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# 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 in 2012 has served a critical  
3 role in strengthening Hawaii's health care system. In the  
4 eleven years since the program's inception, the hospital  
5 sustainability program has helped acute care facilities treat  
6 the State's most vulnerable patients, especially low-income  
7 individuals requiring hospital services. The program has been  
8 carried out in a public-private partnership to ensure patients  
9 in Hawaii have access to quality, affordable care.

10           The legislature further finds that, even with the program,  
11 hospitals in the State face major financial challenges. These  
12 challenges are due in part to the continuing health and  
13 financial pressures related to the coronavirus disease 2019  
14 pandemic and health care workforce shortage. The federal and  
15 state governments jointly finance medicaid by statutory formula.  
16 The federal government pays between fifty per cent and seventy-  
17 four per cent, with a state's per capita income determining the



1 percentage. States with lower per capita incomes relative to  
2 the national average receive higher federal matching rates.  
3 Federal rules mandate that a state must pay the state's share  
4 from public funds that are not federal funds. Public funding to  
5 help financially sustain Hawaii's hospitals should continue by  
6 assessing a provider fee, which is currently scheduled to repeal  
7 in 2024.

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

17       The legislature therefore finds that, in Hawaii, a provider  
18 fee for hospitals can substantially increase medicaid payments  
19 without placing additional constraints on the State's budget.  
20 The additional federal funds obtained via the hospital  
21 sustainability program allow hospitals in the State to continue



1 to serve uninsured or underinsured patients in a timely,  
2 effective manner, maintaining access to care for medicaid  
3 recipients and helping to ensure the overall sustainability of  
4 the health care system in Hawaii.

5 The purpose of this Act is to strengthen and make permanent  
6 the hospital sustainability program to continue to preserve  
7 access to health care for medicaid recipients.

8 SECTION 2. Section 346G-2, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~§~~346G-2] Findings and declaration of necessity. It  
11 is the intent of the legislature to establish a special fund  
12 within the state treasury to receive revenue from the imposition  
13 of a hospital sustainability fee to be administered by the  
14 department of human services, which shall use the revenue from  
15 the fee and associated federal medicaid matching funds  
16 exclusively to make [~~direct~~] payments to hospitals and for other  
17 purposes as [~~set forth~~] described in this chapter."

18 SECTION 3. Section 346G-3, Hawaii Revised Statutes, is  
19 amended by amending the definition of "private hospital" to read  
20 as follows:



1            "Private hospital" means all currently operating  
2 hospitals, except for hospitals that are:

- 3            (1) Operated by or affiliated with the Hawaii health  
4                systems corporation; or  
5            (2) Charitable hospitals funded primarily through  
6                donations or other non-insurance sources of funding,  
7                and whose net patient revenue is less than [~~forty~~]  
8                fifty per cent of operating expenses, per the medicaid  
9                cost report."

10           SECTION 4. Section 346G-4, Hawaii Revised Statutes, is  
11 amended by amending subsections (b) through (d) to read as  
12 follows:

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

- 15            (1) All [~~revenue~~] revenues collected or received by the  
16                department from the hospital sustainability fee[+] as  
17                required by this chapter;  
18            [~~(2)~~] ~~All federal medicaid funds received by the department~~  
19                ~~as a result of matching expenditures made with the~~  
20                ~~hospital sustainability fee;~~



1       ~~(3)~~ (2) Any interest or penalties levied in conjunction  
2               with the administration of this chapter; and

3       ~~(4)~~ (3) Any designated appropriations, federal funds,  
4               donations, gifts, or moneys from any other sources.

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

7       (1) ~~[No less than]~~ At least ninety per cent of the revenue  
8               from the hospital sustainability fee shall be used for  
9               one or more of the following purposes:

10       (A) To match federal medicaid funds, with the  
11               combined total to be used to enhance ~~[capitated~~  
12               ~~rates]~~ payments to medicaid managed care health  
13               plans for the sole purpose of increasing medicaid  
14               payments to private hospitals;

15       (B) To match federal medicaid funds for Hawaii's  
16               medicaid disproportionate share hospital  
17               allotment, as authorized by current federal law  
18               for private hospitals;

19       (C) To match federal medicaid funds for a private  
20               hospital upper payment limit pool; or



1 (D) To match federal medicaid funds with the combined  
2 total to be used to enhance [~~capitated rates~~  
3 payments to medicaid managed care health plans  
4 for the purpose of increasing medicaid payments  
5 to private hospitals through quality or access  
6 incentive programs.

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

10 ~~(3) Any money remaining in the hospital sustainability~~  
11 ~~program special fund six months after the repeal of~~  
12 ~~this chapter, shall be distributed to hospitals within~~  
13 ~~thirty days in the same proportions as received from~~  
14 ~~the hospitals].~~

15 (d) The department shall use federal funds derived from  
16 state hospital certified expenditures to make [~~supplemental~~  
17 payments to state hospitals and may receive intergovernmental  
18 transfers from the state hospitals to support [~~direct~~  
19 ~~supplemental~~] payments and increased capitation rates to health  
20 plans for the benefit of the state hospitals. During any period  
21 in which the hospital sustainability fee is in effect, certified



1 expenditures of state hospitals shall not be used to make or  
2 support [~~direct~~] payments to private hospitals."

