



GOV. MSG. NO. 1161

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 6, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 6, 2016, the following bill was signed into law:

SB2330 SD2 HD2 CD1

RELATING TO THE HOSPITAL SUSTAINABILITY
PROGRAM
ACT 060 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUN 6 2016

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

ACT 060

S.B. NO.

2330
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE HOSPITAL SUSTAINABILITY PROGRAM.

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

1 SECTION 1. The legislature finds that hospitals in the
2 State face major financial challenges in providing quality
3 health care for Hawaii residents. These challenges are largely
4 the result of inadequate payments from the medicaid program that
5 do not cover the actual costs of care. Medicaid is jointly
6 financed by the federal and state government but, by statutory
7 formula, the federal government only pays between fifty per cent
8 and seventy-four per cent of medicaid costs incurred by states
9 for care delivered to their medicaid beneficiaries. Federal
10 assistance percentages vary by state, with states that have
11 lower per capita incomes receiving higher federal matching
12 rates. Under federal rules, the state share must be public
13 funds that are not federal funds. The legislature finds that
14 federal funding to help sustain Hawaii's hospitals financially
15 may be accessed through a provider fee.

16 The legislature further finds that provider fees exist in
17 forty-nine states and the District of Columbia as a means of
18 drawing down federal funds to sustain their medicaid programs



1 due to rising state budget deficits, increasing health care
2 costs, and expanding medicaid enrollment. Provider fees, which
3 are collected from specific categories of health care providers
4 that agree to the fee, may be imposed on nineteen different
5 classes of health care services, including inpatient and
6 outpatient hospital and nursing facility services.

7 The legislature additionally finds that, in Hawaii, a
8 provider fee on hospitals has resulted in an increase of
9 medicaid payments at a time when there are constraints on the
10 State's budget. The additional federal funds obtained via the
11 fee program authorized by the hospital sustainability program
12 has helped to reduce the amount of losses incurred by hospitals
13 and slow the erosion of access to care for medicaid recipients.
14 The purpose of this Act is to preserve access to health care for
15 medicaid recipients by extending the hospital sustainability fee
16 program.

17 SECTION 2. Act 217, Session Laws of Hawaii 2012, section
18 2, as amended by section 1 of Act 141, Session Laws of Hawaii
19 2013, as amended by section 1 of Act 123, Session Laws of Hawaii
20 2014, as amended by section 1 of Act 70, Session Laws of Hawaii
21 2015, is amended as follows:



1 1. By amending the definitions of "net patient service
2 revenue" and "private hospital" in § -3, Hawaii Revised
3 Statutes, to read:

4 ""Net patient service revenue" means gross revenue from
5 inpatient and outpatient care provided to hospital patients
6 converted to net patient revenue utilizing data from Worksheets
7 G-2 and G-3 of each hospital's medicare cost report for fiscal
8 year [~~2012-2013-~~] 2013-2014. If the hospital is new or did not
9 file a fiscal year medicare cost report, the department shall
10 obtain the hospital's net patient service revenue from the most
11 recent period available.

12 "Private hospital" means those non-public hospitals named
13 in attachment A of the medicaid section 1115 demonstration
14 waiver that were in operation in calendar year [~~2014~~] 2015 and
15 are currently operating[~~-~~] or any hospitals not named in
16 attachment A of the medicaid section 1115 demonstration waiver
17 that became private hospitals in calendar year 2016 and are
18 currently operating."

19 2. By amending subsection (c) of § -4, Hawaii Revised
20 Statutes, to read:



1 "(c) Moneys in the hospital sustainability program special
2 fund shall be used exclusively as follows:

3 (1) ~~[To make direct supplemental uncompensated care and~~
4 ~~upper payment limit payments to private hospitals~~
5 ~~pursuant to the terms of the section 1115 waiver. At~~
6 ~~least eighty eight per cent of the moneys in the~~
7 ~~special fund shall be used for this purpose, provided~~
8 ~~that in no instance shall a hospital receive~~
9 ~~supplemental payments that exceed its allowable~~
10 ~~uncompensated care costs,]~~ No less than eighty-eight
11 per cent of the revenue from the hospital
12 sustainability fee shall be used for one or more of
13 the following:

14 (A) Match federal medicaid funds, with the combined
15 total to be used to enhance capitated rates to
16 medicaid managed care health plans for the sole
17 purpose of increasing medicaid payments to
18 private hospitals;

19 (B) Match federal medicaid funds for Hawaii's
20 medicaid disproportionate share hospital



