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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. Section 2 of Act 156, Session Laws of Hawaii  
2 2012, is amended as follows:

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

4 "§ -2 **Findings and declaration of necessity.** It is the  
5 intent of the legislature to establish a special fund within the  
6 state treasury to receive revenue from the nursing facility  
7 sustainability fee to be administered by the department [~~and to~~  
8 ~~use it to receive federal medicaid matching funds under the~~  
9 ~~section 1115 waiver.~~] of human services, which shall use the  
10 revenue from the fee and associated federal medicaid matching  
11 funds to make payments to nursing facilities and for other  
12 purposes as set forth in this chapter.

13 § -3 **Definitions.** As used in this chapter:

14 "Continuing care retirement community" means an entity  
15 providing nursing facility services, along with assisted living  
16 or independent living on a contiguous campus with the number of  
17 assisted living and independent living beds in the aggregate  
18 being at least twice the number of nursing facility beds. For



1 purposes of this definition, "contiguous" means land adjoining  
2 or touching other property held by the same or related  
3 organization, and includes land divided by a public road.

4 "Department" means the department of human services.

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

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

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



1       ~~"QUEST expanded access" means the demonstration project~~  
2 ~~developed by the department described in Hawaii's section 1115~~  
3 ~~waiver.]~~

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

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

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

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

20       (1) All revenues collected or received by the department  
21             from the nursing facility sustainability fee required  
22             by this chapter;



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

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

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

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

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

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



1 ~~purposes,]~~ may be used by the department for other  
2 departmental purposes; and

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

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

19 [~~(e) The nursing facility sustainability program special~~  
20 ~~fund ceiling appropriation shall be \$12,000,000 for fiscal year~~  
21 ~~2012-2013 and \$10,000,000 in federal funds for HMS 401 for~~  
22 ~~fiscal year 2012-2013.]"~~



1           2. By amending § -7 to read:

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

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

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

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



1 (2) The rate enhancement shall be made part of the monthly  
 2 capitated rates by the department to [~~the QUEST~~  
 3 ~~expanded access~~] medicaid managed care health plans,  
 4 which shall provide documentation to the department  
 5 and the nursing facility trade associations located in  
 6 Hawaii certifying that the revenues received under  
 7 paragraph (1) are used in accordance with this  
 8 section;

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

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

18 **§ -11 Payment of rate enhancement.** The rate  
 19 enhancements referred to in section -10 shall be retroactive  
 20 to the effective date of this [~~legislation-~~] chapter.  
 21 Retroactive rate enhancements shall be paid within thirty days



1 of notification by the Centers for Medicare and Medicaid  
2 Services to the department of all necessary approvals."

3 4. By amending § -13 to read:

4 "§ -13 **Termination.** (a) Collection of the nursing  
5 facility sustainability fee under section -5 shall be  
6 discontinued if:

- 7 (1) The waiver in section -7 or the enhanced capitation  
8 rates in section -10 have not been approved by the  
9 Centers for Medicare and Medicaid Services;
- 10 (2) The department reduces funding for nursing facility  
11 services below the state appropriation in effect on  
12 June 30, [~~2012~~] 2013;
- 13 (3) The department or any other state agency uses the  
14 money in the special fund for any use other than the  
15 uses permitted pursuant to this chapter; or
- 16 (4) Federal financial participation to match the nursing  
17 facility sustainability fee becomes unavailable under  
18 federal law. In such case, the department shall  
19 terminate the collection of the fee beginning on the  
20 effective date of the federal statutory, regulatory,  
21 or interpretive change.





1 (b) If collection of the nursing facility sustainability  
 2 fee is discontinued as provided in this section, any remaining  
 3 money in the special fund shall be returned to the nursing  
 4 facilities from which the fee was collected within thirty days  
 5 in the same proportions as received from the nursing  
 6 facilities."

7 SECTION 2. Act 156, Session Laws of Hawaii 2012, is  
 8 amended by amending section 5 to read as follows:

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

14 SECTION 3. There is appropriated out of the nursing  
 15 facility sustainability program special fund the sum of  
 16 \$12,000,000 or so much thereof as may be necessary for fiscal  
 17 year 2013-2014 with such moneys to be used consistent with the  
 18 nursing facility sustainability program special fund.

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

21 SECTION 5. Statutory material to be repealed is bracketed  
 22 and stricken. New statutory material is underscored.



1 SECTION 6. This Act, upon its approval, shall take effect  
2 on June 29, 2013.



**Report Title:**

Nursing Facility Sustainability Program; Special Fund

**Description:**

Continues the Nursing Facility Sustainability Program by extending the sunset date of Act 156, Session Laws of Hawaii 2012; appropriates funds for the program for fiscal year 2013-2014. Effective June 29, 2013. (HB880 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

