This will  
2 allow hospitals in the State to continue to serve uninsured or  
3 underinsured patients in a timely, effective manner. This helps  
4 to ensure the overall sustainability of the health care system  
5 in Hawaii during the challenging time of the COVID-19 pandemic.

6 The purpose of this Act is to preserve access to health  
7 care for medicaid recipients by extending the hospital  
8 sustainability program.

9 SECTION 2. Section 346G-3, Hawaii Revised Statutes, is  
10 amended by adding a new definition to be appropriately inserted  
11 and to read as follows:

12 "Net benefit" means total payments using prevailing  
13 federal medical assistance percentage rates made to private  
14 hospitals, less the taxes paid under the hospital sustainability  
15 program."

16 SECTION 3. Section 346G-4, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[~~§~~346G-4(~~1~~)] **Hospital sustainability program special**  
19 **fund.** (a) There is created in the state treasury the hospital  
20 sustainability program special fund to be administered by the



1 department into which shall be deposited all moneys collected  
2 under this chapter.

3 (b) Moneys in the hospital sustainability program special  
4 fund shall consist of:

5 (1) All revenue received by the department from the  
6 hospital sustainability fee;

7 (2) All federal medicaid funds received by the department  
8 as a result of matching expenditures made with the  
9 hospital sustainability fee;

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

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

14 (c) Moneys in the hospital sustainability program special  
15 fund shall be used exclusively as follows:

16 (1) No less than [~~eighty-eight~~] ninety per cent of the  
17 revenue from the hospital sustainability fee shall be  
18 used for one or more of the following[+] purposes:

19 (A) [~~Match~~] To match federal medicaid funds, with the  
20 combined total to be used to enhance capitated  
21 rates to medicaid managed care health plans for



- 1 the sole purpose of increasing medicaid payments  
2 to private hospitals;
- 3 (B) [~~Match~~] To match federal medicaid funds for  
4 Hawaii's medicaid disproportionate share hospital  
5 allotment, as authorized by current federal law  
6 for private hospitals;
- 7 (C) [~~Match~~] To match federal medicaid funds for a  
8 private hospital upper payment limit pool; [~~or~~]
- 9 (D) [~~Match~~] To match federal medicaid funds with the  
10 combined total to be used to enhance capitated  
11 rates to medicaid managed care health plans for  
12 the purpose of increasing medicaid payments to  
13 private hospitals through [~~a~~] quality or access  
14 incentive [~~pool~~] programs; or
- 15 (E) To match federal medicaid funds with the combined  
16 total to fund medicaid services, including  
17 supportive housing, behavioral health,  
18 vaccinations, preventive health, primary care,  
19 and home and community-based services;



1 (2) [~~Twelve~~] Ten per cent of the moneys in the hospital  
2 sustainability program special fund may be used by the  
3 department for other departmental purposes; and

4 (3) Any money remaining in the hospital sustainability  
5 program special fund six months after the repeal of  
6 this chapter, shall be distributed to hospitals within  
7 thirty days in the same proportions as received from  
8 the hospitals.

9 (d) The department shall [~~utilize~~] use federal funds  
10 derived from state hospital certified expenditures to make  
11 supplemental payments to state hospitals and [~~is authorized to~~]  
12 may receive intergovernmental transfers from the state hospitals  
13 to support direct supplemental payments and increased capitation  
14 rates to health plans for the benefit of the state hospitals.  
15 During any period in which the hospital sustainability fee is in  
16 effect, certified expenditures of state hospitals shall not be  
17 used to make or support direct payments to private hospitals.

18 (e) The aggregate net benefit for private hospitals shall  
19 not be less than the aggregate net benefit provided by the  
20 hospital sustainability program for fiscal year 2021. If  
21 factors affecting the calculation of the aggregate net benefit,



1 including medicaid membership, differ materially from the  
2 assumptions used to determine aggregate net benefit in a given  
3 fiscal year, the department shall consult with the hospital  
4 trade association on potential changes to the aggregate net  
5 benefit and changes shall be made if agreed to in writing by  
6 both parties."

