
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 through the hospital sustainability
7 program, which is currently scheduled to repeal 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 has resulted in a substantial increase in
19 medicaid payments without placing additional constraints on the
20 State's budget. The additional federal funds obtained via the
21 hospital sustainability program allow hospitals in the State to



1 continue to serve uninsured or underinsured patients in a
2 timely, effective manner, maintaining access to care for
3 medicaid recipients, and helping to ensure the overall
4 sustainability of 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 36-27, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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

- 15 (1) Special out-of-school time instructional program fund
16 under section 302A-1310;
- 17 (2) School cafeteria special funds of the department of
18 education;
- 19 (3) Special funds of the University of Hawaii;
- 20 (4) Convention center enterprise special fund under
21 section 201B-8;



- 1 (5) Special funds established by section 206E-6;
- 2 (6) Aloha Tower fund created by section 206J-17;
- 3 (7) Funds of the employees' retirement system created by
- 4 section 88-109;
- 5 (8) Hawaii hurricane relief fund established under chapter
- 6 431P;
- 7 (9) Hawaii health systems corporation special funds and
- 8 the subaccounts of its regional system boards;
- 9 (10) Universal service fund established under section 269-
- 10 42;
- 11 (11) Emergency and budget reserve fund under section 328L-
- 12 3;
- 13 (12) Public schools special fees and charges fund under
- 14 section 302A-1130;
- 15 (13) Sport fish special fund under section 187A-9.5;
- 16 (14) Neurotrauma special fund under section 321H-4;
- 17 (15) Glass advance disposal fee established by section
- 18 342G-82;
- 19 (16) Center for nursing special fund under section 304A-
- 20 2163;



- 1 (17) Passenger facility charge special fund established by
- 2 section 261-5.5;
- 3 (18) Solicitation of funds for charitable purposes special
- 4 fund established by section 467B-15;
- 5 (19) Land conservation fund established by section 173A-5;
- 6 (20) Court interpreting services revolving fund under
- 7 section 607-1.5;
- 8 (21) Trauma system special fund under section 321-22.5;
- 9 (22) Hawaii cancer research special fund;
- 10 (23) Community health centers special fund;
- 11 (24) Emergency medical services special fund;
- 12 (25) Rental motor vehicle customer facility charge special
- 13 fund established under section 261-5.6;
- 14 (26) Shared services technology special fund under section
- 15 27-43;
- 16 (27) Automated victim information and notification system
- 17 special fund established under section 353-136;
- 18 (28) Deposit beverage container deposit special fund under
- 19 section 342G-104;
- 20 (29) Hospital sustainability program special fund
- 21 established under section 346G-4;



1 (30) Nursing facility sustainability program special fund
2 under section 346F-4;

3 (31) Hawaii 3R's school improvement fund under section
4 302A-1502.4;

5 (32) After-school plus program revolving fund under section
6 302A-1149.5;

7 (33) Civil monetary penalty special fund under section 321-
8 30.2; and

9 [+] (34) [+] Stadium development special fund under section 109-
10 3.5,

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



1 the legislature, the director shall report all central service
2 assessments made during the preceding fiscal year."

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

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

- 6 (1) Special out-of-school time instructional program fund
7 under section 302A-1310;
- 8 (2) School cafeteria special funds of the department of
9 education;
- 10 (3) Special funds of the University of Hawaii;
- 11 (4) Special funds established by section 206E-6;
- 12 (5) Aloha Tower fund created by section 206J-17;
- 13 (6) Funds of the employees' retirement system created by
14 section 88-109;
- 15 (7) Hawaii hurricane relief fund established under chapter
16 431P;
- 17 (8) Convention center enterprise special fund established
18 under section 201B-8;
- 19 (9) Hawaii health systems corporation special funds and
20 the subaccounts of its regional system boards;



