

# SB 2466

Measure Title: RELATING TO LONG-TERM CARE FACILITIES.

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 Effective July 1, 2012, and repealed on June 30, 2013.

Companion:

Package: None

Current Referral: HMS, WAM

Introducer(s): GREEN, CHUN OAKLAND

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON HUMAN SERVICES  
ON  
SENATE BILL NO. 2466

January 31, 2012

RELATING TO LONG-TERM CARE FACILITIES

Senate Bill No. 2466 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, 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.

To: Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair  
Committee on Human Services

Re: Testimony in opposition to Senate Bill 2466

The Palolo Chinese Home (PCH) is a 501 (c) (3) not-for-profit organization. For more than a hundred years, PCH has been providing shelter and care to Hawaii's seniors. Its origins date back to 1896 with original intent to care for aging plantation workers who had no family support. Currently, PCH is Hawaii's largest and second oldest Adult Residential Care Home (ARCH II – Expanded Care). PCH has 61 nursing home and 50 residential care beds; an adult day care program for 30 senior participants and an adult respite care program that provides short-term overnight stays for community seniors. PCH also provides hospice care on its campus through partnerships with all hospice care providers in Hawaii.

Although the intent of S.B. 2466 is to increase the amount of federal matching funds to Hawaii's Medicaid program, based on financial projections of the Healthcare Association of Hawaii's consultants, Palolo Chinese Home will be negatively impacted and is projected to incur a loss of approximately \$230,000 annually. A loss of this magnitude will significantly impair our ability to continue serving Hawaii's seniors.

We urge the Committee to hold S.B. 2466. Thanks you for the opportunity to voice our opposition to this bill.

Sincerely,

Darryl N. Ing  
Chief Executive Officer



SENATE COMMITTEE ON HUMAN SERVICES  
Senator Suzanne Chun Oakland, Chair

Conference Room 016  
January 31, 2012 at 1:15 p.m.

**Supporting SB 2466: 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, 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.

Provider fees are not taxes, as they are created voluntarily by different categories of health care providers and are collected only from these providers. These fees are not assessed on other organizations, nor on individuals. Provider fees are used in this limited way to draw down federal funds.

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 SNFs, the Nursing Facility Sustainability Program could enhance the creation of new long term care facilities. For example, the Hawaii Medical Center East facility, will likely be repurposed as a nursing facility. A substantial proportion of its residents are expected to 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, Medicaid payments would be increased to a level that is close 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 this bill is still in the process of being finalized. The model for the Nursing Facility Sustainability Program is still being developed because the data required to design it is still being gathered. The data is expected shortly, and at that time the Healthcare Association of Hawaii will propose amendments to the bill. We would like to thank the Department of Human Services and the Hawaii Long Term Care Association for working cooperatively with the Healthcare Association to complete the model.

In addition to those amendments that will be proposed later, the Healthcare Association would like to propose an HD 1 version of the bill (attached) that includes the following amendments:

1. Exempts continuing care retirement communities.
2. Reschedules the fee payment from a quarterly basis to a monthly basis.
3. Provides specific examples of CMS approvals that may be needed.
4. Corrects an error referring to inpatient care.
5. Authorizes the State to modify the categories of exempt facilities and the rate adjustment provisions if needed for CMS approval.

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



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

*"Touching Lives Everyday"*

**Senate Committee on Human Services  
Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair**

January 31, 2012  
Conference Room 016  
Hawaii State Capitol

**Testimony Supporting Senate Bill 2466, 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 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 respectfully recommend the Committee's support of this measure.