
A BILL FOR AN ACT

RELATING TO LONG-TERM CARE FACILITIES.

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 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 **NURSING FACILITY SUSTAINABILITY PROGRAM**

8 § -1 **Title.** This chapter shall be known and may be
9 cited as the "Nursing Facility 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 nursing facility
13 sustainability fee to be administered by the department [~~and to~~
14 ~~use it to receive federal medicaid matching funds under the~~
15 ~~section 1115 waiver.~~], which shall use the revenue from the fee
16 and associated federal medicaid matching funds to make payments
17 to nursing facilities and for other purposes as set forth in
18 this chapter.



1 § -3 **Definitions.** As used in this chapter:

2 "Continuing care retirement community" means an entity
3 providing nursing facility services, along with assisted living
4 or independent living on a contiguous campus with the number of
5 assisted living and independent living beds in the aggregate
6 being at least twice the number of nursing facility beds. For
7 purposes of this definition, "contiguous" means land adjoining
8 or touching other property held by the same or related
9 organization, and includes land divided by a public road.

10 "Department" means the department of human services.

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



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

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

6 ~~"QUEST expanded access" means the demonstration project~~
7 ~~developed by the department described in Hawaii's section 1115~~
8 ~~waiver.]~~

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

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

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



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

2 (1) All revenues collected or received by the department
3 from the nursing facility sustainability fee required
4 by this chapter;

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

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

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

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

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

21 (2) Twelve per cent of the revenue from the nursing
22 facility sustainability fee [~~shall be used by the~~



1 ~~department to restore funding for the three per cent~~
2 ~~reduction in reimbursements to nursing facilities~~
3 ~~effective 2012, and to the extent remaining after~~
4 ~~restoring the three per cent reduction for other~~
5 ~~purposes,]~~ may be used by the department for other
6 departmental purposes; and

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

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



1 ~~[(c) The nursing facility sustainability program special~~
2 ~~fund ceiling appropriation shall be \$12,000,000 for fiscal year~~
3 ~~2012-2013 and \$10,000,000 in federal funds for HMS 401 for~~
4 ~~fiscal year 2012-2013.]~~

5 § -5 **Nursing facility sustainability fee.** (a)

6 Effective July 1, 2012, the department shall charge and collect
7 a provider fee on health care items or services provided by
8 nursing facilities.

9 (b) The nursing home sustainability fee shall be based on
10 the net patient service revenue of all nursing facilities that
11 are subject to the sustainability fee, as determined by the
12 department.

13 (c) The nursing facility sustainability fee shall not
14 exceed four per cent of net patient service revenue and shall be
15 calculated and paid on a per resident day basis. The per
16 resident daily fee shall be the same amount for each affected
17 facility, except as prescribed in subsection (d)(2).

18 (d) In accordance with the redistribution method set forth
19 in title 42 Code of Federal Regulations section 433.68(e)(1) and
20 (2), the department shall seek a waiver of the broad-based and
21 uniformity provider fee requirements under federal law from
22 which to exclude certain nursing facilities and to permit



1 certain high volume medicaid nursing facilities or facilities
2 with a high number of total annual patient days to pay the
3 sustainability fee at a lesser amount per resident day, as
4 follows:

5 (1) The department shall exempt the following nursing
6 facility providers from the nursing facility
7 sustainability fee subject to federal approval under
8 title 42 Code of Federal Regulations section
9 433.68(e)(2):

10 (A) Nursing facilities with twenty-eight or fewer
11 licensed beds;

12 (B) Nursing facilities owned or operated by the
13 Hawaii health systems corporation; and

14 (C) Continuing care retirement communities.

15 (2) The department shall reduce the fee for high volume
16 medicaid nursing facilities or facilities with high
17 patient volumes in order to meet the redistributive
18 tests of title 42 Code of Federal Regulations section
19 433.68(e)(2).

20 (3) The department, with agreement by the nursing facility
21 trade associations located in Hawaii, may modify, add
22 to, or reduce the categories of facilities exempt from



1 the assessment if necessary to obtain and maintain
2 approval of the waiver by the Centers for Medicare and
3 Medicaid Services, if the modification is consistent
4 with the purposes of this chapter.

5 § -6 **Nursing facility sustainability fee assessment.**

6 (a) Nursing facilities shall pay the nursing facility
7 sustainability fee to the nursing facility sustainability
8 program special fund in accordance with this chapter.

9 (b) The department shall determine, with agreement by the
10 nursing facility trade associations located in Hawaii, the fee
11 rate prospectively for the applicable fiscal year.

