



GOV. MSG. NO. 1320

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 03, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

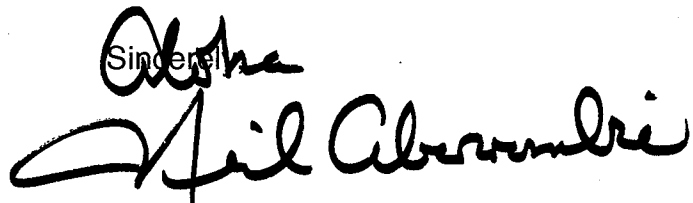
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 03, 2012, the following bill was signed into law:

HB2275 HD2 SD2 CD1

RELATING TO HOSPITALS.  
**Act 217 (12)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on JUL 3 2012  
HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

ORIGINAL

ACT 217  
H.B. NO. 2275  
H.D. 2  
S.D. 2  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO HOSPITALS.

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

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

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

16           Medicaid is jointly financed by the federal and state  
17 governments, but by statutory formula, the federal government



1 pays between fifty per cent and seventy-four per cent of  
2 medicaid costs incurred by states for care delivered to their  
3 medicaid beneficiaries. Federal assistance percentages vary by  
4 state, with states that have lower per capita incomes receiving  
5 higher federal matching rates. Under federal rules, the state  
6 share must be paid through public funds that are not federal  
7 funds.

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

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



- 1 (2) Uniformly imposed. In general, a provider fee is  
2 uniformly imposed if it is the same amount or rate for  
3 each provider in the class; and
- 4 (3) Hold harmless prohibition. States may not hold  
5 providers harmless. A provider fee is considered to  
6 hold the provider harmless if the providers paying the  
7 fee receive, directly or indirectly, non-medicaid  
8 payments from the state that are positively correlated  
9 to the fee paid, or any offset or waiver that  
10 guarantees to hold the provider harmless for all or a  
11 portion of the fee. A provider fee is also considered  
12 to hold the provider harmless if the medicaid payments  
13 to the providers vary based only on the amount of the  
14 total fees paid by the provider.

15 The maximum provider fee a state may impose is currently  
16 six per cent of net patient revenue. A number of proposals have  
17 been made, but not implemented, to eliminate or reduce the  
18 limits on medicaid provider fee programs. However, because  
19 provider fees are used by so many states, many of those who are  
20 knowledgeable about this subject view elimination of provider  
21 fees as unlikely due to their strong political support. A more



1 realistic expectation is a reduction of the provider fee  
2 maximum, as proposed by President Barack Obama's fiscal year  
3 2012 budget, which would reduce the maximum to three and one-  
4 half per cent in 2017. This proposal recognizes that provider  
5 fees are essential for most states to maintain a stable,  
6 functioning medicaid program.

7 In Hawaii, a provider fee would allow an increase in  
8 medicaid payments at a time when constraints on the State's  
9 budget have forced a reduction in payments and benefits. The  
10 additional federal funds for hospital payments obtained via the  
11 fee program would reduce the amount of losses incurred by  
12 hospitals. As such, the provider fee would help preserve access  
13 to health care for the medicaid population and sustain the  
14 State's entire health care system.

15 State hospitals will not be covered by the hospital  
16 sustainability fee. However, other provisions of this law are  
17 intended to assure that state hospitals will benefit from the  
18 use of their certified expenditures and intergovernmental  
19 transfers to generate federal funds to cover their operating  
20 expenses.





1 hospital sustainability fee to be administered by the department  
2 and to use the revenue from the fee and associated federal  
3 medicaid matching funds to make direct payments to hospitals and  
4 for other purposes as set forth in this chapter.

5 **§ -3 Definitions.** As used in this chapter:

6 "Department" means the department of human services.

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

10 "Hospital" means any facility licensed pursuant to chapter  
11 11-93, Hawaii Administrative Rules.

12 "Inpatient care" means the care of patients whose  
13 conditions require admission to a hospital.

