



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 21, 2013

**GOV. MSG. NO. 1245**

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

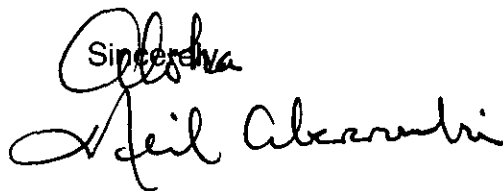
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

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:

HB880 HD2 SD2

RELATING TO THE NURSING FACILITY  
SUSTAINABILITY PROGRAM  
**ACT 142 (13)**

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on JUN 21 2013

**ACT 142**

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

**H.B. NO.** 880  
H.D. 2  
S.D. 2

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# A BILL FOR AN ACT

RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

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

1 SECTION 1. Act 156, Session Laws of Hawaii 2012, is  
2 amended by amending section 1 to read as follows:

3 "SECTION 1. Long-term care facilities in the State face  
4 major financial challenges in providing quality health care for  
5 Hawaii residents. These challenges are largely the result of  
6 payments to medicaid enrollees for care that do not cover the  
7 actual costs of care. The legislature finds that federal  
8 funding to help sustain Hawaii's long-term care facilities  
9 financially may be accessed through a provider fee.

10 Provider fees exist in forty-seven states and the District  
11 of Columbia as a means of drawing down federal funds to sustain  
12 their medicaid programs due to rising state budget deficits,  
13 increasing health care costs, and expanding medicaid rolls.  
14 Implementation of a provider fee in Hawaii would help stabilize  
15 declining medicaid payments to facilities and slow the erosion  
16 of access to care for beneficiaries served by the program.

17 Medicaid is jointly financed by the federal and state  
18 government, but by statutory formula, the federal government



1 pays between fifty per cent and seventy-four per cent of  
2 medicaid costs incurred by states for care delivered to their  
3 medicaid beneficiaries. Federal medical assistance percentages  
4 vary by state, with states that have lower per capita incomes  
5 receiving higher federal matching rates. Under federal rules,  
6 the state share must be public funds that are not federal funds.

7 Provider fees, which are collected from specific categories  
8 of health care items and services, may be assessed on nineteen  
9 different classes of health care services, including inpatient  
10 and outpatient hospital and nursing facility services. However,  
11 there are limitations on the way provider fees are structured.  
12 The Medicaid Voluntary Contribution and Provider-Specific Tax  
13 Amendments of 1991, P.L. 102-234, passed by Congress in 1991,  
14 imposes the following requirements:

15 (1) Broad-based. To be considered broad-based, a provider  
16 fee must be imposed on all health care items or  
17 services furnished by all non-federal, non-public  
18 providers in the class in the State. Provider fee  
19 programs may exclude public facilities without  
20 violating federal law;



- 1 (2) Uniformly imposed. In general, a provider fee is  
2 uniformly imposed if it is the same amount or rate for  
3 each provider in the class; and
- 4 (3) Hold harmless prohibition. States may not hold  
5 providers harmless. A provider fee is considered to  
6 hold the provider harmless if the providers paying the  
7 fee receive, directly or indirectly, a non-medicaid  
8 payment from the state or any offset or waiver that  
9 guarantees to hold the provider harmless for all or a  
10 portion of the fee. A provider fee is also considered  
11 to hold the provider harmless if the medicaid payments  
12 to the provider vary based only on the amount of the  
13 fees paid by the provider.

14 The maximum provider fee a state may receive is currently  
15 six per cent of net patient revenue. A number of proposals have  
16 been made, but not implemented, to eliminate medicaid provider  
17 fee programs in order to reduce the federal deficit. However,  
18 since provider fees are used by so many states, many of those  
19 who are knowledgeable about this subject view elimination of  
20 provider fees as unlikely due to strong political support for  
21 the program. A more realistic expectation is a reduction of the  
22 provider fee maximum, as proposed by President Barack Obama's



1 fiscal year 2012 budget, which would reduce the maximum to three  
2 and one-half per cent in 2017. This proposal recognizes that  
3 provider fees are essential for most states to maintain a  
4 stable, functioning medicaid program.

5 In Hawaii, a provider fee would increase medicaid payments  
6 at a time when constraints on the State's budget have forced a  
7 reduction in payments and optional benefits. The additional  
8 federal funds obtained via the fee program would reduce the  
9 amount of losses incurred by nursing facilities. As such, the  
10 provider fee would help preserve access to health care for the  
11 medicaid population and sustain the State's entire health care  
12 system.

13 State long-term care facilities shall not be covered by the  
14 nursing facility sustainability fee. However, other provisions  
15 of this Act are intended to assure that state facilities will  
16 benefit from the use of their certified expenditures and  
17 intergovernmental transfers to generate federal funds to cover  
18 their operating expenses.

19 The purpose of this Act is to ensure access to health care  
20 for medicaid recipients by establishing a nursing facility  
21 sustainability fee and a special fund to receive moneys from the  
22 nursing facility sustainability fee in order to receive federal



1   medicaid matching funds [~~under the QUEST expanded medicaid~~  
2   ~~section 1115 demonstration waiver~~]."

