

SB 2057

- Measure Title:** RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.
- Report Title:** Nursing Facility Sustainability Program; Nursing Facility Sustainability Program Special Fund; Appropriation (\$)
- Description:** Amends Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, 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 2014-2015. Exempts the nursing facility program special fund from central services expenses assessed under section 36-27, Hawaii Revised Statutes.
- Companion:**
- Package:** None
- Current Referral:** HMS, WAM
- Introducer(s):** GREEN, CHUN OAKLAND, Ige, Ruderman, L. Thielen



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2057, RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 4, 2014 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lee-Ann N.M. Brewer, Deputy Attorney General

Chair Chun Oakland and Members of the Committee:

The Attorney General provides the following comments on this measure.

This measure extends the sunset date of the nursing facility sustainability program, appropriates funds for fiscal year 2014-2015, exempts the nursing facility sustainability program special fund from central services expenses, and makes other non-substantive amendments. There are some technical problems with this measure as drafted, which have already been addressed in two administration measures, Senate Bill No. 2844 and House Bill No. 2294 (HMS-06(14)).

In section 2 of Act 156, Session Laws of Hawaii 2012 (Act 156), as amended by Act 142, Session Laws of Hawaii 2013 (Act 142), section -4(c), Hawaii Revised Statutes (HRS), directs how the nursing facility sustainability program special fund will be used, including disbursement of any money remaining in the special fund six months after the repeal of the chapter. As currently drafted, only this subsection (c) is subject to the extended repeal date of December 31, 2015.

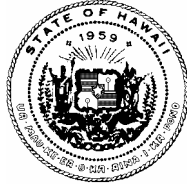
However, other portions of section -4, HRS, that create and fund the nursing facility sustainability program special fund are necessary for the section -4(c) disbursement provisions to have effect, but will be repealed on June 30, 2015, instead of December 31, 2015.

Section -4(d), HRS, which addresses funding of supplemental payments to state long-term care facilities, will also not be preserved until the extended repeal date of December 31, 2015.

Accordingly, in section 2 of the measure, which amends section 5 of Act 156, as amended by Act 142, the reference to section -4(c) should be bracketed and stricken, and the section number "-4" be inserted and underlined. This will ensure that, through December 31, 2015, the nursing facility sustainability program special fund is available to receive and disburse money, and the State authorized to utilize intergovernmental transfers to effectuate increased reimbursement to state long-term care facilities. Therefore, the amendment to section 5 of Act 156, as amended by Act 142, should read as follows:

"SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, [~~2014;~~ 2015; provided that section [~~-4(e);~~ -4, Hawaii Revised Statutes, established by section 2 of this Act, shall be repealed on December 31, [~~2014;~~ 2015."

We respectfully request that this Committee amend the bill as suggested above or, in the alternative, hold this bill and instead utilize Senate Bill No. 2844 to accomplish the same purpose.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 4, 2014

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2057 - RELATING TO THE NURSING FACILITY
SUSTAINABILITY PROGRAM**

Hearing: Tuesday, February 4, 2014; 1:00 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of the bill is to continue the Nursing Facility Sustainability Program, established by Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, 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 2014-2015.

DEPARTMENT'S POSITION: The Department of Human Services supports this measure as it proposes to extend the Nursing Facility Sustainability Program for another year.

The Administration bill, S.B. 2844, also proposes to extend the Nursing Facility Sustainability Program. The DHS has worked collaboratively with the Healthcare Association of Hawaii and the Hawaii Long Term Care Association on language included in S.B. 2844. Should there be any differences between this measure and S.B. 2844, the DHS respectfully requests that the Legislature refer to the language in S.B. 2844.

Under the Nursing Facility Sustainability Program, a fee is levied on non-governmental nursing facilities and uses that revenue 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 fiscal year 2012-2013, the nursing facilities were assessed \$11,535,405 in sustainability fees and received \$21,086,740 in additional reimbursement. In fiscal year 2013-2014 it is anticipated that the nursing facilities will be assessed \$11,436,642 and will receive \$20,906,201 in additional reimbursement.

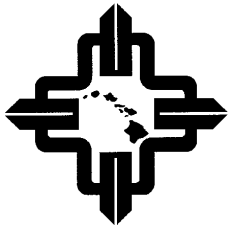
The DHS utilized 12 percent of the sustainability fees authorized for use by the DHS to restore the three percent reduction in reimbursement rates for the nursing facilities. In fiscal year 2012-2013, the DHS retained \$1,384,248 of the sustainability fees and when combined with federal matching funds resulted in the DHS being able to provide the nursing facilities approximately \$2.9 million in increased reimbursement. For fiscal year 2013-2014, it is estimated that the DHS will retain approximately \$1.37 million in sustainability fees to improve services to Medicaid recipients and increase reimbursement to the nursing facilities by \$2.8 million.

The 2012 Legislature, in conference committee, added an exemption for the Nursing Facility Sustainability Program Special Fund from the departmental administrative expenses assessed under section 36-30, HRS. This ensures that any moneys received in fees are only used to increase the sustainability of nursing facilities in Hawaii and to benefit Medicaid program recipients. The exemption from section 36-27, HRS, for central services expenses, however, was not added at the same time.