- 1 (10) Universal service fund established under section 269-
2 42;
- 3 (11) Emergency and budget reserve fund under section 328L-
4 3;
- 5 (12) Public schools special fees and charges fund under
6 section 302A-1130;
- 7 (13) Sport fish special fund under section 187A-9.5;
- 8 (14) Neurotrauma special fund under section 321H-4;
- 9 (15) Center for nursing special fund under section 304A-
10 2163;
- 11 (16) Passenger facility charge special fund established by
12 section 261-5.5;
- 13 (17) Court interpreting services revolving fund under
14 section 607-1.5;
- 15 (18) Trauma system special fund under section 321-22.5;
- 16 (19) Hawaii cancer research special fund;
- 17 (20) Community health centers special fund;
- 18 (21) Emergency medical services special fund;
- 19 (22) Rental motor vehicle customer facility charge special
20 fund established under section 261-5.6;



- 1 (23) Shared services technology special fund under section
- 2 27-43;
- 3 (24) Nursing facility sustainability program special fund
- 4 established pursuant to section 346F-4;
- 5 (25) Automated victim information and notification system
- 6 special fund established under section 353-136;
- 7 (26) Hospital sustainability program special fund
- 8 established under section 346G-4;
- 9 (27) Civil monetary penalty special fund under section 321-
- 10 30.2; and
- 11 [+] (28) [+] Stadium development special fund under section 109-
- 12 3.5,

13 shall be responsible for its pro rata share of the
 14 administrative expenses incurred by the department responsible
 15 for the operations supported by the special fund concerned."

16 SECTION 4. Section 346G-2, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 " [+] §346G-2 [+] Findings and declaration of necessity. It
 19 is the intent of the legislature to establish a special fund
 20 within the state treasury to receive revenue from the imposition
 21 of a hospital sustainability fee to be administered by the



1 department of human services, which shall use the revenue from
2 the fee and associated federal medicaid matching funds
3 exclusively to make [~~direct~~] payments to hospitals and for other
4 purposes as [~~set forth~~] described in this chapter."

5 SECTION 5. Section 346G-3, Hawaii Revised Statutes, is
6 amended by amending the definition of "private hospital" to read
7 as follows:

8 "Private hospital" means all currently operating
9 hospitals, except for hospitals that are:

- 10 (1) Operated by or affiliated with the Hawaii health
11 systems corporation; or
12 (2) Charitable hospitals funded primarily through
13 donations or other non-insurance sources of funding,
14 and whose net patient revenue is less than [~~forty~~]
15 fifty per cent of operating expenses, per the medicaid
16 cost report."

17 SECTION 6. Section 346G-4, Hawaii Revised Statutes, is
18 amended by amending subsections (b) through (d) to read as
19 follows:

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



1 (1) All [~~revenue~~] revenues collected or received by the
2 department from the hospital sustainability fee[+] as
3 required by this chapter;

4 [~~(2)~~] ~~All federal medicaid funds received by the department~~
5 ~~as a result of matching expenditures made with the~~
6 ~~hospital sustainability fee;~~

7 ~~(3)~~] (2) Any interest or penalties levied in conjunction
8 with the administration of this chapter; and

9 [~~(4)~~] (3) Any designated appropriations, federal funds,
10 donations, gifts, or moneys from any other sources.

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

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

16 (A) To match federal medicaid funds, with the
17 combined total to be used to enhance [~~capitated~~
18 ~~rates~~] payments to medicaid managed care health
19 plans for the sole purpose of increasing medicaid
20 payments to private hospitals;



- 1 (B) To match federal medicaid funds for Hawaii's
2 medicaid disproportionate share hospital
3 allotment, as authorized by current federal law
4 for private hospitals;
- 5 (C) To match federal medicaid funds for a private
6 hospital upper payment limit pool; or
- 7 (D) To match federal medicaid funds with the combined
8 total to be used to enhance [~~capitated rates~~
9 payments to medicaid managed care health plans
10 for the purpose of increasing medicaid payments
11 to private hospitals through quality or access
12 incentive programs ~~[-]~~; and
- 13 (2) Ten per cent of the moneys in the hospital
14 sustainability program special fund may be used by the
15 department for other departmental purposes ~~[+ and~~
- 16 ~~(3) Any money remaining in the hospital sustainability~~
17 ~~program special fund six months after the repeal of~~
18 ~~this chapter, shall be distributed to hospitals within~~
19 ~~thirty days in the same proportions as received from~~
20 ~~the hospitals].~~



