

JAN 24 2013

---

---

**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 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.] of human services, which shall use the  
16 revenue from the fee and associated federal medicaid matching  
17 funds to make payments to nursing facilities and for other  
18 purposes as set forth in 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.

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

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

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

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

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

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

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

S.B. NO. 1111

- 1 (1) All revenues collected or received by the department  
2 from the nursing facility sustainability fee required  
3 by this chapter;
- 4 (2) All federal medicaid funds received by the department  
5 as a result of matching expenditures made with the  
6 nursing facility sustainability fees;
- 7 (3) Any interest or penalties levied in conjunction with  
8 the administration of this chapter; and
- 9 (4) Any appropriations, federal funds, donations, gifts,  
10 or moneys from any other sources.
- 11 (c) Revenue from the nursing facility sustainability fee  
12 shall be used exclusively as follows:
- 13 (1) No less than eighty-eight per cent of the revenue from  
14 the nursing facility sustainability fee shall be used  
15 to match federal medicaid funds, with the combined  
16 total to be used to enhance capitated rates to [~~the~~  
17 ~~QUEST expanded access plans~~] medicaid managed care  
18 health plans for the purpose of increasing medicaid  
19 payments to private nursing facilities;
- 20 (2) Twelve per cent of the revenue from the nursing  
21 facility sustainability fee [~~shall be used by the~~  
22 ~~department to restore funding for the three per cent~~  
23 ~~reduction in reimbursements to nursing facilities~~

1 ~~effective 2012, and to the extent remaining after~~  
2 ~~restoring the three per cent reduction for other~~  
3 ~~purposes;]~~ may be used by the department for other  
4 departmental purposes; and

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

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

21 ~~[(e) The nursing facility sustainability program special~~  
22 ~~fund ceiling appropriation shall be \$12,000,000 for fiscal year~~

1 ~~2012-2013 and \$10,000,000 in federal funds for HMS 401 for~~  
2 ~~fiscal year 2012-2013.]~~

3       § -5 **Nursing facility sustainability fee.** (a)

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

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

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

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

S.B. NO. III

1 sustainability fee at a lesser amount per resident day, as  
2 follows:

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

8 (A) Nursing facilities with twenty-eight or fewer  
9 licensed beds;

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

12 (C) Continuing care retirement communities.

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

18 (3) The department, with agreement by the nursing facility  
19 trade associations located in Hawaii, may modify, add  
20 to, or reduce the categories of facilities exempt from  
21 the assessment if necessary to obtain and maintain  
22 approval of the waiver by the Centers for Medicare and

1 Medicaid Services, if the modification is consistent  
2 with the purposes of this chapter.

3 **§ -6 Nursing facility sustainability fee assessment.**

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

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

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

19 **§ -7 Federal approval.** The department shall seek a  
20 waiver and other approvals from the Centers for Medicare and  
21 Medicaid Services that may be necessary to implement the nursing  
22 facility sustainability program, including the approval of the



**SB. NO. IIII**

1 contracts between the State and [~~the QUEST and QUEST expanded~~  
2 ~~access~~] medicaid managed care health plans.

3       **§ -8 Multifacility locations.** If an entity conducts,  
4 operates, or maintains more than one nursing facility, the  
5 entity shall pay the nursing facility sustainability fee for  
6 each nursing facility separately.

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

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

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

22       (2) Suspension or revocation of the nursing facility  
23             license; or

S.B. NO. III

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

3           § -10 Enhanced rates to [~~QUEST expanded access~~] medicaid  
4 managed care health plans. In accordance with title 42 Code of  
5 Federal Regulations section 438, the department shall use  
6 revenues from the nursing facility sustainability fee and  
7 federal matching funds to enhance the capitated rates paid to  
8 [~~the QUEST expanded access~~] medicaid managed care health plans  
9 for the state fiscal year [~~2012-2013~~] 2013-2014 consistent with  
10 the following objectives:

11           (1) The rate enhancement shall be used exclusively for  
12           increasing reimbursements to private nursing  
13           facilities to support the availability of services and  
14           to ensure access to care to the [~~QUEST expanded~~  
15           ~~access~~] medicaid managed care health plan enrollees;

