



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 21, 2013

**GOV. MSG. NO. 1244**

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 21, 2013, the following bill was signed into law:

HB879 HD2 SD1

RELATING TO THE HOSPITAL SUSTAINABILITY  
PROGRAM  
**ACT 141 (13)**

*Neil Abercrombie*  
Sincerely,  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on JUN 21 2013

HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

**ACT 141**

**H.B. NO.** 879  
H.D. 2  
S.D. 1

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# A BILL FOR AN ACT

RELATING TO THE HOSPITAL SUSTAINABILITY PROGRAM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Act 217, Session Laws of Hawaii 2012, is  
2 amended by amending section 2 to read as follows:

3 "SECTION 2. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to be appropriately designated and to read  
5 as follows:

6 "CHAPTER

7 HOSPITAL SUSTAINABILITY PROGRAM

8 § -1 Title. This chapter shall be known and may be  
9 cited as the "Hospital Sustainability Program Act".

10 § -2 Findings and declaration of necessity. It is the  
11 intent of the legislature to establish a special fund within the  
12 state treasury to receive revenue from the imposition of a  
13 hospital sustainability fee to be administered by the department  
14 [~~and to~~] of human services, which shall use the revenue from the  
15 fee and associated federal medicaid matching funds to make  
16 direct payments to hospitals and for other purposes as set forth  
17 in this chapter.

18 § -3 Definitions. As used in this chapter:

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1 "Department" means the department of human services.

2 "Fiscal year" means a twelve-month period from July 1 of a  
3 particular calendar year to June 30 of the following calendar  
4 year, inclusive.

5 "Hospital" means any facility licensed pursuant to chapter  
6 11-93, Hawaii Administrative Rules.

7 "Inpatient care" means the care of patients whose  
8 conditions require admission to a hospital.

9 "Net patient service revenue" means gross revenue from  
10 inpatient and outpatient care provided to hospital patients  
11 converted to net patient revenue utilizing data from Worksheets  
12 G-2 and G-3 of each ~~[hospitals]~~ hospital's medicare cost report  
13 for ~~[the period ending between July 1, 2009, and June 30, 2010.]~~  
14 fiscal year 2010-2011. If the hospital is new or did not file a  
15 fiscal year medicare cost report, the department shall obtain  
16 the hospital's net patient service revenue from the most recent  
17 period available.

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

20 "Private hospital" means those non-public hospitals named  
21 in attachment A of the ~~[QUEST-expanded]~~ medicaid section 1115



1 demonstration waiver that were in operation in calendar year  
2 2012 and are currently operating.

3 "Section 1115 waiver" means the [~~QUEST expanded~~] medicaid  
4 section 1115 demonstration waiver [~~(Number 11-W-00001/9).~~] under  
5 which the state medicaid program is operating.

6 § -4 **Hospital sustainability program special fund.** (a)

7 There is created in the state treasury the hospital  
8 sustainability program special fund to be administered by the  
9 department into which shall be deposited all moneys collected  
10 under this chapter.

11 (b) Moneys in the hospital sustainability program special  
12 fund shall consist of:

- 13 (1) All revenue received by the department from the  
14 hospital sustainability fee;
- 15 (2) All federal medicaid funds received by the department  
16 as a result of matching expenditures made with the  
17 hospital sustainability fee;
- 18 (3) Any interest or penalties levied in conjunction with  
19 the administration of this chapter; and
- 20 (4) Any designated appropriations, federal funds,  
21 donations, gifts, or moneys from any other sources.



1 (c) Moneys in the hospital sustainability program special  
2 fund shall be used exclusively as follows:

3 (1) To make direct payments to private hospitals pursuant  
4 to the terms of the section 1115 waiver. At least  
5 ~~[ninety-three]~~ eighty-eight per cent of the moneys in  
6 the special fund shall be used for this purpose,  
7 provided that in no instance shall a hospital receive  
8 ~~[supplemental]~~ uncompensated care costs payments that  
9 exceed its allowable uncompensated care costs;

10 ~~[(2) Two per cent of the moneys in the special fund shall~~  
11 ~~be used for medicaid covered services for the benefit~~  
12 ~~of hospitals;~~

13 ~~(3) Five]~~ (2) Twelve per cent of the moneys in the  
14 special fund may be used by the department for other  
15 departmental purposes; and

16 ~~[(4)]~~ (3) Any money remaining in the special fund six  
17 months after the repeal of this chapter, shall be  
18 distributed to hospitals within thirty days in the  
19 same proportions as received from the hospitals.