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

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

12 "(c) The hospital sustainability fee for inpatient care
13 services may differ from the fee for outpatient care services
14 but the fees charged to the hospital shall not in the aggregate
15 exceed [~~five and one-half~~] six per cent of the hospital's net
16 patient service revenue. The inpatient hospital sustainability
17 fee shall not exceed [~~five and one-half~~] six per cent of net
18 inpatient hospital service revenue. The outpatient hospital
19 sustainability fee shall not exceed [~~five and one-half~~] six per
20 cent of net outpatient hospital service revenue. Each fee shall



1 be the same percentage for all affected hospitals, subject to
2 subsection (d).

3 (d) The department shall exempt federal hospitals and
4 public hospitals from the hospital sustainability fees on
5 inpatient services and outpatient care services.

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

13 If necessary to obtain and maintain approval of the waiver
14 by the Centers for Medicare and Medicaid Services, the
15 department may, upon good faith consultation and negotiations
16 with the hospital trade association located in Hawaii, modify,
17 add, or remove facilities excluded from or subject to the
18 assessment; provided that any modifications are consistent with
19 the purposes of this chapter."

20 SECTION 8. Section 346G-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§346G-6 Hospital sustainability fee assessments. (a)
2 Hospitals shall pay the hospital sustainability fee to the
3 department in accordance with this chapter. [~~The fee shall be~~
4 ~~divided and paid in twelve equal installments on a monthly~~
5 ~~basis.~~]

6 (b) The department shall determine, upon good faith
7 consultation and negotiations with the hospital trade
8 association located in Hawaii, the prospective fee rate for the
9 applicable fiscal year.

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

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

20 "~~[§346G-7]~~ **Federal approval.** The department shall
21 seek 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[-], including
3 approval of the contracts between the State and medicaid managed
4 care health plans."

5 SECTION 10. Section 346G-9, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

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

14 SECTION 11. Section 346G-10, Hawaii Revised Statutes, is
15 amended by amending its title and subsections (a) and (b) to
16 read as follows:

17 "§346G-10 Private hospital payments through enhanced
18 [~~rates~~] payments to medicaid managed care health plans. (a)
19 The department shall use moneys [~~solely~~] from the hospital
20 sustainability program special fund solely to fulfill the
21 requirements of section 346G-4(c).



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

8 (1) The ~~[rate enhancement]~~ enhanced payments shall be used
9 exclusively ~~[for increasing]~~ to increase
10 reimbursements to private hospitals, ~~[to]~~ support the
11 availability of services, and ~~[to]~~ ensure access to
12 care ~~[to the]~~ for medicaid managed care health plan
13 enrollees;

14 (2) The ~~[rate enhancement]~~ enhanced payments shall be
15 ~~[made part of the monthly capitated rates]~~ paid by the
16 department to medicaid managed care health plans,
17 which shall provide documentation to the department
18 and the hospital trade association located in Hawaii
19 certifying that the revenues received under paragraph
20 (1) are used in accordance with this section;



- 1 (3) The [~~rate enhancement~~] enhanced payment rates shall be
2 actuarially sound and approved by the federal
3 government for federal fund participation;
- 4 (4) The rate enhancements shall be retroactive to July 1,
5 2012, or the effective date approved by the federal
6 government, whichever is later. Retroactive rate
7 enhancements shall be paid within thirty days of
8 notification by the Centers for Medicare and Medicaid
9 Services to the department of all necessary approvals;
10 ~~[and]~~
- 11 (5) Payments made by the medicaid managed care health
12 plans shall be made within thirty business days upon
13 receipt of [~~monthly capitation rates~~] payment from the
14 department [-]; and
- 15 (6) Each managed care health plan shall expend one hundred
16 per cent of any increased payments received under this
17 section to carry out the goals of the hospital
18 sustainability program."