This bill also proposes to exempt the Nursing Facility Sustainability Program Special Fund from the central services expenses assessed under section 36-27, HRS.

Without these two exemptions from the departmental administrative expenses and central services expenses assessments, the Nursing Facility Sustainability Program would have to pay \$500,000 in central services expenses assessed under section 36-27 and \$982,000 for departmental administrative expenses assessed under section 36-30 for fiscal year 2013-2014. This is a total of \$1,482,000 that the Department would not be able use to sustain nursing facilities and improve services to Medicaid recipients.

Thank you for the opportunity to testify on this bill.



HAWAII HEALTH SYSTEMS

C O R P O R A T I O N

Quality Healthcare For All

**Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, M.D., Vice Chair**

Tuesday, February 4, 2014
Conference Room 016
1:00 p.m.
Hawaii State Capitol

Testimony Strongly Supporting Senate Bill 2057, Relating to the Nursing Facility Sustainability Fee Program. Amends Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, 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 2014-2015. Exempts the nursing facility program special fund from the central service expenses under section 36-27, Hawaii Revised Statutes.

Alice M. Hall
Acting President and Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in strong support of SB 2057 that continues the Nursing Facility Sustainability Program.

Given that health care provider reimbursements are declining at both the federal and state level, it is imperative that health care providers find innovative ways to generate revenues to offset the decline in reimbursements. We believe that the concept of a provider fee on health care items or services provided by nursing facilities is a good financing mechanism that leverages federal funds to increase the reimbursements to nursing facilities from the QUEST and QUEST Expanded Access (QEXA) programs.

As is common in other states that have implemented sustainability fee programs, the public hospitals of the Hawaii Health Systems Corporation are being exempted from the nursing facility sustainability fee. This is being done to maximize both the amount of federal funds that the private nursing facilities will receive through the nursing facility sustainability fee program and the amount of federal matching funds the public hospitals

3675 KILAUEA AVENUE • HONOLULU, HAWAII 96816 • PHONE: (808) 733-4020 • FAX: (808) 733-4028

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can receive under the State of Hawaii's Section 1115 waiver. Since the sustainability fee program was put into place, the public hospitals have been able to fully utilize their certified public expenditures to the maximum extent possible for their exclusive benefit as a means of continuing financing for their operating deficits. In this way, the greatest amount of federal funds has been realized and the private nursing facilities and the public hospitals as a whole are receiving greater reimbursements than before the sustainability program was implemented.

Thank you for the opportunity to testify before this committee. We respectfully recommend the Committee's support of this measure.



Tuesday – February 4, 2014 – 1:00pm
Conference Room 016

The Senate Committee on Human Services

To: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Strong Support**
SB 2057 — Relating to the Nursing Facility Sustainability Program

The Healthcare Association of Hawaii (HAH) is a 116 member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for this opportunity to testify in strong support of SB 2057, which makes adjustments to the Nursing Facility Sustainability Program and extends its sunset date to June 30, 2015.

The Legislature created this program two years ago by enacting Act 156, SLH 2012. Recognizing that Medicaid payments were below the actual costs of care, this program increases Medicaid payments to nursing facilities. The program does that by assessing a fee on nursing facilities, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to nursing facilities.

Non-government nursing facilities are assessed an annual fee based on the amount of care they provide. Payment is based on the amount of a nursing facility's Medicaid utilization. As such, the fees and payments are different for every nursing facility.

SB 2057 is the result of a collaborative effort between the DHS and HAH. Nursing facilities constitute a critical element of the health care continuum, and the majority of residents in Hawaii's nursing facilities are Medicaid enrollees. They are the ultimate beneficiaries of this bill, which ensures that they continue to have access to quality care.

Thank you for the opportunity to testify in strong support of SB 2057.



February 4, 2014

To: Chair Suzanne Chun Oakland and Members Senate
Committee on Human Services
From: Bob Ogawa, President
Re: SB 2057 Relating to the Nursing Facility Sustainability
Program

The Hawaii Long Term Care Association (HLTCA) strongly supports SB 2057, which extends the Nursing Facility Sustainability Program. You are all well-familiar with the substantial financial and services challenges that face our State medicaid system. Long term care facilities, in particular, have been falling into increasingly dire straits just as the leading edge of the Baby Boomer Generation has begun to turn 65. As such, this program offers much-needed support to our troubled senior care infrastructure at the most critical of times.

Very simply, this program uses provider fees to draw down essential additional federal funds to cope with budget shortfalls, rising healthcare costs and ever-expanding medicaid rolls. This has resulted in increased reimbursements to nursing facilities, thus reducing the losses they were incurring, preserving access to care for the medicaid population and helping to ensure sustainability for our long term care system.

Between the HLTCA and the Healthcare Association of Hawaii, we represent all the skilled nursing facility beds in the State of Hawaii. As such, like we did in 2012 and 2013, we present to you a united front in support of this legislation.

Part of HLTCA's mission statement says: *How we provide for Hawaii's kupuna, chronically ill and convalescent disabled is a measure of the respect and compassion we have for them . . . a reflection of our dignity as a society.*

Enabling the nursing facility sustainability program to continue indeed reflects our dignity as a society. It says that we will not let the system fail, because we will not fail our kupuna. Thank you.