20 (d) The department shall utilize federal funds derived  
21 from state hospital certified expenditures to make supplemental  
22 payments to state hospitals and is authorized to receive



1 intergovernmental transfers from the state hospitals to support  
2 direct supplemental payments and increased capitation rates to  
3 health plans for the benefit of the state hospitals. During any  
4 period in which the hospital sustainability fee is in effect,  
5 certified expenditures of state hospitals shall not be used to  
6 make or support direct payments to private hospitals.

7 ~~[(e) The hospital sustainability program special fund~~  
8 ~~appropriation ceiling shall be \$42,000,000 for fiscal year 2012-~~  
9 ~~2013 and \$37,000,000 in federal funds for HMS 401 for fiscal~~  
10 ~~year 2012-2013.]~~

11 § -5 **Hospital sustainability fee.** (a) Effective  
12 July 1, 2012, or, if later, the effective date of any necessary  
13 federal approvals, the department shall charge and collect  
14 provider fees, to be known as the hospital sustainability fee,  
15 on inpatient and outpatient care services provided by private  
16 hospitals.

17 (b) The hospital sustainability fee shall be based on the  
18 net patient service revenue for inpatient services and  
19 outpatient services, respectively, of all hospitals that are  
20 subject to the hospital sustainability fee.

21 (c) The hospital sustainability fee for inpatient care  
22 services may differ from the fee for outpatient care services



1 but the fees shall not in the aggregate exceed three per cent of  
2 net patient service revenue as derived from the [~~hospitals~~]  
3 hospital's medicare cost report ending during state fiscal year  
4 [~~2010-~~] 2010-2011. The inpatient hospital sustainability fee  
5 shall be [~~2.471~~] 2.365 per cent of net inpatient hospital  
6 service revenue. The outpatient hospital sustainability fee  
7 shall be three per cent of net outpatient hospital service  
8 revenue. Each fee shall be the same percentage for all affected  
9 hospitals, subject to subsection (d).

10 (d) The department shall exempt children's hospitals,  
11 federal hospitals, public hospitals, rehabilitation hospitals,  
12 [~~and~~] psychiatric hospitals, and any hospital that was not in  
13 operation during any part of calendar year 2012 from the  
14 hospital sustainability fees on inpatient [~~and outpatient care~~]  
15 services. In addition, the department shall exempt hospitals  
16 with net outpatient revenue of less than [~~\$45,000,000~~]  
17 \$42,500,000 per year (based on fiscal year [~~2010~~] 2010-2011  
18 reports), public hospitals, and any hospital that was not in  
19 operation during any part of calendar year 2012 from the  
20 hospital sustainability fee on outpatient care services.

21 (e) The department, with agreement by the hospital trade  
22 association located in Hawaii, may modify the structure of the



1 hospital sustainability program if such modification is  
2 necessary to obtain federal waiver approval consistent with the  
3 requirements of 42 Code of Federal Regulations section  
4 433.68(e)(2).

5       §   -6 **Hospital sustainability fee assessments.** (a)

6 Hospitals shall pay the hospital sustainability fee to the  
7 department in accordance with this chapter. The fee shall be  
8 divided and paid in four equal installments on a quarterly  
9 basis.

10       (b) The department shall collect, and each hospital shall  
11 pay, the hospital sustainability fee not later than the  
12 fifteenth day after the end of each calendar quarter, provided  
13 that if required federal approvals have not been secured by the  
14 end of a calendar quarter the fees for that quarter shall be  
15 paid within ten days after notification to the hospitals that  
16 the required approvals have been received.

17       §   -7 **Federal approval.** The department shall seek  
18 waivers and any additional approvals from the Centers for  
19 Medicare and Medicaid Services that may be necessary to  
20 implement the hospital sustainability program.

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





1 department of health, the entity shall pay the hospital  
2 sustainability fee for each hospital separately.

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

12       (b) In addition to the penalty imposed by subsection (a),  
13 the department may seek any of the following remedies for the  
14 failure of any hospital 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 hospital license; or
- 19       (3) Development of a plan that requires the hospital to  
20             pay any delinquent fee in installments.