16           (2) The rate enhancement shall be made part of the monthly  
17           capitated rates by the department to [~~the QUEST~~  
18           ~~expanded access~~] medicaid managed care health plans,  
19           which shall provide documentation to the department  
20           and the nursing facility trade associations located in  
21           Hawaii certifying that the revenues received under  
22           paragraph (1) are used in accordance with this  
23           section;

**SB. NO. IIII**

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

4 (4) The department shall modify the fee-for-service  
5 reimbursement rates of the nursing facilities to  
6 recognize the medicaid portion of the nursing facility  
7 sustainability fee as an additional cost of serving  
8 medicaid patients, and to provide a uniform percentage  
9 increase in pre-existing facility-specific rates.

10 **§ -11 Payment of rate enhancement.** The rate  
11 enhancements referred to in section -10 shall be retroactive  
12 to the effective date of this legislation. Retroactive rate  
13 enhancements shall be paid within thirty days of notification by  
14 the Centers for Medicare and Medicaid Services to the department  
15 of all necessary approvals.

16 **§ -12 Special designation of nursing facility**  
17 **sustainability program special fund.** Notwithstanding section  
18 37-53 and any law or administrative rule to the contrary, the  
19 specific purposes set out in section -4(c) are established as  
20 being pre-eminent uses of the nursing facility sustainability  
21 program special fund and shall not be used for any other  
22 purposes, notwithstanding any authority granted to the governor

1 or any other state official by any other statutory provisions  
2 relating to the allocation or reallocation of funds.

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

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

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

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

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

21 (b) If collection of the nursing facility sustainability  
22 fee is discontinued as provided in this section, any remaining  
23 money in the special fund shall be returned to the nursing

1 facilities from which the fee was collected within thirty days  
2 in the same proportions as received from the nursing facilities.

3       **§ -14 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 which can be given effect without  
7 the invalid provision or application, and to this end the  
8 provisions of this chapter are severable."

9       SECTION 2. Act 156, 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, established by  
14 section 2 of this Act, shall be repealed on December 31, [~~2013~~]  
15 2014."

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

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

S.B. NO. 1111

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

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

5

6

INTRODUCED BY: 

7

BY REQUEST

8

**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. Effective June 29, 2013. Repeals June 30, 2014.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

PURPOSE: To continue the Nursing Facility Sustainability Program, established by Act 156, Session Laws of Hawaii 2012, by extending the sunset date of Act 156, Session Laws of Hawaii 2012, updating the referral dates in the statute, and appropriating funding out of the Nursing Facility Sustainability Program Special Fund for fiscal year 2013-2014.

MEANS: Amend sections 2 and 5 of Act 156, Session Laws of Hawaii 2012, and adding appropriation language.

JUSTIFICATION: Act 156, Session Laws of Hawaii 2012, established the Nursing Facility Sustainability Program Special Fund into which the nursing facility sustainability fees shall be deposited. Act 156 also established exclusive uses for revenue from the nursing facility sustainability fee.

Act 156 requires the Department of Human Services to charge and collect a provider fee on health care items or services provided by nursing facilities and exempts the Nursing Facility Sustainability Program Special Fund from its pro rata share of the administrative expenses of operating the fund incurred by the Department of Human Services. Act 156 is to be repealed on June 30, 2013.

This bill levies a fee on non-governmental nursing facilities and uses that revenue largely to leverage federal funds and increase reimbursement to nursing facilities, with a greater benefit to those providing proportionately more services to



Medicaid recipients. These additional moneys will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the long-term care safety-net. In addition, some of the moneys will be utilized by the Department of Human Services to benefit its beneficiaries.

This bill proposes to extend the nursing facility sustainability program for another year.

Impact on the public: Hawaii residents benefit by having more sustainable nursing facilities and thereby have increased access to necessary long-term care.

Impact on the department and other agencies: The Department of Human Services will benefit by receiving some additional funds to support its programs. However, the Department will have the increased administrative burden of administering the sustainability fee program.

GENERAL FUND: None.

OTHER FUNDS: \$12,000,000 Nursing Facility Sustainability Program Special Fund.

PPBS PROGRAM DESIGNATION: HMS 401.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: June 29, 2013.