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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-six states and the District of  
9 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-six per cent of medicaid  
18 costs incurred by states for care delivered to their medicaid



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

5 Provider fees, which are collected from specific categories  
6 of health care providers that agree to the fee, may be imposed  
7 on nineteen different classes of health care services, including  
8 inpatient and outpatient hospital and nursing facility services.  
9 However, there are limitations on the way provider fees are  
10 structured. The Medicaid Voluntary Contribution and Provider-  
11 Specific Tax Amendments of 1991 (P.L. 102-234), passed by  
12 Congress in 1991, 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. A fee program may not hold  
2           providers harmless. A provider fee is considered to  
3           hold a provider harmless if the provider paying the  
4           fee receives, 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 fees. 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 benefits. The additional federal  
6 funds obtained via the fee program would reduce the amount of  
7 losses incurred by nursing facilities. As such, the provider  
8 fee would help preserve access to health care for the medicaid  
9 population and sustain the State's entire health care system.

10 The purpose of this Act is to ensure access to health care  
11 for medicaid recipients by establishing a nursing facility  
12 sustainability fee and a special fund to receive moneys from the  
13 nursing facility sustainability fee in order to receive federal  
14 medicaid matching funds under the QUEST expanded medicaid  
15 section 1115 demonstration waiver.

16 SECTION 2. The Hawaii Revised Statutes is amended by  
17 adding a new chapter to title 20 to be appropriately designated  
18 and to read as follows:

19 **"CHAPTER**

20 **NURSING FACILITY SUSTAINABILITY PROGRAM**

21 **§ -1 Title.** This chapter shall be known and may be  
22 cited as the "Nursing Facility Sustainability Program Act".



1           **§ -2 Findings and declaration of necessity.** It is the  
2 intent of the legislature to encourage the maximum drawdown of  
3 federal medicaid funds by establishing a special fund within the  
4 state treasury to receive revenue from the nursing facility  
5 sustainability fee and to use it to receive federal medicaid  
6 matching funds under the section 1115 waiver.

7           **§ -3 Definitions.** As used in this chapter:

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

17           "Department" means the department of human services.

18           "Medicare resident days" means those resident days funded  
19 by the medicare program, a medicare advantage or special needs  
20 plan, a medicare cost plan, or the medicare hospice program.

21           "Net patient service revenue" means gross inpatient revenue  
22 from services provided to nursing facility patients less



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

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

12 "Resident day" means a calendar day of care provided to a  
13 nursing facility resident, including the day of admission and  
14 excluding the day of discharge; provided that one resident day  
15 shall be deemed to exist when admission and discharge occur on  
16 the same day. A resident day includes a day on which a bed is  
17 held for a patient and for which the facility receives  
18 compensation for holding the bed.

19 **§ -4 Nursing facility sustainability program special**  
20 **fund.** (a) There is created in the state treasury the nursing  
21 facility sustainability program special fund to be administered



1 by the department and into which shall be deposited all moneys  
2 collected under this chapter.

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

4 (1) All revenues collected or received by the department  
5 from the nursing facility sustainability fee required  
6 by this chapter;

7 (2) All federal matching funds received by the department  
8 as a result of expenditures made by the department  
9 that are attributable to moneys deposited into the  
10 special fund;

11 (3) Any interest or penalties levied in conjunction with  
12 the administration of this chapter; and

13 (4) Any appropriations, federal funds, donations, gifts,  
14 or moneys from any other sources.

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

17 (1) No less than ninety-five per cent of the revenue from  
18 the nursing facility sustainability fee shall be used  
19 to match federal medicaid funds, with the combined  
20 total to be used to enhance capitated rates to the  
21 QUEST and QUEST expanded access plans for the purpose



1 of increasing medicaid nursing facility payments to  
2 the maximum permitted by federal law; and  
3 (2) An amount not to exceed five per cent of the revenue  
4 from the nursing facility sustainability fee shall be  
5 used to pay administrative expenses.

6 **§ -5 Nursing facility sustainability fee. (a)**

7 Effective July 1, 2012, the department shall charge and collect  
8 a provider fee on health care items or services provided by  
9 nursing facilities.

10 (b) The nursing facility sustainability fee shall be based  
11 on the net patient service revenue of all nursing facilities  
12 that are subject to the sustainability fee.

13 (c) The nursing facility sustainability fee shall not  
14 exceed three per cent of net patient service revenue and shall  
15 be calculated and paid on a per resident day basis exclusive of  
16 medicare part A resident days. The per resident day fee shall  
17 be the same amount for each affected facility, except as  
18 prescribed in subsection (d)(2).

