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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE FACILITIES.

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

1           SECTION 1. Long-term care facilities in the State face  
2 major financial challenges in providing quality health care for  
3 Hawaii residents. These challenges are largely the result of  
4 payments to medicaid enrollees for care that do not cover the  
5 actual costs of care. The legislature finds that federal  
6 funding to help sustain Hawaii's long-term care facilities  
7 financially may be accessed through a provider fee.

8           Provider fees exist in forty-seven states and the District  
9 of Columbia as a means of drawing down federal funds to sustain  
10 their medicaid programs due to rising state budget deficits,  
11 increasing health care costs, and expanding medicaid rolls.  
12 Implementation of a provider fee in Hawaii would help stabilize  
13 declining medicaid payments to facilities and slow the erosion  
14 of access to care for beneficiaries served by the program.

15           Medicaid is jointly financed by the federal and state  
16 government, but by statutory formula, the federal government  
17 pays between fifty per cent and seventy-four per cent of  
18 medicaid costs incurred by states for care delivered to their



1    medicaid beneficiaries. Federal medical assistance percentages  
2    vary by state, with states that have lower per capita incomes  
3    receiving higher federal matching rates. Under federal rules,  
4    the state share must be public funds that are not federal funds.

5            Provider fees, which are collected from specific categories  
6    of health care items and services, may be assessed on nineteen  
7    different classes of health care services, including inpatient  
8    and outpatient hospital and nursing facility services. However,  
9    there are limitations on the way provider fees are structured.  
10   The Medicaid Voluntary Contribution and Provider-Specific Tax  
11   Amendments of 1991, P.L. 102-234, passed by Congress in 1991,  
12   imposes the following requirements:

13           (1) Broad-based. To be considered broad-based, a provider  
14            fee must be imposed on all health care items or  
15            services furnished by all non-federal, non-public  
16            providers in the class in the State. Provider fee  
17            programs may exclude public facilities without  
18            violating federal law;

19           (2) Uniformly imposed. In general, a provider fee is  
20            uniformly imposed if it is the same amount or rate for  
21            each provider in the class; and



1           (3) Hold harmless prohibition. States may not hold  
2           providers harmless. A provider fee is considered to  
3           hold a provider harmless if the providers paying the  
4           fee receive, directly or indirectly, a non-medicaid  
5           payment from the state or any offset or waiver that  
6           guarantees to hold the provider harmless for all or a  
7           portion of the fee. A provider fee is also considered  
8           to hold the provider harmless if the medicaid payments  
9           to the provider vary based only on the amount of the  
10          fees paid by the provider.

11          The maximum provider fee a state may receive is currently  
12          six per cent of net patient revenue. A number of proposals have  
13          been made, but not implemented, to eliminate medicaid provider  
14          fee programs in order to reduce the federal deficit. However,  
15          since provider fees are used by so many states, many of those  
16          who are knowledgeable about this subject view elimination of  
17          provider fees as unlikely due to strong political support for  
18          the program. A more realistic expectation is a reduction of the  
19          provider fee maximum, as proposed by President Barack Obama's  
20          fiscal year 2012 budget, which would reduce the maximum to three  
21          and one-half per cent in 2017. This proposal recognizes that



1 provider fees are essential for most states to maintain a  
2 stable, functioning medicaid program.

3 In Hawaii, a provider fee would increase medicaid payments  
4 at a time when constraints on the State's budget have forced a  
5 reduction in payments and optional benefits. The additional  
6 federal funds obtained via the fee program would reduce the  
7 amount of losses incurred by nursing facilities. As such, the  
8 provider fee would help preserve access to health care for the  
9 medicaid population and sustain the State's entire health care  
10 system.

11 The purpose of this Act is to ensure access to health care  
12 for medicaid recipients by establishing a nursing facility  
13 sustainability fee and a special fund to receive moneys from the  
14 nursing facility sustainability fee in order to receive federal  
15 medicaid matching funds under the QUEST Expanded Medicaid  
16 Section 1115 Demonstration Waiver.

