

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. 2467, S.D. 1

February 28, 2012

RELATING TO HOSPITALS

Senate Bill No. 2467, S.D. 1, establishes a Hospital Sustainability Program Special Fund into which shall be deposited hospital provider fees which will be used to match federal Medicaid funds to increase Medicaid payments to hospitals.

While the Department of Budget and Finance does not take any position on the policy of establishing a hospital 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. 2467, S.D. 1, it is difficult to determine whether there is a clear nexus between the hospital facilities which are assessed fees and the hospital 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.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 28, 2012

The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair

Senate Committee on Ways and Means

Re: SB 2467, SD1 – Relating to Hospitals

Dear Chair Ige, Vice Chair Kidani and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates your allowing us to comment on SB 2467, SD1. HMSA understands and appreciates the intent of this legislation but has questions with the Bill as drafted, and we have an objection to two specific provisions in the Bill.

SB2467, SD1 authorizes hospitals to charge a fee of up to 3 percent of “net patient service revenue,” known as the Hospital Sustainability Fee. The revenue generated from this fee is to be transferred to the State Department of Human Services (DHS) for deposit into the Hospital Sustainability Program Special Fund (Fund). DHS is allowed to retain up to 5 percent of those deposits to pay for administrative overhead. And, no less than 95 percent of those deposits are to be used to match federal Medicaid funds to increase Medicaid hospital payments.

As drafted, the Bill seems to be only an outline of the concept of the Hospital Stabilization Program (Program), and it lacks specificity regarding how the Program will be administered and will operate such as:

- While revenues from the fee and federal funds are to be used for exclusive purposes, the Bill leaves open the possibility that other deposits into the Fund may not necessarily be held in trust and subject to purposes outside of the Program.
- How will expenditures from the Fund be made?
- What will be the role of the plans that implement the QUEST and QUEST Expanded Access contracts for MedQUEST?

While we understand the need for a State overhead charge to administer the Program, we are concerned that the Bill does not acknowledge that this program also creates an administrative burden on the health plans. The fee structure should be drafted to also accommodate the additional administrative plan costs.

We do have an objection to two provisions in the Bill. The first authorizes a private entity to authorize an exemption from the fee. And, the second mandates QUEST and QUEST expanded access plans to provide reimbursement documentation to that private entity. The fee is a State mandated levy, and it would be irregular for a private entity to either alter the fee or exempt anyone from the levy. Furthermore, while we understand the need for plans to certify the appropriate use of funds to DHS, we would find it highly inappropriate for plans to be required to report and provide documentation to a private entity that represents the providers that receive payments from the Fund. Attached for your consideration is a suggested draft amendment to the offending sections of the Bill.

We truly understand and appreciate this innovative proposal to enhance the effectiveness of our state's Medicaid program. While we do have questions regarding the details behind this proposal, we look forward to working with this Committee and with everyone who have an interest in seeing such innovations proceed.

Thank you for allowing us to comment on this measure, and your consideration of our concerns is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jennifer Diesman
Vice President
Government Relations

Attachment

Proposed Amendments to
SB 2467, SD1, Section 2, Page 8, Section ____-5(c)

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

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

(c) The hospital sustainability fee shall not exceed three per cent of net patient service revenue; provided that certain hospitals shall be exempted from the fee or pay a reduced fee, as determined by the department [~~and the Healthcare Association of Hawaii or its successor organization~~] within the broad-based and uniformity waiver requirements imposed by federal law.