14 "Net patient service revenue" means gross revenue from  
15 inpatient and outpatient care provided to hospital patients  
16 converted to net patient revenue utilizing data from Worksheets  
17 G-2 and G-3 of each hospitals medicare cost report for the  
18 period ending between July 1, 2009, and June 30, 2010. If the  
19 hospital is new or did not file a fiscal year medicare cost  
20 report, the department shall obtain the hospital's net patient  
21 service revenue from the most recent period available.



1 "Outpatient care" means all services furnished by hospitals  
2 to patients who are registered as hospital outpatients.

3 "Private hospital" means those hospitals named in  
4 attachment A of the QUEST expanded medicaid section 1115  
5 demonstration waiver that are currently operating.

6 "Section 1115 waiver" means the QUEST expanded medicaid  
7 section 1115 demonstration waiver (Number 11-W-00001/9).

8 **§ -4 Hospital sustainability program special fund. (a)**

9 There is created in the state treasury the hospital  
10 sustainability program special fund to be administered by the  
11 department into which shall be deposited all moneys collected  
12 under this chapter.

13 (b) Moneys in the hospital sustainability program special  
14 fund shall consist of:

- 15 (1) All revenue received by the department from the  
16 hospital sustainability fee;
- 17 (2) All federal medicaid funds received by the department  
18 as a result of matching expenditures made with the  
19 hospital sustainability fee;
- 20 (3) Any interest or penalties levied in conjunction with  
21 the administration of this chapter; and





- 1           (4) Any designated appropriations, federal funds,  
2           donations, gifts, or moneys from any other sources.
- 3           (c) Moneys in the hospital sustainability program special  
4 fund shall be used exclusively as follows:
- 5           (1) To make direct payments to private hospitals pursuant  
6           to the terms of the section 1115 waiver. At least  
7           ninety-three per cent of the moneys in the special  
8           fund shall be used for this purpose, provided that in  
9           no instance shall a hospital receive supplemental  
10          payments that exceed its allowable uncompensated care  
11          costs;
- 12          (2) Two per cent of the moneys in the special fund shall  
13          be used for medicaid covered services for the benefit  
14          of hospitals;
- 15          (3) Five per cent of the moneys in the special fund may be  
16          used by the department for other departmental  
17          purposes; and
- 18          (4) Any money remaining in the special fund six months  
19          after the repeal of this chapter, shall be distributed  
20          to hospitals within thirty days in the same  
21          proportions as received from the hospitals.



1 (d) The department shall utilize federal funds derived  
2 from state hospital certified expenditures to make supplemental  
3 payments to state hospitals and is authorized to receive  
4 intergovernmental transfers from the state hospitals to support  
5 increased capitation rates to health plans for the benefit of  
6 the state hospitals. During any period in which the hospital  
7 sustainability fee is in effect, certified expenditures of state  
8 hospitals shall not be used to make or support direct payments  
9 to private hospitals.

10 (e) The hospital sustainability program special fund  
11 appropriation ceiling shall be \$42,000,000 for fiscal year 2012-  
12 2013 and \$37,000,000 in federal funds for HMS 401 for fiscal  
13 year 2012-2013.

14 **§ -5 Hospital sustainability fee.** (a) Effective  
15 July 1, 2012, or, if later, the effective date of any necessary  
16 federal approvals, the department shall charge and collect  
17 provider fees, to be known as the hospital sustainability fee,  
18 on inpatient and outpatient care services provided by private  
19 hospitals.

20 (b) The hospital sustainability fee shall be based on the  
21 net patient service revenue for inpatient services and



1 outpatient services, respectively, of all hospitals that are  
2 subject to the hospital sustainability fee.

3 (c) The hospital sustainability fee for inpatient care  
4 services may differ from the fee for outpatient care services  
5 but the fees shall not in the aggregate exceed three per cent of  
6 net patient service revenue as derived from the hospitals'  
7 medicare cost report ending during state fiscal year 2010. The  
8 inpatient hospital sustainability fee shall be 2.471 per cent of  
9 net inpatient hospital service revenue. The outpatient hospital  
10 sustainability fee shall be three per cent of net outpatient  
11 hospital service revenue. Each fee shall be the same percentage  
12 for all affected hospitals, subject to subsection (d).