1 allotment as authorized by current federal law
2 for private hospitals;

3 (C) Match federal medicaid funds for a private
4 hospital upper payment limit pool; or

5 (D) Match federal medicaid funds with the combined
6 total to be used to enhance capitated rates to
7 medicaid managed care health plans for the
8 purpose of increasing medicaid payments to
9 private hospitals through a quality incentive
10 pool;

11 (2) Twelve per cent of the moneys in the hospital
12 sustainability program special fund may be used by the
13 department for other departmental purposes; and

14 (3) Any money remaining in the hospital sustainability
15 program special fund six months after the repeal of
16 this chapter, shall be distributed to hospitals within
17 thirty days in the same proportions as received from
18 the hospitals."

19 3. By amending § -5, Hawaii Revised Statutes, to read:

20 "§ -5 Hospital sustainability fee. (a) Effective

21 July 1, 2012, or, if later, the effective date of any necessary



1 federal approvals, the department shall charge and collect
2 provider fees, to be known as the hospital sustainability fee,
3 on inpatient and outpatient care services provided by private
4 hospitals.

5 (b) The hospital sustainability fee shall be based on the
6 net patient service revenue for inpatient services and
7 outpatient services, respectively, of all hospitals that are
8 subject to the hospital sustainability fee.

9 (c) The hospital sustainability fee for inpatient care
10 services may differ from the fee for outpatient care services
11 but the fees shall not in the aggregate exceed three per cent of
12 net patient service revenue as derived from the hospital's
13 medicare cost report ending during state fiscal year [~~2012-~~
14 ~~2013-~~] 2013-2014. The inpatient hospital sustainability fee
15 shall [~~be 1.892~~] not exceed three per cent of net inpatient
16 hospital service revenue. The outpatient hospital
17 sustainability fee shall be three per cent of net outpatient
18 hospital service revenue. Each fee shall be the same percentage
19 for all affected hospitals, subject to subsection (d).

20 (d) The department shall exempt children's hospitals,
21 federal hospitals, public hospitals, [~~rehabilitation hospitals,~~]



1 and psychiatric hospitals [~~, and any hospital that was not in~~
2 ~~private operation during any part of calendar year 2014]~~ from
3 the hospital sustainability fees on inpatient services. In
4 addition, the department shall exempt [~~hospitals with net~~
5 ~~outpatient revenue of less than \$50,000,000 per year (based on~~
6 ~~fiscal year 2012-2013 reports) and] children's hospitals, public
7 hospitals, rehabilitation hospitals, psychiatric hospitals, and
8 [~~any hospital that was not in private operation during any part~~
9 ~~of calendar year 2014]~~ any hospitals with net outpatient
10 revenues of less than \$57,000,000 per year based upon fiscal
11 year 2013-2014 cost reports from the hospital sustainability fee
12 on outpatient care services.~~

13 (e) The department, with agreement by the hospital trade
14 association located in Hawaii, may modify the structure of the
15 hospital sustainability program if such modification is
16 necessary to obtain federal waiver approval consistent with the
17 requirements of 42 Code of Federal Regulations section
18 433.68(e)(2).

19 (f) Notwithstanding section -6, nothing shall require
20 the department to exempt a facility from the hospital
21 sustainability fee if it is not approved by the United States



1 Department of Health and Human Services Centers for Medicare and
2 Medicaid Services."

3 4. By amending § -6, Hawaii Revised Statutes, to read:

4 "§ -6 Hospital sustainability fee assessments. (a)

5 Hospitals shall pay the hospital sustainability fee to the
6 department in accordance with this chapter. The fee shall be
7 divided and paid in [~~four~~] twelve equal installments on a
8 [~~quarterly~~] monthly basis.

9 (b) The department shall collect, and each hospital shall
10 pay, the hospital sustainability fee not later than the
11 [~~fifteenth~~] thirtieth day after the end of each calendar
12 [~~quarter,~~] month; provided that if required federal approvals
13 have not been secured by the end of a calendar [~~quarter~~] month
14 the fees for that [~~quarter~~] month shall be paid within ten days
15 after notification to the hospitals that the required approvals
16 have been received."