3           SECTION 2. Act 156, Session Laws of Hawaii 2012, is  
4   amended by amending section 2 as follows:

5           1. By amending § -2 to § -4 to read:

6           "§ -2 **Findings and declaration of necessity.** It is the  
7   intent of the legislature to establish a special fund within the  
8   state treasury to receive revenue from the nursing facility  
9   sustainability fee to be administered by the department [~~and to~~  
10 ~~use it to receive federal medicaid matching funds under the~~  
11 ~~section 1115 waiver~~], which shall use the revenue from the fee  
12 and associated federal medicaid matching funds to make payments  
13 to nursing facilities and for other purposes as set forth in  
14 this chapter.

15           § -3 **Definitions.** As used in this chapter:

16           "Continuing care retirement community" means an entity  
17   providing nursing facility services, along with assisted living  
18   or independent living on a contiguous campus with the number of  
19   assisted living and independent living beds in the aggregate  
20   being at least twice the number of nursing facility beds. For  
21   purposes of this definition, "contiguous" means land adjoining



1 or touching other property held by the same or related  
2 organization, and includes land divided by a public road.

3 "Department" means the department of human services.

4 "Net patient service revenue" means gross inpatient  
5 revenues from services provided to nursing facility patients  
6 less reductions from gross inpatient revenue resulting from an  
7 inability to collect payment of charges. Inpatient service  
8 revenue excludes non-patient care revenues, such as revenues  
9 from beauty and barber services, vending income, interest and  
10 contributions, revenues from the sale of meals, and all  
11 outpatient revenues. Reductions from gross revenue include  
12 contractual adjustments, uncompensated care, administrative,  
13 courtesy, and policy discounts and adjustments, and other  
14 revenue deductions.

15 "Nursing facility" means any facility licensed pursuant to  
16 chapter 11-94.1, Hawaii administrative rules.

17 ~~["QUEST" means the demonstration project developed by the~~  
18 ~~department described in Hawaii's section 1115 waiver and~~  
19 ~~includes the QUEST, QUEST-Net, and QUEST-ACE components.~~

20 ~~"QUEST expanded access" means the demonstration project~~  
21 ~~developed by the department described in Hawaii's section 1115~~  
22 ~~waiver.]~~



1 "Resident day" means a calendar day of care provided to a  
2 nursing facility resident, including the day of admission and  
3 excluding the day of discharge; provided that one resident day  
4 shall be deemed to exist when admission and discharge occur on  
5 the same day. A resident day includes a day on which a bed is  
6 held for a patient and for which the facility receives  
7 compensation for holding the bed.

8 [~~"Section 1115 waiver" means the QUEST expanded medicaid~~  
9 ~~section 1115 demonstration waiver (Number 11-W-00001/9).]~~

10 § -4 **Nursing facility sustainability program special**  
11 **fund.** (a) There is created in the state treasury the nursing  
12 facility sustainability program special fund to be administered  
13 by the department into which shall be deposited all moneys  
14 collected under this chapter.

15 (b) Moneys in the special fund shall consist of:

16 (1) All revenues collected or received by the department  
17 from the nursing facility sustainability fee required  
18 by this chapter;

19 (2) All federal medicaid funds received by the department  
20 as a result of matching expenditures made with the  
21 nursing facility sustainability fees;





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

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

5 (c) Revenue from the nursing facility sustainability fee  
6 shall be used exclusively as follows:

7 (1) No less than eighty-eight per cent of the revenue from  
8 the nursing facility sustainability fee shall be used  
9 to match federal medicaid funds, with the combined  
10 total to be used to enhance capitated rates to ~~the~~  
11 ~~QUEST expanded access plans~~ medicaid managed care  
12 health plans for the purpose of increasing medicaid  
13 payments to private nursing facilities;

14 (2) Twelve per cent of the revenue from the nursing  
15 facility sustainability fee ~~[shall be used by the~~  
16 ~~department to restore funding for the three per cent~~  
17 ~~reduction in reimbursements to nursing facilities~~  
18 ~~effective 2012, and to the extent remaining after~~  
19 ~~restoring the three per cent reduction for other~~  
20 ~~purposes;]~~ may be used by the department for other  
21 departmental purposes; and



1           (3) All moneys remaining in the special fund on  
2           December 30, [~~2013,~~] 2014, shall be distributed to  
3           nursing facilities within thirty days in the same  
4           proportions as received from the nursing facilities.

5           (d) The department shall utilize federal funds derived  
6           from state long-term care facility certified expenditures to  
7           make supplemental payments to state long-term care facilities to  
8           the extent permitted by federal law. The department may receive  
9           intergovernmental transfers from the state long-term care  
10          facilities to support direct supplemental payments and increased  
11          capitation rates to health plans for the benefit of the state  
12          long-term care facilities. During any period in which the  
13          nursing facility sustainability fee is in effect, certified  
14          expenditures of state long-term care facilities shall not be  
15          used to make or support direct payments to private nursing  
16          facilities.