12 (c) The department shall collect and each nursing facility
13 shall pay in twelve equal installments the nursing facility
14 sustainability fee in section -5 on a monthly basis, subject
15 to the terms of this section. The fee shall be due within
16 thirty days after the end of each month, with the initial
17 payment due on the later of July 31, 2012, or forty-five days
18 after the required federal approvals for the assessment and any
19 increase in health plan capitation payments have been secured
20 from the Centers for Medicare and Medicaid Services.

21 § -7 **Federal approval.** The department shall seek a
22 waiver and other approvals from the Centers for Medicare and



1 Medicaid Services that may be necessary to implement the nursing
2 facility sustainability program, including the approval of the
3 contracts between the State and [~~the QUEST and QUEST expanded~~
4 ~~access~~] medicaid managed care health plans.

5 § -8 **Multifacility locations.** If an entity conducts,
6 operates, or maintains more than one nursing facility, the
7 entity shall pay the nursing facility sustainability fee for
8 each nursing facility separately.

9 § -9 **Penalties for failure to pay nursing facility**
10 **sustainability fee.** (a) If a nursing facility fails to pay the
11 full amount of the nursing facility sustainability fee when due,
12 there shall be added to the fee, unless waived by the department
13 for reasonable cause, a penalty equal to two per cent of the fee
14 that was not paid when due. Any subsequent payments shall be
15 credited first to unpaid fee amounts rather than to penalty or
16 interest amounts, beginning with the most delinquent
17 installment.

18 (b) In addition to the penalty identified in this section,
19 the department may seek any of the following remedies for
20 failure of any nursing facility to pay its fee when due:



1 (1) Withholding any medical assistance reimbursement
2 payments until such time as the fee amount is paid in
3 full;

4 (2) Suspension or revocation of the nursing facility
5 license; or

6 (3) Development of a plan that requires the nursing
7 facility to pay any delinquent fee in installments.

8 § -10 **Enhanced rates to [~~QUEST expanded access~~] medicaid**
9 **managed care health plans**. In accordance with title 42 Code of
10 Federal Regulations section 438, the department shall use
11 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 [~~QUEST expanded access~~]
20 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. Retroactive rate
19 enhancements shall be paid within thirty days of notification by
20 the Centers for Medicare and Medicaid Services to the department
21 of all necessary approvals.



1 § -12 **Special designation of nursing facility**
2 **sustainability program special fund.** Notwithstanding section
3 37-53 and any law or administrative rule to the contrary, the
4 specific purposes set out in section -4(c) are established as
5 being pre-eminent uses of the nursing facility sustainability
6 program special fund and shall not be used for any other
7 purposes, notwithstanding any authority granted to the governor
8 or any other state official by any other statutory provisions
9 relating to the allocation or reallocation of funds.

10 § -13 **Termination.** (a) Collection of the nursing
11 facility sustainability fee under section -5 shall be
12 discontinued if:

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

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

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



1 (4) Federal financial participation to match the nursing
2 facility sustainability fee becomes unavailable under
3 federal law. In such case, the department shall
4 terminate the collection of the fee beginning on the
5 effective date of the federal statutory, regulatory,
6 or interpretive change.

7 (b) If collection of the nursing facility sustainability
8 fee is discontinued as provided in this section, any remaining
9 money in the special fund shall be returned to the nursing
10 facilities from which the fee was collected within thirty days
11 in the same proportions as received from the nursing facilities.

12 § -14 **Severability.** If any provision of this chapter or
13 the application thereof to any person or circumstance is held
14 invalid, the invalidity shall not affect other provisions or
15 applications of the chapter which can be given effect without
16 the invalid provision or application, and to this end the
17 provisions of this chapter are severable."

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

20 "SECTION 5. This Act shall take effect on July 1, 2012,
21 and shall be repealed on June 30, [~~2013~~] 2014; provided that
22 section -4(c), Hawaii Revised Statutes, established by



1 section 2 of this Act, shall be repealed on December 31, [~~2013-~~
2 2014."]

3 SECTION 3. There is appropriated out of the nursing
4 facility sustainability program special fund the sum of
5 \$12,000,000 or so much thereof as may be necessary for fiscal
6 year 2013-2014 with such moneys to be used consistent with the
7 nursing facility sustainability program special fund.

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

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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



Report Title:

Nursing Facility Sustainability Program; Nursing Facility Sustainability Program Special Fund

Description:

Amends Act 156, Session Laws of Hawaii 2012, to continue the Nursing Facility Sustainability Program by extending the sunset date of the Act, updating the referral dates in the statute, and appropriating funding out of the nursing facility sustainability program special fund for fiscal year 2013-2014. Repeals nursing facility sustainability program on 06/30/2014 instead of 6/30/13. (SD2)

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