13 (d) The department shall exempt children's hospitals,  
14 federal hospitals, public hospitals, rehabilitation hospitals,  
15 and psychiatric hospitals from the hospital sustainability fees  
16 on inpatient and outpatient care services. In addition, the  
17 department shall exempt hospitals with net outpatient revenue of  
18 less than \$45,000,000 per year (based on fiscal year 2010  
19 reports) from the hospital sustainability fee on outpatient care  
20 services.



1 (e) The department, with agreement by the hospital trade  
2 association located in Hawaii, may modify the structure of the  
3 hospital sustainability program if such modification is  
4 necessary to obtain federal waiver approval consistent with the  
5 requirements of 42 Code of Federal Regulations section  
6 433.68(e)(2).

7 **§ -6 Hospital sustainability fee assessments.** (a)  
8 Hospitals shall pay the hospital sustainability fee to the  
9 department in accordance with this chapter. The fee shall be  
10 divided and paid in four equal installments on a quarterly  
11 basis.

12 (b) The department shall collect, and each hospital shall  
13 pay, the hospital sustainability fee not later than the  
14 fifteenth day after the end of each calendar quarter, provided  
15 that if required federal approvals have not been secured by the  
16 end of a calendar quarter the fees for that quarter shall be  
17 paid within ten days after notification to the hospitals that  
18 the required approvals have been received.

19 **§ -7 Federal approval.** The department shall seek  
20 waivers and any additional approvals from the Centers for



1 Medicare and Medicaid Services that may be necessary to  
2 implement the hospital sustainability program.

3       **§ -8 Multifacility locations.** If an entity conducts,  
4 operates, or maintains more than one hospital licensed by the  
5 department of health, the entity shall pay the hospital  
6 sustainability fee for each hospital separately.

7       **§ -9 Penalties for failure to pay the hospital**  
8 **sustainability fee.** (a) If a hospital fails to pay the full  
9 amount of any hospital sustainability fee when due, there shall  
10 be added to the fee, unless waived by the department for  
11 reasonable cause, a penalty equal to prime plus two per cent of  
12 the fee that was not paid when due. Any subsequent payments  
13 shall be credited first to unpaid fee amounts beginning with the  
14 most delinquent installment rather than to penalty or interest  
15 amounts.

16       (b) In addition to the penalty imposed by subsection (a),  
17 the department may seek any of the following remedies for the  
18 failure of any hospital to pay its fee when due:

19           (1) Withholding any medical assistance reimbursement  
20               payments until such time as the fee amount is paid in  
21               full;



- 1 (2) Suspension or revocation of the hospital license; or  
2 (3) Development of a plan that requires the hospital to  
3 pay any delinquent fee in installments.

4 § -10 Private hospital payments. (a) The department  
5 shall use moneys from the hospital sustainability program  
6 special fund to make direct payments to private hospitals in an  
7 amount equal to \$77,468,401 to cover the uncompensated care  
8 costs incurred by private hospitals for serving medicaid and  
9 uninsured individuals during state fiscal year 2013.

10 (b) The department shall make quarterly payments to  
11 private hospitals to reimburse their uncompensated care costs  
12 within twenty days after the end of each calendar quarter;  
13 provided that payments shall not be due until at least fifteen  
14 days after receipt of the fees required by section -6. If the  
15 department fails to pay the full amount when due, there shall be  
16 added to the payment a penalty equal to prime plus two per cent  
17 of the payment that was not paid when due.

18 (c) Each eligible hospital's quarterly payment shall be  
19 equal to one-quarter of its uncompensated care costs for the  
20 fiscal year in which payment is made, as derived from the



1 uncompensated care costs reported by all private hospitals for  
2 fiscal year 2010.

3 (d) If federal approval pursuant to section -7 is not  
4 received until after the end of any quarter for which the  
5 hospital sustainability fee is applicable, the department shall  
6 make the initial quarterly payments within five days after  
7 receipt of the hospital sustainability fee for the respective  
8 quarter.

