
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. These challenges are largely 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 rolls. Implementation of a provider fee in Hawaii would help
13 stabilize declining 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
18 pays between fifty per cent and seventy-four per cent of



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

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

15 (1) Broad-based. To be considered broad-based, a provider
16 fee must be imposed on all health care items or
17 services furnished by all non-federal, non-public
18 providers in the class in the State. Provider fee
19 programs may exclude public facilities without
20 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, a non-medicaid
8 payment from the state or any offset or waiver that
9 guarantees to hold the provider harmless for all or a
10 portion of the fee. A provider fee is also considered
11 to hold the provider harmless if the medicaid payments
12 to the provider vary based only on the amount of the
13 fees paid by the provider.

14 The maximum provider fee a state may impose is currently
15 six per cent of net patient revenue. A number of proposals have
16 been made, but not implemented, to eliminate medicaid provider
17 fee programs to reduce the federal deficit. However, because
18 provider fees are used by so many states, many of those who are
19 knowledgeable about this subject view elimination of provider
20 fees as unlikely due to their strong political support. A more
21 realistic expectation is a reduction of the provider fee
22 maximum, as proposed by President Barack Obama's fiscal year

1 2012 budget, which would reduce the maximum to three and one-
2 half per cent in 2017. While the level of tax collection may be
3 reduced several years in the future, this proposal recognizes
4 that provider fees are essential for most states to maintain a
5 stable, functioning medicaid program.

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

13 The purpose of this Act is to ensure access to health care
14 for medicaid recipients by establishing a hospital
15 sustainability fee assessed on net inpatient hospital service
16 revenue and by establishing a hospital sustainability program
17 special fund to receive moneys from the hospital sustainability
18 fee to receive federal medicaid matching funds for direct
19 hospital payments made under the private hospital uncompensated
20 care pool established under the authority of a federally-
21 approved amendment to the QUEST expanded medicaid section 1115
22 demonstration waiver.



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

4 "CHAPTER

5 HOSPITAL SUSTAINABILITY PROGRAM

6 § -1 Title. This chapter shall be known and may be
7 cited as the "Hospital Sustainability Program Act".

8 § -2 Findings and declaration of necessity. It is the
9 intent of the legislature to encourage the drawdown of federal
10 medicaid funds by establishing a fund within the state treasury
11 to receive revenue from the imposition of a hospital
12 sustainability fee and to use the revenue to receive federal
13 medicaid matching funds under the authority of a federally-
14 approved amendment to the QUEST expanded medicaid Section 1115
15 demonstration waiver.

16 § -3 Definitions. As used in this chapter:

17 "Department" means the department of human services.

18 "Fiscal year" means a twelve-month period from July 1 of a
19 particular calendar year to June 30 of the following calendar
20 year, inclusive.

21 "Hospital" means any facility licensed pursuant to section
22 11-93, Hawaii Administrative Rules.



1 "Inpatient care" means the care of patients whose
2 conditions require admission to a hospital.

3 "Net patient service revenue" means inpatient hospital
4 gross revenue divided by total gross revenue, as derived from
5 worksheet G-2 of each hospital's medicare cost report,
6 multiplied by the net patient revenue, as derived from worksheet
7 G-3 of each hospital's medicare cost report. The net inpatient
8 hospital service revenue shall be derived from each hospital's
9 cost report ending between the period of July 1, 2009, to June
10 30, 2010. If a hospital is new or did not file a fiscal year
11 2010 medicare cost report, the department shall collect the
12 hospital's net inpatient hospital service revenue from the most
13 recent period available.

14 "Private hospital" means those hospitals currently
15 operating and named in attachment "A" of the QUEST expanded
16 medicaid Section 1115 demonstration waiver.

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

19 **§ -4 Hospital sustainability program special fund. (a)**

20 There is created in the state treasury the hospital
21 sustainability program special fund into which shall be
22 deposited all moneys collected under this chapter.



