
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 to medicaid enrollees for care, the payments of which do not
5 cover the actual costs of care. The legislature finds that
6 federal funding to help sustain Hawaii's hospitals financially
7 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 to reduce the federal deficit. However, since
15 provider fees are used by so many states, many of those who are
16 knowledgeable about this subject view elimination of provider
17 fees as unlikely due to their strong political support. A more
18 realistic expectation is a reduction of the provider fee
19 maximum, as proposed by President Barack Obama's fiscal year
20 2012 budget, which would reduce the maximum to three and one-
21 half per cent in 2017. This proposal recognizes that provider



1 fees are essential for most states to maintain a stable,
2 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 hospitals. As such, the provider fee would
8 help preserve access to health care for the medicaid population
9 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 hospital
12 sustainability fee assessed on provider fees on health care
13 items or services provided by hospitals and by establishing a
14 hospital sustainability program special fund to receive moneys
15 from the hospital sustainability fee to receive federal medicaid
16 matching funds under the QUEST Expanded Medicaid Section 1115
17 Demonstration Waiver.

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

21 **"CHAPTER**

22 **HOSPITAL SUSTAINABILITY PROGRAM**



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

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

9 **§ -3 Definitions.** As used in this chapter:

10 "Acute care day" means a calendar day of care provided to a
11 hospital patient, including the day of admission and excluding
12 the day of discharge of the patient.

13 "Department" means the department of human services.

14 "Fiscal year" means a twelve-month period from July 1 of a
15 particular calendar year to June 30 of the following calendar
16 year, inclusive.

17 "Hospital" means a facility as defined and licensed
18 pursuant to chapter 11-93.1, Hawaii administrative rules.

19 "Inpatient care" means the care of patients whose
20 conditions require admission to a hospital.

21 "Net patient service revenue" means gross revenue from
22 inpatient and outpatient care provided to hospital patients,



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

10 "Outpatient care" means all services furnished by hospitals
 11 to patients who are registered as hospital outpatients.

12 "Section 1115 waiver" means the QUEST Expanded Medicaid
 13 Section 1115 Demonstration Waiver (Number 11-W-00001/9).

14 **§ -4 Hospital sustainability program special fund. (a)**

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

18 (b) Moneys in the hospital sustainability program special
 19 fund shall consist of:

- 20 (1) All revenue received by the department from the
- 21 hospital sustainability fee;



1 (2) All federal medicaid funds received by the department
2 as a result of matching revenue from the hospital
3 sustainability fee;

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

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

8 (c) Revenue from the hospital sustainability fee shall be
9 used exclusively as follows:

10 (1) No less than ninety-five per cent of the revenue from
11 the hospital sustainability fee shall be used for any
12 or all of the following:

13 (A) To match federal medicaid funds, with the
14 combined total to be used to enhance capitated
15 rates to the QUEST and QUEST expanded access
16 plans for increasing medicaid hospital payments
17 to the maximum permitted by federal law;

18 (B) To match any remaining federal uncompensated care
19 costs funds under the current Section 1115 waiver
20 if certified public expenditures are not
21 sufficient to draw down the allotted amount; or



1 (C) To match any additional federal medicaid funds
2 available for uncompensated care authorized by
3 any Section 1115 waiver effective after June 30,
4 2013.

5 (2) An amount not to exceed five per cent of the revenue
6 from the hospital sustainability fee shall be used to
7 pay the administrative expenses of the State.

8 **§ -5 Hospital sustainability fee.** (a) Effective July
9 1, 2012, the department shall charge and collect a provider fee
10 on health care items or services provided by hospitals.

11 (b) The hospital sustainability fee shall be based on the
12 net patient service revenue of all hospitals that are subject to
13 the hospital sustainability fee.

14 (c) The hospital sustainability fee shall not exceed three
15 per cent of net patient service revenue as derived from the
16 hospitals' medicare cost report ending during state fiscal year
17 2010; provided that certain hospitals may be exempted from the
18 fee or pay a reduced fee, as determined by the department and
19 the Healthcare Association of Hawaii or its successor
20 organization within the broad-based and uniformity waiver
21 requirements imposed by federal law.



1 **§ -6 Hospital sustainability fee assessments.** (a)

2 Hospitals shall pay the hospital sustainability fee to the
3 department in accordance with this chapter.

4 (b) The department shall collect, and each hospital shall
5 pay, the hospital sustainability fee on a monthly basis subject
6 to the terms of this subsection. The fee shall be due on the
7 first of the month, with the initial payment due on the first
8 day of the ensuing quarter after approval by the Centers for
9 Medicare and Medicaid Services.

10 **§ -7 Federal approval.** The department shall seek the
11 necessary broad-based or uniformity waiver and any additional
12 approvals from the Centers for Medicare and Medicaid Services
13 that may be necessary to implement the hospital sustainability
14 program, including a Section 1115 waiver renewal and the
15 approval of the contracts between the State and the medicaid
16 health plans.

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 hospital**
22 **sustainability fee.** (a) If a hospital fails to pay the full



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

8 (b) In addition to the penalty identified in this section,
9 the department may seek any of the following remedies for the
10 failure of any hospital to pay its fee when due:

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

17 **§ -10 Enhanced rates to QUEST and QUEST expanded access**
18 **plans.** In accordance with title 42 Code of Federal Regulations
19 section 438, the department shall use revenue from the hospital
20 sustainability fee and federal matching funds to enhance the
21 capitated rates paid to the QUEST and QUEST expanded access



1 plans for the subject fiscal year, consistent with the following
2 objectives:

3 (1) The rate enhancement shall be used exclusively for
4 increasing hospital reimbursements to support the
5 availability of hospital services and to ensure access
6 for medicaid beneficiaries;

7 (2) The rate enhancement shall be made part of the monthly
8 capitated rates by the department to the QUEST and
9 QUEST expanded access plans, which shall provide
10 documentation to the department and the Healthcare
11 Association of Hawaii certifying that those funds
12 received in this manner are used in accordance with
13 this section;

14 (3) The QUEST and QUEST expanded access plans shall use
15 the rate enhancement to reimburse hospitals based on
16 the inpatient and outpatient use of their QUEST and
17 QUEST expanded access enrollees; and

18 (4) The rate enhancement shall be actuarially sound and
19 approved by the federal government for federal fund
20 participation.



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

4 (1) The hospital sustainability program waiver in section
5 -5 or section -7 is not approved 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 the
9 effective date of this chapter;

10 (3) The department or any other state agency uses the
11 money in the hospital sustainability program special
12 fund for any use other than the uses permitted
13 pursuant to this chapter; or

14 (4) If federal financial participation to match the
15 revenue from the hospital sustainability fee becomes
16 unavailable under federal law. In such case, the
17 department shall terminate the imposition of the
18 hospital sustainability fee beginning on the date the
19 federal statutory, regulatory, or interpretive change
20 takes effect.

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



1 special fund shall be distributed to the hospitals on the same
2 basis as the hospital sustainability fee was assessed.

3 **§ -12 Severability.** If any provision of this chapter or
4 the application thereof to any person or circumstances is held
5 invalid, the invalidity shall not affect other provisions or
6 applications of the chapter which can be given effect without
7 the invalid provision or application, and to this end the
8 provisions of this chapter are severable."

9 SECTION 3. This Act shall take effect on July 1, 2050.



Report Title:

Hospital Sustainability Fee; Hospital Sustainability Program
Special Fund

Description:

Establishes the Hospital Sustainability Program into which hospital 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 hospitals. Effective July 1, 2050. (SD1)

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