17          ~~[(e) The nursing facility sustainability program special~~  
18          ~~fund ceiling appropriation shall be \$12,000,000 for fiscal year~~  
19          ~~2012-2013 and \$10,000,000 in federal funds for HMS 401 for~~  
20          ~~fiscal year 2012-2013.]"~~

21          2. By amending § -7 to read:



1           "§ -7 **Federal approval.** The department shall seek a  
2 waiver and other approvals from the Centers for Medicare and  
3 Medicaid Services that may be necessary to implement the nursing  
4 facility sustainability program, including the approval of the  
5 contracts between the State and [~~the QUEST and QUEST expanded~~  
6 ~~access~~] medicaid managed care health plans."

7           3. By amending § -10 and § -11 to read:

8           "§ -10 **Enhanced rates to [~~QUEST expanded access~~**  
9 **medicaid managed care health plans.** In accordance with title 42  
10 Code of Federal Regulations section 438, the department shall  
11 use revenues from the nursing facility sustainability fee and  
12 federal matching funds to enhance the capitated rates paid to  
13 [~~the QUEST expanded access~~] medicaid managed care health plans  
14 for the state fiscal year [~~2012-2013~~] 2013-2014 consistent with  
15 the following objectives:

16           (1) The rate enhancement shall be used exclusively for  
17 increasing reimbursements to private nursing  
18 facilities to support the availability of services and  
19 to ensure access to care to the [~~QUEST expanded~~  
20 ~~access~~] medicaid managed care health plan enrollees;

21           (2) The rate enhancement shall be made part of the monthly  
22 capitated rates by the department to [~~the QUEST~~



1 ~~expanded access]~~ medicaid managed care health plans,  
2 which shall provide documentation to the department  
3 and the nursing facility trade associations located in  
4 Hawaii certifying that the revenues received under  
5 paragraph (1) are used in accordance with this  
6 section;

7 (3) The rate enhancement shall be actuarially sound and  
8 approved by the federal government for federal fund  
9 participation; and

10 (4) The department shall modify the fee-for-service  
11 reimbursement rates of the nursing facilities to  
12 recognize the medicaid portion of the nursing facility  
13 sustainability fee as an additional cost of serving  
14 medicaid patients, and to provide a uniform percentage  
15 increase in pre-existing facility-specific rates.

16 § -11 **Payment of rate enhancement.** The rate

17 enhancements referred to in section -10 shall be retroactive  
18 to the effective date of this [~~legislation.~~] chapter.

19 Retroactive rate enhancements shall be paid within thirty days  
20 of notification by the Centers for Medicare and Medicaid  
21 Services to the department of all necessary approvals."

22 4. By amending § -13 to read:



1           "§   -13   **Termination.**   (a)   Collection of the nursing  
2   facility sustainability fee under section       -5 shall be  
3   discontinued if:

4           (1)   The waiver in section       -7 or the enhanced capitation  
5                rates in section       -10 have not been approved by the  
6                Centers for Medicare and Medicaid Services;

7           (2)   The department reduces funding for nursing facility  
8                services below the state appropriation in effect on  
9                June 30, [~~2012~~] 2013;

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

13          (4)   Federal financial participation to match the nursing  
14                facility sustainability fee becomes unavailable under  
15                federal law. In such case, the department shall  
16                terminate the collection of the fee beginning on the  
17                effective date of the federal statutory, regulatory,  
18                or interpretive change.

19          (b)   If collection of the nursing facility sustainability  
20   fee is discontinued as provided in this section, any remaining  
21   money in the special fund shall be returned to the nursing  
22   facilities from which the fee was collected within thirty days



1 in the same proportions as received from the nursing  
2 facilities."

3 SECTION 3. Act 156, Session Laws of Hawaii 2012, is  
4 amended by amending section 5 to read as follows:

5 "SECTION 5. This Act shall take effect on July 1, 2012,  
6 and shall be repealed on June 30, [~~2013~~] 2014; provided that  
7 section -4(c), Hawaii Revised Statutes, established by  
8 section 2 of this Act, shall be repealed on December 31, [~~2013~~]  
9 2014."

10 SECTION 4. There is appropriated out of the nursing  
11 facility sustainability program special fund the sum of  
12 \$12,000,000 or so much thereof as may be necessary for fiscal  
13 year 2013-2014 with such moneys to be used consistent with the  
14 nursing facility sustainability program special fund.

15 SECTION 5. The sum appropriated shall be expended by the  
16 department of human services for the purposes of this Act.

17 SECTION 6. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on June 29, 2013;  
20 provided that section 4 of this Act shall take effect on July 1,  
21 2013.



H.B. NO. 880  
H.D. 2  
S.D. 2

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APPROVED this 21 day of JUN , 2013

*Neil Abernethy*

GOVERNOR OF THE STATE OF HAWAII