1 (b) Moneys in the hospital sustainability program special
2 fund shall consist of:

3 (1) All revenue received by the department from the
4 hospital sustainability fee;

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

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

9 (c) The department may expend moneys from the special fund
10 for the purposes of this chapter.

11 (d) Revenue from the hospital sustainability fee shall be
12 used exclusively as follows:

13 (1) To make direct payments to private hospitals for the
14 uncompensated care costs of serving medicaid and
15 uninsured individuals as authorized under the section
16 1115 waiver amendment, effective the later of July 1,
17 2012, or the date of federal approval of the section
18 1115 waiver amendment, if necessary, to establish the
19 private hospital uncompensated care pool; and

20 (2) No more than five per cent for other expenses incurred
21 in the medicaid program and to pay the expenses of the



1 State associated with the administration of this
2 chapter.

3 (e) All moneys remaining in the special fund on the last
4 day of the fiscal year shall be distributed to hospitals within
5 thirty days in the same proportions as received from the
6 hospitals.

7 § -5 **Hospital sustainability fee.** (a) Effective the
8 later of July 1, 2012, or the date of federal approval of the
9 Section 1115 waiver amendment establishing the private hospital
10 uncompensated care pool, the department shall charge and collect
11 a provider fee, to be known as the hospital sustainability fee,
12 on inpatient services provided by hospitals.

13 (b) The hospital sustainability fee shall be based on the
14 inpatient hospital service revenue of all hospitals that are
15 subject to the hospital sustainability fee, as derived from each
16 hospital's cost report ending between the period of July 1,
17 2009, to June 30, 2010.

18 (c) The hospital sustainability fee shall be assessed on
19 all private hospitals at a rate of 5.50 per cent of net
20 inpatient hospital service revenue, with the following
21 exceptions:



- 1 (1) Trauma hospitals shall pay 3.85 per cent of net
2 inpatient hospital revenue;
- 3 (2) Teaching hospitals that are also not trauma hospitals
4 shall pay 2.31 per cent of net inpatient hospital
5 revenue; and
- 6 (3) Children's hospitals, rehabilitation hospitals,
7 psychiatric hospitals, public hospitals, and federal
8 hospitals shall be excluded from the hospital
9 sustainability fee.

10 The department, with agreement by the hospital trade association
11 located in Hawaii, may modify the structure of the hospital
12 sustainability fee if such modification is necessary to obtain
13 federal uniformity waiver approval consistent with the requirements
14 of 42 Code of Federal Regulations section 433.68(e)(2).

15 **§ -6 Hospital sustainability fee assessments. (a)**

16 Hospitals shall pay the hospital sustainability fee to the
17 department in accordance with this chapter. The hospital
18 sustainability fee in section -5 shall be divided and paid in
19 four equal installments on a quarterly basis.

20 (b) The department shall collect, and each hospital shall
21 pay, the hospital sustainability fee on a quarterly basis subject



1 to the terms of this subsection. The fee shall be due on the
2 fifteenth day after the end of each calendar quarter.

3 (c) If federal approval of the Section 1115 waiver amendment
4 authorizing the private hospital uncompensated care pool and the
5 hospital sustainability fee uniformity waiver occurs later than
6 forty-five days from the beginning of a calendar quarter, the
7 initial fee shall be due within sixty days of the federal approval.
8 Each subsequent quarterly fee shall be due on the fifteenth day
9 after the end of each subsequent calendar quarter.

10 § -7 **Federal approval.** The department shall seek a
11 waiver of the uniformity waiver requirements from the federal
12 Centers for Medicare and Medicaid Services for the hospital
13 sustainability fee, as provided by 42 Code of Federal Regulations
14 section 433.68(e)(2). The department may also seek an amendment
15 to the Section 1115 waiver to establish the private hospital
16 uncompensated care pool, if necessary.

17 § -8 **Multifacility locations.** If an entity conducts,
18 operates, or maintains more than one hospital licensed by the
19 department of health, the entity shall pay the hospital
20 sustainability fee for each hospital separately.