17 SECTION 2. The Hawaii Revised Statutes is amended by  
18 adding a new chapter to be appropriately designated and to read  
19 as follows:

20 **"CHAPTER**  
21 **NURSING FACILITY SUSTAINABILITY PROGRAM**



1           **§ -1 Title.** This chapter shall be known and may be  
2 cited as the "Nursing Facility Sustainability Program Act".

3           **§ -2 Findings and declaration of necessity.** It is the  
4 intent of the legislature to encourage the drawdown of federal  
5 medicaid funds by establishing a special fund within the state  
6 treasury to receive revenue from the nursing facility  
7 sustainability fee to be administered by the department and to  
8 use it to receive federal medicaid matching funds under the  
9 Section 1115 waiver.

10          **§ -3 Definitions.** As used in this chapter:

11           "Continuing care retirement community" means an entity  
12 providing nursing facility services, along with assisted living  
13 or independent living on a contiguous campus with the number of  
14 assisted living and independent living beds in the aggregate  
15 being at least twice the number of nursing facility beds. For  
16 purposes of this definition, "contiguous" means land adjoining  
17 or touching other property held by the same or related  
18 organization, and includes land divided by a public road.

19           "Department" means the department of human services.

20           "Net patient service revenue" means gross inpatient  
21 revenues from services provided to nursing facility patients  
22 less reductions from gross inpatient revenue resulting from an



1 inability to collect payment of charges. Inpatient service  
2 revenue excludes non-patient care revenues, such as revenues  
3 from beauty and barber services, vending income, interest and  
4 contributions, revenues from the sale of meals, and all  
5 outpatient revenues. Reductions from gross revenue include  
6 contractual adjustments; uncompensated care; administrative,  
7 courtesy, and policy discounts and adjustments; and other  
8 revenue deductions.

9 "Nursing facility" means any facility licensed pursuant to  
10 chapter 11-94.1, Hawaii Administrative Rules.

11 "QUEST" means the demonstration project developed by the  
12 department described in Hawaii's Section 1115 waiver and  
13 includes the QUEST, QUEST-Net, and QUEST-Ace components.

14 "QUEST expanded access" means the demonstration project  
15 developed by the department described in Hawaii's Section 1115  
16 waiver.

17 "Resident day" means a calendar day of care provided to a  
18 nursing facility resident, including the day of admission and  
19 excluding the day of discharge; provided that one resident day  
20 shall be deemed to exist when admission and discharge occur on  
21 the same day. A resident day includes a day on which a bed is



1 held for a patient and for which the facility receives  
2 compensation for holding the bed.

3 "Section 1115 waiver" means the QUEST Expanded Medicaid  
4 Section 1115 Demonstration Waiver (Number 11-W-00001/9).

5 **§ -4 Nursing facility sustainability program special**  
6 **fund.** (a) There is created in the state treasury the nursing  
7 facility sustainability program special fund to be administered  
8 by the department and into which shall be deposited all moneys  
9 collected under this chapter.

10 (b) Moneys in the special fund shall consist of:

11 (1) All revenues collected or received by the department  
12 from the nursing facility sustainability fee required  
13 by this chapter;

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

16 (3) Any appropriations, federal funds, donations, gifts,  
17 or moneys from any other sources.

18 (c) Revenue from the nursing facility sustainability fee  
19 shall be used exclusively as follows:

20 (1) No less than ninety-five per cent of the revenue from  
21 the nursing facility sustainability fee shall be used  
22 to match federal medicaid funds, with the combined



1 total to be used to enhance capitated rates to the  
2 QUEST and QUEST expanded access plans for the purpose  
3 of increasing medicaid nursing facility payments to  
4 the maximum permitted by federal law;

5 (2) An amount not to exceed per cent of the revenue  
6 from the nursing facility sustainability fee shall be  
7 used to pay administrative expenses;

8 (3) Any portion of the revenue not used as set forth in  
9 paragraph (c)(1) may be used to support the medicaid  
10 program of the department, including payment of  
11 administrative expenses; and

12 (4) All moneys remaining in the special fund on the last  
13 day of the fiscal year shall be distributed to nursing  
14 facilities within thirty days in the same proportions  
15 as received from the nursing facilities.