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

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

16 (d) The department shall exempt federal hospitals and  
17 public hospitals from the hospital sustainability fees on  
18 inpatient services and outpatient care services.

19 Children's hospitals, psychiatric hospitals, and  
20 rehabilitation hospitals may be assessed hospital sustainability  
21 fees on inpatient and outpatient services at a different rate



1 than other private hospitals. [~~The department may also exclude~~  
2 ~~any facility from the hospital sustainability fee if it is~~  
3 ~~determined that its exclusion is required to meet federal~~  
4 ~~standards of approval.~~] If necessary to obtain and maintain  
5 approval of the waiver by the Centers for Medicare and Medicaid  
6 Services, the department may, upon good faith consultation and  
7 negotiations with the hospital trade association located in  
8 Hawaii, modify, add, or remove facilities excluded from or  
9 subject to the assessment; provided that any modifications are  
10 consistent with the purposes of this chapter."

11 SECTION 6. Section 346G-6, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§346G-6 Hospital sustainability fee assessments. (a)**  
14 Hospitals shall pay the hospital sustainability fee to the  
15 department in accordance with this chapter. [~~The fee shall be~~  
16 ~~divided and paid in twelve equal installments on a monthly~~  
17 ~~basis.~~]

18 (b) The department shall determine, upon good faith  
19 consultation and negotiations with the hospital trade  
20 association located in Hawaii, the prospective fee rate for the  
21 applicable fiscal year.





1           ~~[(b)]~~ (c) The department shall collect, and each hospital  
2 shall pay, if so required, on a monthly basis, the hospital  
3 sustainability fee no later than the sixtieth day after the end  
4 of each calendar month; provided that if required federal  
5 approvals have not been secured by the end of a calendar month,  
6 the fees for that month shall be paid within ten days after  
7 notification to the hospitals that the required approvals have  
8 been received."

9           SECTION 7. Section 346G-7, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "~~[-]~~ §346G-7 ~~[-]~~ **Federal approval.** The department shall  
12 seek waivers and any additional approvals from the Centers for  
13 Medicare and Medicaid Services that may be necessary to  
14 implement the hospital sustainability program~~[-]~~, including  
15 approval of the contracts between the State and medicaid managed  
16 care health plans."

17           SECTION 8. Section 346G-9, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19           "(a) If a hospital fails to pay the full amount of any  
20 hospital sustainability fee when due, there shall be added to  
21 the fee, unless waived by the department for reasonable cause, a



1 penalty equal to [~~prime plus~~] two per cent of the fee that was  
2 not paid when due. Any subsequent payments shall be credited  
3 first to unpaid fee amounts beginning with the most delinquent  
4 installment rather than to penalty or interest amounts."

5 SECTION 9. Section 346G-10, Hawaii Revised Statutes, is  
6 amended by amending its title and subsections (a) and (b) to  
7 read as follows:

8 "§346G-10 Private hospital payments through enhanced  
9 [~~rates~~] payments to medicaid managed care health plans. (a)

10 The department shall use moneys [~~solely~~] from the hospital  
11 sustainability program special fund solely to fulfill the  
12 requirements of section 346G-4(c).

13 (b) In accordance with title 42 Code of Federal  
14 Regulations part 438, the department shall use revenues from the  
15 hospital sustainability fee and federal matching funds to  
16 enhance [~~the capitated rates paid~~] payments to medicaid managed  
17 care health plans [~~for the period of July 1 through December 31,~~  
18 ~~2021, and calendar years 2022 and 2023~~], consistent with the  
19 following objectives:

20 (1) The [~~rate enhancement~~] enhanced payments shall be used  
21 exclusively [~~for increasing~~] to increase



1 reimbursements to private hospitals, ~~[to]~~ support the  
2 availability of services, and ~~[to]~~ ensure access to  
3 care ~~[to the]~~ for medicaid managed care health plan  
4 enrollees;

5 (2) The ~~[rate enhancement]~~ enhanced payments shall be  
6 ~~[made part of the monthly capitated rates]~~ paid by the  
7 department to medicaid managed care health plans,  
8 which shall provide documentation to the department  
9 and the hospital trade association located in Hawaii  
10 certifying that the revenues received under paragraph  
11 (1) are used in accordance with this section;

12 (3) The ~~[rate enhancement]~~ enhanced payment rates shall be  
13 actuarially sound and approved by the federal  
14 government for federal fund participation;

15 (4) The rate enhancements shall be retroactive to July 1,  
16 2012, or the effective date approved by the federal  
17 government, whichever is later. Retroactive rate  
18 enhancements shall be paid within thirty days of  
19 notification by the Centers for Medicare and Medicaid  
20 Services to the department of all necessary approvals;  
21 ~~[and]~~



1           (5) Payments made by the medicaid managed care health  
2           plans shall be made within thirty business days upon  
3           receipt of [~~monthly capitation rates~~] payment from the  
4           department [-]; and

5           (6) Each managed care health plan shall expend one hundred  
6           per cent of any increased payments received under this  
7           section to carry out the goals of the hospital  
8           sustainability program."