21 § -9 **Penalties for failure to pay the hospital**
22 **sustainability fee.** (a) If a hospital fails to pay the full



1 amount of the hospital sustainability fee when due, there shall be
2 added to the fee, unless waived by the department for reasonable
3 cause, a penalty equal to two per cent of the fee that was not
4 paid when due. Any subsequent payments shall be credited first to
5 unpaid fee amounts beginning with the most delinquent installment
6 rather than to penalty or interest amounts.

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

- 10 (1) Withholding any medical assistance reimbursement payments
11 until such time as the fee amount is paid in full;
- 12 (2) Suspension or revocation of the hospital license; or
- 13 (3) Development of a plan that requires the hospital to pay
14 any delinquent fee in installments.

15 § -10 **Private hospital uncompensated care pool.** (a)

16 The department shall use revenue from the hospital
17 sustainability fee and federal matching funds to reimburse
18 private hospitals in an amount equal to \$72,000,000 annually for
19 the uncompensated care costs incurred by private hospitals for
20 serving medicaid and uninsured individuals.

21 (b) The department shall make quarterly uncompensated care
22 pool payments directly to private hospitals. The department



1 shall make quarterly uncompensated care pool payments within
2 eighteen days after the end of each calendar quarter. Each
3 eligible hospital shall receive its proportional share of the
4 uncompensated care pool based on the estimated fiscal year 2013
5 uncompensated care costs as derived from the actual uncompensated
6 care in 2010, not otherwise adjusted for growth to such costs.

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

12 (d) If federal approval of the Section 1115 waiver amendment
13 authorizing the private hospital uncompensated care pool and the
14 hospital sustainability fee uniformity waiver occurs later than
15 forty-five days from the beginning of a calendar quarter, the
16 department shall make the initial quarterly payment within three
17 business days of the department's receipt of the first quarterly
18 hospital sustainability fee paid by private hospitals as described
19 in section -6. The department shall make each subsequent
20 quarterly uncompensated care pool payment within eighteen days
21 after the end of each subsequent calendar quarter.



1 § -11 **Termination.** (a) Collection of the hospital
2 sustainability fee established by section -5 shall be
3 discontinued if:

4 (1) The hospital sustainability fee uniformity waiver or the
5 Section 1115 waiver amendment establishing the private
6 hospital uncompensated care pool is not approved by
7 the federal Centers for Medicare and Medicaid
8 Services;

9 (2) The department reduces funding for hospital services
10 below the state appropriation in effect on June 30, 2012;

11 (3) The department or any other state agency expends any
12 portion of the funds in the hospital sustainability
13 program special fund for any purpose other than the uses
14 permitted by this chapter; or

15 (4) Federal financial participation to match the revenue from
16 the hospital sustainability fee becomes unavailable
17 under federal law; provided that the department shall
18 terminate the assessment of the hospital sustainability
19 fee beginning on the date the federal statutory,
20 regulatory, or interpretive change takes effect.

21 (b) If collection of the hospital sustainability fee is
22 discontinued as provided in this section, all moneys in the



1 hospital sustainability program special fund shall be distributed
2 among the hospitals within thirty days in the same proportions as
3 received from the hospitals.

4 § -12 **Severability.** If any provision of this chapter
5 or the application thereof to any person or circumstances is held
6 invalid, the invalidity shall not affect other provisions or
7 applications of the chapter that can be given effect without the
8 invalid provision or application, and to this end the provisions of
9 this chapter are severable."

10 SECTION 3. This Act shall take effect on July 1, 2012, and
11 shall be repealed on June 30, 2013.



Report Title:

Hospital Sustainability Fee; Hospital Sustainability Program
Special Fund

Description:

Establishes a hospital sustainability fee and special fund to receive moneys from the hospital sustainability fee to receive federal medicaid matching funds under the QUEST Expanded Medicaid Section 1115 Demonstration Waiver. Requires the Department of Human Services to charge and collect a provider fee on health care items or services provided by hospitals. Repeals 06/30/2013. (SD2)

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