7 SECTION 4. Section 346G-5, Hawaii Revised Statutes, is  
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) The hospital sustainability fee for inpatient care  
10 services may differ from the fee for outpatient care services  
11 but the fees charged to the hospital shall not in the aggregate  
12 exceed [~~four~~] five and one-half per cent of the hospital's net  
13 patient service revenue. The inpatient hospital sustainability  
14 fee shall not exceed [~~four~~] five and one-half per cent of net  
15 inpatient hospital service revenue. The outpatient hospital  
16 sustainability fee shall not exceed [~~four~~] five and one-half  
17 per cent of net outpatient hospital service revenue. Each fee  
18 shall be the same percentage for all affected hospitals, subject  
19 to subsection (d).

20 (d) The department shall exempt [~~children's hospitals,~~]  
21 federal hospitals[~~7~~] and public hospitals[~~7~~ and ~~psychiatric~~



1 ~~hospitals]~~ from the hospital sustainability fees on inpatient  
2 services[~~. In addition, the department shall exempt from the~~  
3 ~~hospital sustainability fee on]~~ and outpatient care services  
4 [~~federal hospitals and public hospitals; provided that the]~~.

5 Children's hospitals, psychiatric hospitals, and  
6 rehabilitation hospitals may be assessed hospital sustainability  
7 fees on inpatient and outpatient services at a different rate  
8 than other private hospitals. The department may also exclude  
9 any facility from the hospital sustainability fee if it is  
10 determined that its exclusion is required to meet federal  
11 standards of approval."

12 SECTION 5. Section 346G-6, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) The department shall collect, and each hospital shall  
15 pay, if so required, the hospital sustainability fee [~~not~~] no  
16 later than the [~~thirtieth~~] sixtieth day after the end of each  
17 calendar month; provided that if required federal approvals have  
18 not been secured by the end of a calendar month, the fees for  
19 that month shall be paid within ten days after notification to  
20 the hospitals that the required approvals have been received."



1 SECTION 6. Section 346G-10, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. Amending subsection (b) to read:

4 "(b) In accordance with title 42 Code of Federal  
5 Regulations part 438, the department shall use revenues from the  
6 hospital sustainability fee and federal matching funds to  
7 enhance the capitated rates paid to medicaid managed care health  
8 plans for [~~state fiscal years 2019-2020 and 2020-2021,~~] the  
9 period of July 1 through December 31, 2021, and calendar  
10 years 2022 and 2023, consistent with the following objectives:

11 (1) The rate enhancement shall be used exclusively for  
12 increasing reimbursements to private hospitals, to  
13 support the availability of services and to ensure  
14 access to care to the medicaid managed care health  
15 plan enrollees;

16 (2) The rate enhancement shall be made part of the monthly  
17 capitated rates by the department to medicaid managed  
18 care health plans, which shall provide documentation  
19 to the department and the hospital trade association  
20 located in Hawaii certifying that the revenues



- 1 received under paragraph (1) are used in accordance  
2 with this section;
- 3 (3) The rate enhancement shall be actuarially sound and  
4 approved by the federal government for federal fund  
5 participation;
- 6 (4) The rate enhancements shall be retroactive to July 1,  
7 2012, or the effective date approved by the federal  
8 government, whichever is later. Retroactive rate  
9 enhancements shall be paid within thirty days of  
10 notification by the Centers for Medicare and Medicaid  
11 Services to the department of all necessary approvals;  
12 and
- 13 (5) Payments made by the medicaid managed care health  
14 plans shall be made within thirty business days upon  
15 receipt of monthly capitation rates from the  
16 department."
- 17 2. Amending subsection (d) to read:
- 18 "(d) To the extent the hospital sustainability program is  
19 not effective for the entire year, the hospital sustainability  
20 fee, the state medicaid expenses and administrative fee, and the  
21 corresponding [~~medicaid managed care health plan~~] payments to



1 fulfill the requirements of section 346G-4(c) shall be based on  
2 the proportion of the fiscal year the program is in effect."

