WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2466, S.D. 1

February 28, 2012

RELATING TO LONG-TERM CARE FACILITIES

Senate Bill No. 2466, S.D. 1, establishes a Nursing Facility Sustainability Program Special Fund into which shall be deposited nursing facility provider fees which will be used to match federal Medicaid funds to increase Medicaid payments to nursing facilities.

While the Department of Budget and Finance does not take any position on the policy of establishing a nursing facility sustainability program, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to Senate Bill No. 2466, S.D. 1, it is difficult to determine whether there is a clear nexus between the nursing facilities which are assessed fees and the nursing facilities which receive increased Medicaid payments, and it does not appear that the special fund will be self-sustaining.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.

HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Everyday"

Senate Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair

February 28, 2012
Conference Room 211
Hawaii State Capitol

Testimony Supporting Senate Bill 2466, SD1 Relating to Long-Term Care Facilities 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.

Bruce S. Anderson, Ph.D.
President and Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in support of the concept of SB 2466, SD1 that establishes the Nursing Facility Sustainability Program Special fund into which nursing facility sustainability fees shall be deposited.

Given that health care provider reimbursements are declining at both the federal and state level, it is imperative that health care providers find innovative ways to generate revenues to offset the decline in reimbursements. We believe that the concept of a provider fee on health care items or services provided by nursing facilities would be a good financing mechanism that could leverage federal funds to increase the reimbursements to nursing facilities from the QUEST and QUEST Expanded Access (QEXA) programs.

However, we have several concerns that will need to be addressed before we can provide our full support of this bill. First, the bill requires that the nursing facilities would pay the sustainability fee 45 days after the end of each calendar quarter. That means that there would be a gap of approximately three months at a minimum before a nursing facility would be able to recoup the amount of the sustainability fee paid from the enhanced reimbursements from the QUEST and QEXA plans. This would create a severe cash flow issue for HHSC's nursing facilities, since they do not have adequate cash reserves to make the initial payment and then wait for the reimbursements to come in over the next three months.

Second, the bill does not contain any language that requires deadlines for the Department of Human Services (DHS) to facilitate the drawdown of federal funds or to pay the enhanced capitation rates to the QUEST and QEXA plans. Also, the bill does not contain any language that requires deadlines for the QUEST and QEXA plans to make the enhanced reimbursements to the providers. Further, while the bill contains penalties for nursing facilities for lack of timely payment, there are no such penalties for DHS or the QUEST and QEXA plans to make sure that the nursing facilities receive the enhanced reimbursements due them.

Third, the bill does not specify what data source will be used to assess the nursing facility sustainability fee. While the bill specifies that the fee will be assessed on the nursing facility's "net patient service revenue," the data source is critical for nursing facility providers to know in order for them to determine whether the amount of the fee assessed to them is correct or not.

Fourth, the bill assumes that all nursing facilities are participating providers with the QUEST and QEXA plans. It is unclear how nursing facilities that are not participating providers would receive enhanced reimbursements under this bill.

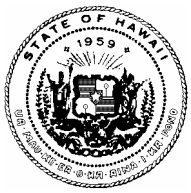
These concerns have been communicated to the Healthcare Association of Hawaii, whom we understand will be providing technical amendments to this bill to address these concerns as the bill moves through the Legislative session.

Thank you for the opportunity to testify before this committee. We would respectively recommend the Committee's support of this measure.

NEIL ABERCROMBIE
GOVERNOR

PATRICIA MCMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 28, 2012

TO: The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2466, S.D.1 - RELATING TO LONG-TERM CARE FACILITIES**

Hearing: Tuesday, February 28, 2012; 9:00 a.m.
Conference Room 211, State Capitol

PURPOSE: The purpose of the bill is to establish the Nursing Facility Sustainability Program special fund into which nursing facility sustainability fees shall be deposited and requires the department of human services to charge and collect a provider fee on health care items or services provided by nursing facilities.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports increasing the sustainability of the long-term care services delivery system. The DHS is in active discussions with stakeholders on this bill and continues to more thoroughly review the technical aspects of this proposal.

While we are working with the stakeholders we would like to comment that these provider fees have been widely implemented nationally but are now being increasingly scrutinized by the Centers for Medicare & Medicaid Services (CMS). While the current version allows specifically 5% for administrative costs for staff to collect and administer the provider

fees the DHS would recommend broader language that would allow the Department to also utilize the funds for services as well if available.

In the context of the recently released report from the Long Term Care Commission (LTCC), there are many unmet long-term needs in Hawaii. The enhanced revenue from this measure could provide the opportunity to more effectively address the broader long-term care needs recommended by the LTCC such as providing incentives for developing community-based services in addition to increasing reimbursement for providers.

Provider assessments are commonly used to generate revenue for a state by leveraging federal funds through Medicaid. Some of the funding is used to increase provider reimbursement, but the funding can be used for any purpose. For example, if $100 is assessed, the State could keep $50 for itself and use the other $50 to increase Medicaid provider reimbursement which would bring in an additional $50 in federal match. Under this scenario, the provider receives an increased payment of $100 relative to the $100 assessed and breaks even; the state makes $50. Conversely, the same assessed $100 could be used entirely to increase reimbursement to providers, receive $100 in matching federal funds and result in $200 being paid to providers relative to the $100 assessed for a net gain of $100.

Thank you for the opportunity to comment on this bill.