9 (e) To the extent the hospital sustainability program is  
10 not effective for the entire year, the hospital sustainability  
11 fee, the state medicaid expenses and administrative fee, and the  
12 corresponding uncompensated care payments shall be based on the  
13 proportion of the fiscal year the program is in effect.

14 **§ -11 Special designation of hospital sustainability**  
15 **program special fund.** Notwithstanding section 37-53, and any  
16 law or any administrative rule to the contrary, the specific  
17 purposes set out in section -4(c) are established as being  
18 exclusive uses of the hospital sustainability program special  
19 fund. The hospital sustainability program special fund shall  
20 not and may not be used for any other purposes, notwithstanding  
21 any authority granted to the governor or any other state



1 official by any other statutory provisions relating to the  
2 allocation or reallocation of funds.

3       **§ -12 Termination.** (a) Collection of the hospital  
4 sustainability fee established by section -5 shall be  
5 discontinued if:

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





1 federal statutory, regulatory, or interpretive change  
2 takes effect.

3 (b) Notwithstanding section -4(c), if collection of the  
4 hospital sustainability fee is discontinued as provided in this  
5 section, any remaining moneys in the hospital sustainability  
6 program special fund shall be distributed within thirty days to  
7 the private hospitals on the same basis as the hospital  
8 sustainability fee was collected.

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

15 SECTION 3. Section 36-30, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Each special fund, except the:

- 18 (1) Transportation use special fund established by section  
19 261D-1;
- 20 (2) Special out-of-school time instructional program fund  
21 under section 302A-1310;



- 1 (3) School cafeteria special funds of the department of  
2 education;
- 3 (4) Special funds of the University of Hawaii;
- 4 (5) State educational facilities improvement special fund;
- 5 (6) Special funds established by section 206E-6;
- 6 (7) Aloha Tower fund created by section 206J-17;
- 7 (8) Funds of the employees' retirement system created by  
8 section 88-109;
- 9 (9) Unemployment compensation fund established under  
10 section 383-121;
- 11 (10) Hawaii hurricane relief fund established under section  
12 431P-2;
- 13 (11) Convention center enterprise special fund established  
14 under section 201B-8;
- 15 (12) Hawaii health systems corporation special funds and  
16 the subaccounts of its regional system boards;
- 17 (13) Tourism special fund established under section 201B-  
18 11;
- 19 (14) Universal service fund established under section 269-  
20 42;



- 1       (15)   Emergency and budget reserve fund under section 328L-
- 2                    3;
- 3       (16)   Public schools special fees and charges fund under
- 4                    section 302A-1130;
- 5       (17)   Sport fish special fund under section 187A-9.5;
- 6       (18)   Center for nursing special fund under section 304A-
- 7                    2163;
- 8       (19)   Passenger facility charge special fund established by
- 9                    section 261-5.5;
- 10       (20)   Court interpreting services revolving fund under
- 11                    section 607-1.5;
- 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 special
- 16                    fund established under section 261-5.6; [~~and~~]
- 17       (25)   Shared services technology special fund under section
- 18                    27-43[~~7~~]; and
- 19       (26)   Hospital sustainability program special fund under
- 20                    section       -4,

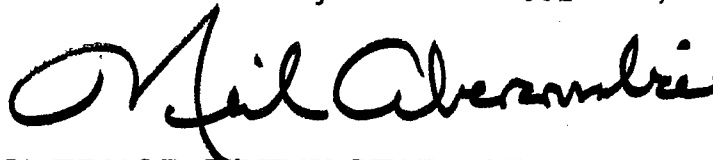


1 shall be responsible for its pro rata share of the  
2 administrative expenses incurred by the department responsible  
3 for the operations supported by the special fund concerned."

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2012, and  
7 shall be repealed on June 30, 2013; provided that  
8 section -4(c), Hawaii Revised Statutes, in section 2 of this  
9 Act shall be repealed on December 31, 2013.

APPROVED this 3 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