9           SECTION 10. Section 346G-12, Hawaii Revised Statutes, is  
10          amended to read as follows:

11          "**§346G-12 Termination.** (a) Collection of the hospital  
12          sustainability fee established by section 346G-5 shall be  
13          discontinued if:

14               (1) The required federal approvals specified in section  
15               346G-7 are not granted or are revoked by the Centers  
16               for Medicare and Medicaid Services;

17               (2) The department reduces [~~funding for hospital services~~  
18               ~~below the state appropriation in effect as of July 1,~~  
19               ~~2021,~~] reimbursement rates for private hospital  
20               services to medicaid patients with the intention of



1           using the sustainability funds to supplant the planned  
2           or permanent reduction in reimbursement rates;

3           (3) The department or any other state agency uses the  
4           money in the hospital sustainability program special  
5           fund for any use other than the uses permitted by this  
6           chapter; or

7           (4) Federal financial participation to match the revenue  
8           from the hospital sustainability fee becomes  
9           unavailable under federal law; provided that the  
10          department shall terminate the imposition of the  
11          hospital sustainability fee beginning on the date the  
12          federal statutory, regulatory, or interpretive change  
13          takes effect.

14          (b) If [~~collection of~~] the hospital sustainability fee is  
15          discontinued [~~as provided in this section~~], any remaining moneys  
16          in the hospital sustainability program special fund shall be  
17          distributed [~~pursuant to section 346G-4(e).~~] to hospitals within  
18          six months of the date of discontinuation in the same  
19          proportions as received from the hospitals."

20          SECTION 11. Act 217, Session Laws of Hawaii 2012, as  
21          amended by section 2 of Act 141, Session Laws of Hawaii 2013, as



1 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as  
2 amended by Section 2 of Act 70, Session Laws of Hawaii 2015, as  
3 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as  
4 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as  
5 amended by section 6 of Act 173, Session Laws of Hawaii 2019, as  
6 amended by section 7 of Act 38, Session Laws of Hawaii 2021, is  
7 amended by amending section 5 to read as follows:

8       "SECTION 5. This Act shall take effect on July 1, 2012[~~7~~  
9 ~~and shall be repealed on December 31, 2023; provided that~~  
10 ~~section 4, Hawaii Revised Statutes, in section 2 of this~~  
11 ~~Act, and the amendment to section 36-30(a), Hawaii Revised~~  
12 ~~Statutes, in section 3 of this Act, shall be repealed on~~  
13 ~~June 30, 2024]."~~

14       SECTION 12. Act 123, Session Laws of Hawaii 2014, as  
15 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as  
16 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as  
17 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as  
18 amended by section 7 of Act 173, Session Laws of Hawaii 2019, as  
19 amended by section 8 of Act 38, Session Laws of Hawaii 2021, is  
20 amended by amending section 7 to read as follows:



1 "SECTION 7. This Act shall take effect on June 29, 2014;  
2 provided that[+]

3 ~~(1) Section]~~ section 5 shall take effect on July 1, 2014[+]  
4 and

5 ~~(2) The amendments made to sections 36-27(a) and 36-30(a),~~  
6 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~  
7 ~~Act shall be repealed on June 30, 2024]."~~

8 SECTION 13. There is appropriated out of the hospital  
9 sustainability program special fund the sum of \$200,000,000 or  
10 so much thereof as may be necessary for fiscal year 2023-2024  
11 and the same sum or so much thereof as may be necessary for  
12 fiscal year 2024-2025 for the purposes of the hospital  
13 sustainability program special fund.

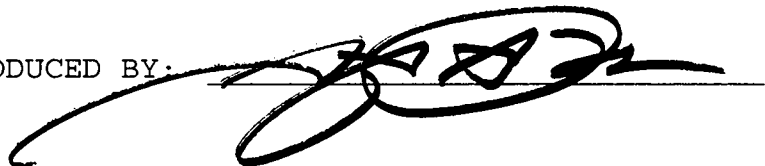
14 The sums appropriated shall be expended by the department  
15 of human services for the purposes of this Act.

16 SECTION 14. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 15. This Act shall take effect on July 1, 2023.

19

INTRODUCED BY:



# S.B. NO. 404

**Report Title:**

Hospital Sustainability Program; Hospital Sustainability Fee;  
Hospital Trade Association; Department of Human Services;  
Hospital Sustainability Program Special Fund; Appropriation

**Description:**

Expands the Hospital Sustainability Program and makes the program permanent. Amends the definition of "private hospital". Increases the fee cap on various hospital sustainability fees. Requires the Department of Human Services to consult and negotiate with the hospital trade association located in Hawaii regarding fee participation and rates. Requires the Hospital Sustainability Fee to discontinue under certain circumstances and provides guidelines for the distribution of remaining funds. Appropriates funds out of the Hospital Sustainability Program Special Fund.

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