3 SECTION 7. Section 346G-12, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§346G-12 Termination.** (a) Collection of the hospital  
6 sustainability fee established by section 346G-5 shall be  
7 discontinued if:

- 8 (1) The required federal approvals specified in  
9 section 346G-7 are not granted or are revoked by the  
10 Centers for Medicare and Medicaid Services;
- 11 (2) The department reduces funding for hospital services  
12 below the state appropriation in effect as of July 1,  
13 [~~2020~~] 2021;
- 14 (3) The department or any other state agency uses the  
15 money in the hospital sustainability program special  
16 fund for any use other than the uses permitted by this  
17 chapter; or
- 18 (4) Federal financial participation to match the revenue  
19 from the hospital sustainability fee becomes  
20 unavailable under federal law; provided that the  
21 department shall terminate the imposition of the



1 hospital sustainability fee beginning on the date the  
2 federal statutory, regulatory, or interpretive change  
3 takes effect.

4 (b) [~~Notwithstanding section 346G-4(e), if~~] If collection  
5 of the hospital sustainability fee is discontinued as provided  
6 in this section, any remaining moneys in the hospital  
7 sustainability program special fund shall be distributed [~~within~~  
8 ~~thirty days to the private hospitals on the same basis as the~~  
9 ~~hospital sustainability fee was collected.~~] pursuant to  
10 section 346G-4(c)."

11 SECTION 8. Act 217, Session Laws of Hawaii 2012, as  
12 amended by section 2 of Act 141, Session Laws of Hawaii 2013, as  
13 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as  
14 amended by Section 2 of Act 70, Session Laws of Hawaii 2015, as  
15 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as  
16 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as  
17 amended by section 6 of Act 173, Session Laws of Hawaii 2019, is  
18 amended by amending section 5 to read as follows:

19 "SECTION 5. This Act shall take effect on July 1, 2012,  
20 and shall be repealed on [~~June 30, 2021,~~] December 31, 2023;  
21 provided that section -4, Hawaii Revised Statutes, in



1 section 2 of this Act, and the amendment to section 36-30(a),  
2 Hawaii Revised Statutes, in section 3 of this Act, shall be  
3 repealed on [~~December 31, 2021.~~] June 30, 2024."

4 SECTION 9. Act 123, Session Laws of Hawaii 2014, as  
5 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as  
6 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as  
7 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as  
8 amended by section 7 of Act 173, Session Laws of Hawaii 2019, is  
9 amended by amending section 7 to read as follows:

10 "SECTION 7. This Act shall take effect on June 29, 2014;  
11 provided that:

- 12 (1) Section 5 shall take effect on July 1, 2014; and
- 13 (2) The amendments made to sections 36-27(a) and 36-30(a),  
14 Hawaii Revised Statutes, in sections 3 and 4 of this  
15 Act shall be repealed on [~~December 31, 2021.~~] June 30,  
16 2024."

17 SECTION 10. There is appropriated out of the hospital  
18 sustainability program special fund the sum of \$ or so  
19 much thereof as may be necessary for fiscal year 2021-2022 and  
20 the same sum or so much thereof as may be necessary for fiscal



1 year 2022-2023 for the purposes of the hospital sustainability  
2 program special fund.

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

5 SECTION 11. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 12. This Act shall take effect on July 1, 2060;  
8 provided that sections 9 and 10 of this Act shall take effect on  
9 July 1, 2021.



**Report Title:**

Hospital Sustainability Program; Extension; Special Fund;  
Appropriation

**Description:**

Extends the hospital sustainability program through 6/30/2024. Increases the maximum fee for inpatient care services to five and one-half per cent. Increases the amount of time hospitals have to pay the hospital sustainability fee from thirty days to sixty days. Increases the pool of medicaid services that can be used for matching purposes. Appropriates moneys. Effective 7/1/2060. (HD2)

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