19 (d) In accordance with the redistribution method set forth  
20 in title 42 Code of Federal Regulations section 433.68(e)(1) and  
21 (2), the department shall seek a waiver of the broad-based and  
22 uniform provider fee requirements under federal law to exclude





1 certain nursing facilities from the sustainability fee and to  
2 permit certain high volume medicaid nursing facilities or  
3 facilities with a high number of total annual patient days to  
4 pay the sustainability fee at a lesser amount per non-medicare  
5 resident day, as follows:

6 (1) The department shall exempt the following nursing  
7 facility providers from the nursing facility  
8 sustainability fee subject to federal approval under  
9 title 42 Code of Federal Regulations section  
10 433.68(e)(2):

- 11 (A) Nursing facilities with forty-six or fewer beds;
- 12 (B) Nursing facilities owned or operated by the  
13 federal government; and
- 14 (C) Continuing care retirement communities; and

15 (2) The department shall reduce the fee for high volume  
16 medicaid nursing facilities or facilities with high  
17 patient volumes that meet the redistributive tests of  
18 title 42 Code of Federal Regulations section  
19 433.68(e)(2).



1           **§ -6 Nursing facility sustainability fee assessment.**

2   (a) Nursing facilities shall pay the nursing facility  
3 sustainability fee to the nursing facility sustainability  
4 program special fund in accordance with this chapter.

5       (b) The department shall determine, in conjunction with  
6 nursing facility trade associations located in Hawaii, the fee  
7 rate prospectively for the applicable fiscal year on a per  
8 resident day basis, exclusive of medicare resident days.

9       (c) The department shall collect, and each nursing  
10 facility shall pay, the nursing facility sustainability fee on a  
11 monthly basis, subject to the terms of this section. The fee  
12 shall be due on the first day of each month, with the initial  
13 payment due beginning on the first day of the ensuing quarter  
14 after the state plan has been approved by the Centers for  
15 Medicare and Medicaid Services.

16       **§ -7 Federal approval.** The department shall seek a  
17 broad-based and uniformity waiver and other approvals from the  
18 Centers for Medicare and Medicaid Services that may be necessary  
19 to implement the nursing facility sustainability program,  
20 including a section 1115 waiver renewal and the approval of the  
21 contracts between the State and the medicaid health plans.



1           **§ -8 Multifacility locations.** If an entity conducts,  
2 operates, or maintains more than one nursing facility, the  
3 entity shall pay the nursing facility sustainability fee for  
4 each nursing facility separately.

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

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

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

20           (2) Suspension or revocation of the nursing facility  
21                 license, or facility sustainability fee and federal



1 matching funds to enhance the capitated rates paid to  
2 the QUEST; and

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

5 **§ -10 Enhanced rates to QUEST and QUEST expanded access**  
6 **plans.** (a) In accordance with title 42 Code of Federal

7 Regulations section 438, the department shall use revenues from  
8 the nursing QUEST expanded access plans for the subject fiscal  
9 year consistent with the following objectives:

10 (1) The rate enhancement shall be used exclusively for  
11 increasing nursing facility reimbursements to support  
12 the availability of services and to ensure access to  
13 care to QUEST and QUEST expanded access enrollees;

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

21 (3) The QUEST and QUEST expanded access plans shall use  
22 the rate enhancement to reimburse nursing facilities



1 based on the inpatient use of their QUEST and QUEST  
2 expanded access enrollees, as follows:

3 (A) First, to cover the QUEST and QUEST expanded  
4 access share of the nursing facility  
5 sustainability fee paid by the facilities; and

6 (B) Second, to cover the nursing facility use of  
7 their QUEST and QUEST expanded access enrollees;  
8 and

9 (4) The rate enhancement shall be actuarially sound and  
10 approved by the federal government for federal fund  
11 participation.

12 § -11 Termination. (a) Collection of the nursing  
13 facility sustainability fee under section -5 shall be  
14 discontinued if:

15 (1) The nursing facility sustainability program or the  
16 waiver in section -5 is not approved by the Centers  
17 for Medicare and Medicaid Services. The State may  
18 modify the categories of facilities exempt from the  
19 assessment and the rate adjustment provisions of this  
20 chapter if necessary to obtain and maintain approval  
21 of the waiver and the plan amendment by the Centers  
22 for Medicare and Medicaid Services and if the



1 modification is consistent with the purposes of this  
2 chapter;

3 (2) The department reduces funding for nursing facility  
4 services below the state appropriation in effect on  
5 June 30, 2012;

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

9 (4) Federal financial participation to match the nursing  
10 facility sustainability fee becomes unavailable under  
11 federal law. In such case, the department shall  
12 terminate the collection of the fee beginning on the  
13 effective date of the federal statutory, regulatory,  
14 or interpretive change.

15 (b) If collection of the nursing facility sustainability  
16 fee is discontinued as provided in this section, all moneys in  
17 the special fund shall be returned to the nursing facilities  
18 from which the fee was collected on the same basis as the fee  
19 was assessed.

20 **§ -12 Severability.** If any provision of this chapter or  
21 the application thereof to any person or circumstances is held  
22 invalid, the invalidity shall not affect other provisions or



1 applications of the chapter which can be given effect without  
2 the invalid provision or application, and to this end the  
3 provisions of this chapter are severable."

4 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 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 HD1)

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