Healthcare Association
of Hawaii

SENATE COMMITTEE ON WAYS AND MEANS
Senator David Ige, Chair

Conference Room 211
February 28, 2012 at 9:00 a.m.

Comments Supporting SB 2466 SD 1: Relating to Long-Term Care Facilities

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of SB 2466 SD 1, which creates the Nursing Facility Sustainability Program, which strengthens the financing of long term care in Hawaii by drawing down federal funds.

Provider fee programs are used in 46 states and the District of Columbia as a means of drawing down additional federal funds to sustain their Medicaid programs. Hawaii is one of only four states without such a program, at a time when state budget deficits are rising due to increasing health care costs and expanding Medicaid rolls. The implementation of a provider fee in Hawaii could assist in stabilizing declining Medicaid payments to facilities and slow down the erosion of access to care for those beneficiaries served by the program. I must emphasize that supporting access to care via this program can only be accomplished if it is implemented in the manner supported by the Health Care Association and its members.

Provider fee programs use NO state funds and no taxpayer funds. The funds to draw down federal funds are those of the long term care facilities. These organizations will have to pay an up front assessment and as such they will be draining what little, if any, funds they have in reserve to utilize this program. But the current situation is so dire that these providers are willing to take the risks involved with implementing a provider fee program.

Why do I say that there is a risk involved? Besides the cash flow issue this could cause for some facilities there is a risk that the Department of Human Services will ask for more than the 5% administrative concession to the state currently contained in the bill. This concession is to recognize any administrative burden that DHS may incur in supporting the program. Although we are still finalizing our model, 5%of the long term care sustainability program would likely net the state between $500,000 and $750,000 which, if used for Medicaid services, would be eligible for a federal match thus netting the state between $1 million and 1.5 million total. The MedQuest Director has stated that two full time employees would be needed to administer the program. This would be more than enough funding to hire two FTEs.

Medicaid is jointly financed by the states and the federal government. By statutory formula, the federal government pays between 50% and 76% of Medicaid costs incurred by states for care delivered to their Medicaid beneficiaries, based on each state's Federal Medical Assistance Percentage (FMAP). Under federal rules, the state share must be public funds that are not federal funds. The non-federal public funds may come from three sources:

Category 1: Direct appropriations to the state Medicaid agency;
Category 2: Intergovernmental transfers (IGTs); or
Category 3: Certified public expenditures (CPEs).

Provider fees fall under Category 1 above. The provider fee program may be utilized by 19 different classes of health care services, including inpatient/outpatient hospital and nursing facility services. Fee programs produce revenues that flow into special funds and are then directly appropriated to the state Medicaid agency in order to draw down matching federal funds for Medicaid covered services.

In the past few years, states have increasingly relied on provider fee revenues to fund their Medicaid programs. This growth is a direct result of the downturn in state revenues during the last two recessions. Provider fees have served as the primary vehicle for maintaining and enhancing Medicaid funding during the last two recessions.

Federal regulations allow states to use revenue from provider fees to help fund Medicaid, as long as they satisfy the following requirements established by the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments (P.L. 102-234):

(1) They must be broad-based. In order to be considered broad-based, a provider fee must be imposed on all the health care items or services furnished by all the non-federal, non-public providers in the class in the state.

(2) They must be uniformly imposed. In general, a provider fee is uniformly imposed if it is the same amount or rate for each provider in the class.

(3) There is a hold harmless prohibition. A fee program may not hold providers harmless. A provider fee is considered to hold the provider harmless if the providers paying the fee receive a non-Medicaid payment from the state or any offset or waiver that guarantees to hold the provider harmless for the fee.

The Secretary of Health and Human Services is authorized to waive the broad-based and uniformity provisions, provided that a state can demonstrate through a quantitative statistical test that its fee program is generally redistributive in nature. This means that the increase in Medicaid reimbursements a provider would receive are not positively correlated to the amount of fees paid by the provider. Obtaining a waiver from CMS permits a state to exempt certain providers from the fee, or reduce their assessment amounts to reduce the financial impact on net contributors (i.e. fee paid is greater than the distribution earned).

In Hawaii a provider fee would increase Medicaid payments at a time when constraints on the State budget have forced a reduction in payments and benefits. The additional federal funds obtained via the fee program would reduce the amount of losses incurred by hospitals and long term care facilities. As such, the provider fee would help to preserve access to health care for the Medicaid population and to preserve our health care system.

This bill creates a provider fee for nursing facilities. Another bill being considered by the Legislature creates a separate provider fee for hospitals.

Besides helping existing long term care facilities, the Nursing Facility Sustainability Program could enhance the creation of new long term care facilities. For example, if reopened, the Hawaii Medical Center East facility, could be repurposed as a nursing facility. If this occurred it

is likely that a substantial proportion of its residents would be Medicaid enrollees since Medicaid enrollees represent about 70% of the total population of all Hawaii nursing homes. However, nursing facilities are losing $7 to $8 per day on each Medicaid resident. If a provider fee program were implemented in the manner supported by the Healthcare Association of Hawaii, Medicaid payments would be increased to a level that is closer to the actual cost of care. This increase would make the Hawaii Medical Center East facility more attractive to a potential purchaser.

It should be noted that the Healthcare Association of Hawaii continues to discuss this bill with the Department of Human Services and other interested parties, each of which has a different perspective. As such, the Association may request amendments to the bill in the near future. Meanwhile, the Association urges the committee to pass the bill so that it remains under consideration in the legislative process.

Thank you for the opportunity to testify in support of SB 2466 SD 1.