21       §   -10 Private hospital payments. (a) The department  
22 shall use moneys from the hospital sustainability program



1 special fund to make direct payments to private hospitals in an  
2 amount equal to [~~\$77,468,401~~] \$81,309,367 to cover the  
3 uncompensated care costs incurred by private hospitals for  
4 serving medicaid and uninsured individuals during state fiscal  
5 year [~~2013-~~] 2013-2014.

6 (b) The department shall make quarterly payments to  
7 private hospitals to reimburse their uncompensated care costs  
8 within twenty days after the end of each calendar quarter;  
9 provided that payments shall not be due until at least fifteen  
10 days after receipt of the fees required by section -6. If  
11 the department fails to pay the full amount when due, there  
12 shall be added to the payment a penalty equal to prime plus two  
13 per cent of the payment that was not paid when due.

14 (c) Each eligible hospital's quarterly payment shall be  
15 equal to one-quarter of its uncompensated care costs for the  
16 fiscal year in which payment is made, as derived from the  
17 uncompensated care costs reported by all private hospitals for  
18 fiscal year [~~2010-~~] 2010-2011.

19 (d) If federal approval pursuant to section -7 is not  
20 received until after the end of any quarter for which the  
21 hospital sustainability fee is applicable, the department shall  
22 make the initial quarterly payments within five days after



1 receipt of the hospital sustainability fee for the respective  
2 quarter.

3 (e) To the extent the hospital sustainability program is  
4 not effective for the entire year, the hospital sustainability  
5 fee, the state medicaid expenses and administrative fee, and the  
6 corresponding uncompensated care payments shall be based on the  
7 proportion of the fiscal year the program is in effect.

8 § -11 **Special designation of hospital sustainability**  
9 **program special fund.** Notwithstanding section 37-53, and any  
10 law or any administrative rule to the contrary, the specific  
11 purposes set out in section -4(c) are established as being  
12 exclusive uses of the hospital sustainability program special  
13 fund. The hospital sustainability program special fund shall  
14 not and may not be used for any other purposes, notwithstanding  
15 any authority granted to the governor or any other state  
16 official by any other statutory provisions relating to the  
17 allocation or reallocation of funds.

18 § -12 **Termination.** (a) Collection of the hospital  
19 sustainability fee established by section -5 shall be  
20 discontinued if:



- 1 (1) The required federal approvals specified in section  
2 -7 are not granted or are revoked by the Centers  
3 for Medicare and Medicaid Services;
- 4 (2) The department reduces funding for hospital services  
5 below the state appropriation in effect as of the  
6 effective date of this chapter;
- 7 (3) The department or any other state agency uses the  
8 money in the hospital sustainability program special  
9 fund for any use other than the uses permitted by this  
10 chapter; or
- 11 (4) Federal financial participation to match the revenue  
12 from the hospital sustainability fee becomes  
13 unavailable under federal law; provided that the  
14 department shall terminate the imposition of the  
15 hospital sustainability fee beginning on the date the  
16 federal statutory, regulatory, or interpretive change  
17 takes effect.
- 18 (b) Notwithstanding section -4(c), if collection of the  
19 hospital sustainability fee is discontinued as provided in this  
20 section, any remaining moneys in the hospital sustainability  
21 program special fund shall be distributed within thirty days to



1 the private hospitals on the same basis as the hospital  
2 sustainability fee was collected.

3 § -13 **Severability.** If any provision of this chapter or  
4 the application thereof to any person or circumstance is held  
5 invalid, the invalidity shall not affect other provisions or  
6 applications of the chapter that can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this chapter are severable.""

9 SECTION 2. Act 217, Session Laws of Hawaii 2012, is  
10 amended by amending section 5 to read as follows:

11 "SECTION 5. This Act shall take effect on July 1, 2012,  
12 and shall be repealed on June 30, [~~2013~~] 2014; provided that  
13 section -4(c), Hawaii Revised Statutes, in section 2 of this  
14 Act shall be repealed on December 31, [~~2013~~] 2014."

15 SECTION 3. There is appropriated out of the hospital  
16 sustainability program special fund the sum of \$46,000,000 or so  
17 much thereof as may be necessary for fiscal year 2013-2014, with  
18 such moneys to be used consistent with the hospital  
19 sustainability program special fund.

20 SECTION 4. The sum appropriated shall be expended by the  
21 department of human services for the purposes of this Act.



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on June 29, 2013.

APPROVED this 21 day of JUN , 2013

*Neil Abernethy*

GOVERNOR OF THE STATE OF HAWAII