16 **§ -5 Nursing facility sustainability fee.** (a)

17 Effective July 1, 2012, the department shall charge and collect  
18 a nursing facility sustainability fee on health care items or  
19 services provided by nursing facilities.

20 (b) The nursing facility sustainability fee shall be based  
21 on the net patient service revenue of all nursing facilities





1 that are subject to the sustainability fee, as determined by the  
2 department.

3 (c) The nursing facility sustainability fee shall not  
4 exceed three per cent of net patient service revenue and shall  
5 be calculated and paid on a per resident day basis. The fee  
6 shall be the same amount for each affected facility, except as  
7 prescribed in subsection (d)(2).

8 (d) In accordance with the redistribution method set forth  
9 in title 42 Code of Federal Regulations section 433.68(e)(1) and  
10 (2), the department shall seek a waiver of the broad-based and  
11 uniformity provider fee requirements under federal law from  
12 which to exclude certain nursing facilities and to permit  
13 certain high volume medicaid nursing facilities or facilities  
14 with a high number of total annual patient days to pay the  
15 sustainability fee at a lesser amount per resident day, as  
16 follows:

17 (1) The department shall exempt the following nursing  
18 facility providers from the nursing facility  
19 sustainability fee subject to federal approval under  
20 title 42 Code of Federal Regulations section  
21 433.68(e)(2):



- 1 (A) Nursing facilities with twenty-eight or fewer
- 2 medicaid-licensed beds;
- 3 (B) Nursing facilities owned or operated by the
- 4 Hawaii health systems corporation; and
- 5 (C) Continuing care retirement communities;
- 6 (2) The department shall reduce the fee for high volume
- 7 medicaid nursing facilities or facilities with high
- 8 patient volumes that meet the redistributive tests of
- 9 title 42 Code of Federal Regulations section
- 10 433.68(e)(2); and
- 11 (3) The department, with agreement by the nursing facility
- 12 trade associations located in Hawaii, may modify, add
- 13 to, or reduce the categories of facilities exempt from
- 14 the assessment if necessary to obtain and maintain
- 15 approval of the waiver by the Centers for Medicare and
- 16 Medicaid Services, if the modification is consistent
- 17 with the purpose of this chapter.

18 **§ -6 Nursing facility sustainability fee assessment.**

- 19 (a) Nursing facilities shall pay the nursing facility
- 20 sustainability fee to the nursing facility sustainability
- 21 program special fund in accordance with this chapter.



1 (b) The department shall determine, with agreement by the  
2 nursing facility trade associations located in Hawaii, the fee  
3 rate prospectively for the applicable fiscal year.

4 (c) The department shall collect, and each nursing  
5 facility shall pay in twelve equal installments, the nursing  
6 facility sustainability fee in section -5 on a monthly basis,  
7 subject to the terms of this section. The fee shall be due  
8 within thirty days after the end of each month, with the initial  
9 payment due forty-five days after the required federal approvals  
10 for the assessment and any increase in health plan capitation  
11 payments have been secured from the Centers for Medicare and  
12 Medicaid Services.

13 **§ -7 Federal approval.** The department shall seek a  
14 waiver and other approvals from the Centers for Medicare and  
15 Medicaid Services that may be necessary to implement the nursing  
16 facility sustainability program, including the approval of the  
17 contracts between the State and the QUEST and QUEST expanded  
18 access health plans.

19 **§ -8 Multifacility locations.** If an entity conducts,  
20 operates, or maintains more than one nursing facility, the  
21 entity shall pay the nursing facility sustainability fee for  
22 each nursing facility separately.



1           **§ -9 Penalties for failure to pay nursing facility**  
2 **sustainability fee.** (a) If a nursing facility fails to pay the  
3 full amount of the nursing facility sustainability fee when due,  
4 there shall be added to the fee, unless waived by the department  
5 for reasonable cause, a penalty equal to two per cent of the fee  
6 that was not paid when due. Any subsequent payments shall be  
7 credited first to unpaid fee amounts rather than to penalty or  
8 interest amounts, beginning with the most delinquent  
9 installment.