Proposed Amendment to
SB 2467, SD1, Section 2, Page 11, Section ____-10(2)

§ -10 Enhanced rates to QUEST and QUEST Expanded Access plans. In accordance with Title 42 Code of Federal Regulations section 438, the department shall use revenue from the hospital sustainability fee and federal matching funds to enhance the capitated rates paid to the QUEST and QUEST expanded access plans for the subject fiscal year, consistent with the following objectives:

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

2) The rate enhancement shall be made part of the monthly capitated rates by the department to the QUEST and QUEST expanded access plans, which shall provide documentation to the department [~~and the Healthcare Association of Hawaii~~] certifying that funds received are used in accordance with this section;



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

"Touching Lives Everyday"

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

February 28, 2012
Conference Room 211
9:00 a.m.
Hawaii State Capitol

**Testimony Supporting Senate Bill 2467, SD1, Relating to Hospitals
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.**

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

On behalf of the Hawaii Health Systems Corporation (HHSC), thank you for the opportunity to present testimony in support of the concept of SB 2467, SD1 that establishes the Hospital Sustainability Program into which hospital 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 hospitals would be a good financing mechanism that could leverage federal funds to increase the reimbursements to hospitals 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 hospitals 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 hospitals, 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.

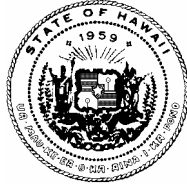
Second, the bill does not contain any language that requires deadlines for the Department of Human Services (DHS) to facilitate the drawdown of federal funds or to pay the enhanced capitation rates to the QUEST and QEXA plans. Also, the bill does not contain any language that requires deadlines for the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

Third, the bill does not specify what data source will be used to assess the hospital sustainability fee. While the bill specifies that the fee will be assessed on the hospital's "net patient service revenue," the data source is critical for hospitals 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 hospitals are participating providers with the QUEST and QEXA plans. It is unclear how hospitals 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.



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. 2467, S.D.1 - RELATING TO HOSPITALS**

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

PURPOSE: The purpose of the bill is to establish 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.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports increasing the sustainability of the State's services delivery system. The DHS is in active discussions with stakeholders of this bill and continues to review the technical proposal.

While we work 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) therefore, raising some concerns about the likelihood of federal approval. Initial concerns include that the Healthcare Association of Hawaii (HAH) and DHS will determine who is exempt from or pays a reduced fee. Should DHS and the HAH not be able to agree on which facilities should be exempted it could delay payment of the

fee, DHS recommends that we get input from HAH but that DHS will make the final decision on exemptions.

This bill, as drafted, would also prohibit use of the received fees to increase reimbursement for services provided to non-pregnant adult migrants because they are not eligible for federal match. This is also of concern to DHS.

The current version allows specifically 5% for administrative costs for staff to collect and administer the provider fees. DHS would like to see broader language that would allow the Department to also utilize the funds for services as well if funds are available.

Lastly, the enhanced revenue from this measure provides the opportunity to help transform Hawaii's health care system such as by increasing reimbursement and thereby access to primary care to prevent hospitalizations, developing hospital on site alternatives to reduce inappropriate emergency room use, and increasing nursing facility reimbursement to reduce the hospital waitlist, in addition to increasing reimbursement for hospitals.

Provider assessments are commonly used to generate revenue for a state by leveraging federal funds through Medicaid. While some of the funding will be used to increase provider reimbursement, the funding should be allowed to be used for any purpose as it relates to Medicaid benefits. 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.



SENATE COMMITTEE ON WAYS AND MEANS
Senator David Ige, Chair

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

Comments Supporting SB 2467 SD 1: Relating to Hospitals

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 2467 SD 1, which creates the Hospital Sustainability Program, which strengthens the financing of hospitals 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 of Hawaii 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 hospitals. They will have to pay an up front assessment, and as such some of them 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 Hospital Sustainability Program would likely net the state between \$1.5 million and \$2.5 million which, if used for Medicaid services, would be eligible for a federal match thus netting the state between \$3 million and \$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 hospitals. Another bill being considered by the Legislature creates a separate provider fee for nursing facilities.

It should be noted that this bill is still in the process of being finalized. The model for the Hospital 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 Health Systems Corporation for working cooperatively with the Healthcare Association to complete the model.

Thank you for the opportunity to testify in support of SB 2467 SD 1.