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

1 **"§346G-12 Termination.** (a) Collection of the hospital
2 sustainability fee established by section 346G-5 shall be
3 discontinued if:

4 (1) The required federal approvals specified in section
5 346G-7 are not granted or are revoked by the Centers
6 for Medicare and Medicaid Services;

7 (2) The department reduces [~~funding for hospital services~~
8 ~~below the state appropriation in effect as of July 1,~~
9 ~~2021,]~~ reimbursement rates for private hospital
10 services to medicaid patients with the intention of
11 using the sustainability funds to supplant the planned
12 or permanent reduction in reimbursement rates;

13 (3) The department or any other state agency uses the
14 money in the hospital sustainability program special
15 fund for any use other than the uses permitted by this
16 chapter; or

17 (4) Federal financial participation to match the revenue
18 from the hospital sustainability fee becomes
19 unavailable under federal law; provided that the
20 department shall terminate the imposition of the
21 hospital sustainability fee beginning on the date the



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

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

9 SECTION 13. Act 217, Session Laws of Hawaii 2012, as
10 amended by section 2 of Act 141, Session Laws of Hawaii 2013, as
11 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as
12 amended by Section 2 of Act 70, Session Laws of Hawaii 2015, as
13 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as
14 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as
15 amended by section 6 of Act 173, Session Laws of Hawaii 2019, as
16 amended by section 7 of Act 38, Session Laws of Hawaii 2021, is
17 amended by amending section 5 to read as follows:

18 "SECTION 5. This Act shall take effect on July 1, 2012[
19 ~~and shall be repealed on December 31, 2023, provided that~~
20 ~~section 4, Hawaii Revised Statutes, in section 2 of this~~
21 ~~Act, and the amendment to section 36-30(a), Hawaii Revised~~



1 ~~Statutes, in section 3 of this Act, shall be repealed on~~
2 ~~June 30, 2024]. "~~

3 SECTION 14. Act 123, Session Laws of Hawaii 2014, as
4 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as
5 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as
6 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as
7 amended by section 7 of Act 173, Session Laws of Hawaii 2019, as
8 amended by section 8 of Act 38, Session Laws of Hawaii 2021, 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]~~ section 5 shall take effect on July 1, 2014[+]

13 and

14 ~~(2) The amendments made to sections 36-27(a) and 36-30(a),~~

15 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~

16 ~~Act shall be repealed on June 30, 2024]. "~~

17 SECTION 15. There is appropriated out of the hospital
18 sustainability program special fund the sum of \$200,000,000 or
19 so much thereof as may be necessary for fiscal year 2023-2024
20 and the same sum or so much thereof as may be necessary for



1 fiscal year 2024-2025 for the purposes of the hospital
2 sustainability program.

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

5 SECTION 16. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 17. This Act shall take effect on December 31,
8 2050.



Report Title:

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

Description:

Modifies the Hospital Sustainability Program, including:
expanding the definition of "private hospitals" subject to the
program; increasing the fee cap on various hospital
sustainability fees; requiring the Department of Human Services
to consult and negotiate with the hospital trade association
located in Hawaii regarding fee participation and rates;
requiring the hospital sustainability fee to discontinue under
certain circumstances and provides guidelines for the
distribution of remaining funds. Makes the Hospital
Sustainability Program permanent. Makes exemptions of the
Hospital Sustainability Program Special Fund from the central
service expenses assessment and administrative expenses
assessment permanent. Appropriates funds out of the Hospital
Sustainability Program Special Fund. Effective 12/31/2050.
(SD1)

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