10           (b) In addition to the penalty identified in this section,  
11 the department may seek any of the following remedies for  
12 failure of any nursing facility to pay its fee when due:

13           (1) Withholding any medical assistance reimbursement  
14                 payments until such time as the fee amount is paid in  
15                 full;

16           (2) Suspension or revocation of the nursing facility  
17                 license; or

18           (3) Development of a plan that requires the nursing  
19                 facility to pay any delinquent fee in installments.

20           **§ -10 Enhanced rates to QUEST and QUEST expanded access**  
21 **plans.** (a) In accordance with title 42 Code of Federal  
22 Regulations section 438, the department shall use revenues from



1 the nursing facility sustainability fee and federal matching  
2 funds to enhance the capitated rates paid to the QUEST and QUEST  
3 expanded access plans for the subject fiscal year consistent  
4 with the following objectives:

5 (1) The rate enhancement shall be used exclusively for  
6 increasing nursing facility reimbursements to support  
7 the availability of services and to ensure access to  
8 care to QUEST and QUEST expanded access enrollees;

9 (2) The rate enhancement shall be made part of the monthly  
10 capitated rates by the department to the QUEST and  
11 QUEST expanded access plans, which shall provide  
12 documentation to the department and nursing facility  
13 trade associations located in Hawaii certifying that  
14 the revenues received under paragraph (1) are used in  
15 accordance with this section;

16 (3) The rate enhancement shall be actuarially sound and  
17 approved by the federal government for federal fund  
18 participation; and

19 (4) The rate enhancement shall first reimburse the  
20 medicaid share of the assessment to each facility,  
21 with the remainder being an equal per diem per  
22 medicaid day to each facility.



1           **§ -11 Payment of rate enhancement.** The rate  
2 enhancements referred to in section -10 shall be retroactive  
3 to the effective date of this legislation. Retroactive rate  
4 enhancements shall be paid within thirty days of notification by  
5 the Centers for Medicare and Medicaid Services to the department  
6 of the waiver and plan amendment approval.

7           **§ -12 Termination.** (a) Collection of the nursing  
8 facility sustainability fee under section -5 shall be  
9 discontinued if:

10           (1) The waiver in section -7 or the enhanced capitation  
11 rates in section -10 have not been approved by the  
12 Centers for Medicare and Medicaid Services;

13           (2) The department reduces funding for nursing facility  
14 services below the state appropriation in effect on  
15 June 30, 2012;

16           (3) The department or any other state agency uses the  
17 money in the special fund for any use other than the  
18 uses permitted pursuant to this chapter; or

19           (4) Federal financial participation to match the nursing  
20 facility sustainability fee becomes unavailable under  
21 federal law. In such case, the department shall  
22 terminate the collection of the fee beginning on the



1 effective date of the federal statutory, regulatory,  
2 or interpretive change.

3 (b) If collection of the nursing facility sustainability  
4 fee is discontinued as provided in this section, all moneys in  
5 the special fund shall be returned to the nursing facilities  
6 from which the fee was collected within thirty days in the same  
7 proportions as received from the nursing facilities.

8 **§ -13 Severability.** If any provision of this chapter or  
9 the application thereof to any person or circumstance is held  
10 invalid, the invalidity shall not affect other provisions or  
11 applications of the chapter which can be given effect without  
12 the invalid provision or application, and to this end the  
13 provisions of this chapter are severable."

14 SECTION 3. This Act shall take effect on July 1, 2050.



**Report Title:**

Long-Term Care Facilities; Nursing Sustainability Fee; Nursing Facility Sustainability Program Special Fund

**Description:**

Establishes the nursing facility sustainability program special fund into which nursing facility sustainability fees shall be deposited. Requires the Department of Human Services to charge and collect a provider fee on health care items or services provided by nursing facilities. Effective July 1, 2050.

(SB2466 HD2)

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

