
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 be appropriately designated and to read
18 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 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).

20 **§ -6 Nursing facility sustainability fee assessment.**

21 (a) Nursing facilities shall pay the nursing facility



1 sustainability fee to the nursing facility sustainability
2 program special fund in accordance with this chapter.

3 (b) The department shall determine, in conjunction with
4 the Healthcare Association of Hawaii and the Hawaii Long Term
5 Care Association, the fee rate prospectively for the applicable
6 fiscal year on a per resident day basis, exclusive of medicare
7 resident days.

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

15 § -7 **Federal approval.** The department shall seek a
16 broad-based and uniformity waiver and other approvals from the
17 Centers for Medicare and Medicaid Services that may be necessary
18 to implement the nursing facility sustainability program,
19 including a Section 1115 waiver renewal and the approval of the
20 contracts between the State and the medicaid health plans.

21 § -8 **Multifacility locations.** If an entity conducts,
22 operates, or maintains more than one nursing facility, the



1 entity shall pay the nursing facility sustainability fee for
2 each nursing facility separately.

3 § -9 Penalties for failure to pay nursing facility
4 sustainability fee. (a) If a nursing facility fails to pay the
5 full amount of the nursing facility sustainability fee when due,
6 there shall be added to the fee, unless waived by the department
7 for reasonable cause, a penalty equal to five per cent of the
8 fee that was not paid when due. Any subsequent payments shall
9 be credited first to unpaid fee amounts rather than to penalty
10 or interest amounts, beginning with the most delinquent
11 installment.

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

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

18 (2) Suspension or revocation of the nursing facility
19 license; or facility sustainability fee and federal
20 matching funds to enhance the capitated rates paid to
21 the QUEST and



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

3 § -10 Enhanced rates to QUEST and QUEST expanded access
4 plans. (a) In accordance with title 42 Code of Federal
5 Regulations section 438, the department shall use revenues from
6 the nursing QUEST expanded access plans for the subject fiscal
7 year consistent with the following objectives:

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

12 (2) The rate enhancement shall be made part of the monthly
13 capitated rates by the department to the QUEST and
14 QUEST expanded access plans, which shall provide
15 documentation to the department, the Healthcare
16 Association of Hawaii, and the Hawaii Long Term Care
17 Association certifying that the revenues received
18 under paragraph (1) are used in accordance with this
19 section;

20 (3) The QUEST and QUEST expanded access plans shall use
21 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 of this chapter
14 shall be discontinued if:

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



1 Medicare and Medicaid Services and if the modification
2 is consistent with the purposes of this 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 money 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 the 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. (SD1)

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