17 5. By amending § -10, Hawaii Revised Statutes, to read:

18 "§ -10 Private hospital payments[~~-~~] through enhanced

19 rates to medicaid managed care health plans. [~~(a)~~] The

20 ~~department shall use moneys solely from the hospital~~

21 ~~sustainability program special fund to make direct payments to~~



1 ~~private hospitals, pursuant to the terms of the section 1115~~
2 ~~waiver, in an amount equal to \$88,000,000 to cover the~~
3 ~~uncompensated care costs incurred by private hospitals for~~
4 ~~serving medicaid and uninsured individuals during state fiscal~~
5 ~~year 2015-2016.~~

6 ~~(b) The department shall use moneys solely from the~~
7 ~~hospital sustainability program special fund to make direct~~
8 ~~upper payment limit payments in an amount equal to \$3,975,442,~~
9 ~~pursuant to the terms of the section 1115 waiver, to level II~~
10 ~~trauma centers verified by the American College of Surgeons and~~
11 ~~designated by the department of health, including recognized~~
12 ~~specialty children's hospitals that do not pay both the~~
13 ~~inpatient and outpatient assessments.~~

14 ~~(c) The department shall make quarterly payments to~~
15 ~~private hospitals to reimburse their uncompensated care costs~~
16 ~~within twenty days after the end of each calendar quarter,~~
17 ~~provided that payments shall not be due until at least fifteen~~
18 ~~days after receipt of the fees required by section 6. If~~
19 ~~the department fails to pay the full amount when due, there~~
20 ~~shall be added to the payment a penalty equal to prime plus two~~
21 ~~per cent of the payment that was not paid when due.~~



1 ~~(d) Each eligible hospital's quarterly payment shall be~~
2 ~~equal to one quarter of its prorated share of uncompensated care~~
3 ~~costs for the fiscal year in which payment is made, as derived~~
4 ~~from the uncompensated care costs reported by all private~~
5 ~~hospitals for fiscal year 2012-2013, provided that:~~

6 ~~(1) Outpatient uncompensated care costs shall be~~
7 ~~reimbursed at one hundred per cent of reported~~
8 ~~uncompensated care costs, and~~

9 ~~(2) Inpatient uncompensated care costs shall be reimbursed~~
10 ~~on a prorated share based on the remaining~~
11 ~~uncompensated care amounts available through the~~
12 ~~section 1115 waiver.~~

13 ~~(e) Each eligible hospital's quarterly payment from the~~
14 ~~hospital sustainability program special fund shall be equal to~~
15 ~~one quarter of its share of upper payment limit payments for the~~
16 ~~fiscal year in which payment is made. Eligible hospitals shall~~
17 ~~receive their payments based on their medicaid utilization to~~
18 ~~ensure access to care for that beneficiary population.] (a)~~

19 The department shall use moneys solely from the hospital
20 sustainability program special fund to fulfill the requirements
21 of section -4(c).



1 (b) In accordance with title 42 Code of Federal
2 Regulations section 438, the department shall use revenues from
3 the hospital sustainability fee and federal matching funds to
4 enhance the capitated rates paid to medicaid managed care health
5 plans for the state fiscal year 2016-2017, consistent with the
6 following objectives:

7 (1) The rate enhancement shall be used exclusively for
8 increasing reimbursements to private hospitals to
9 support the availability of services and to ensure
10 access to care to the medicaid managed care health
11 plan enrollees;

12 (2) The rate enhancement shall be made part of the monthly
13 capitated rates by the department to medicaid managed
14 care health plans, which shall provide documentation
15 to the department and the hospital trade association
16 located in Hawaii certifying that the revenues
17 received under paragraph (1) are used in accordance
18 with this section;

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



1 (4) The rate enhancements shall be retroactive to the
2 effective date of this Act, or the effective date
3 approved by the federal government, whichever is
4 later. Retroactive rate enhancements shall be paid
5 within thirty days of notification by the Centers for
6 Medicare and Medicaid Services to the department for
7 all necessary approvals; and

8 (5) Payments made by the medicaid managed care health
9 plans shall be made within thirty business days upon
10 receipt of monthly capitation rates from the
11 department.

12 ~~[(f)]~~ (c) If federal approval pursuant to section -7 is
13 not received until after the end of any ~~[quarter]~~ month for
14 which the hospital sustainability fee is applicable, the
15 department shall make the initial ~~[quarterly]~~ monthly payments
16 within five days after receipt of the hospital sustainability
17 fee for the respective ~~[quarter.]~~ month.

18 ~~[(g)]~~ (d) To the extent the hospital sustainability
19 program is not effective for the entire year, the hospital
20 sustainability fee, the state medicaid expenses and
21 administrative fee, and the corresponding ~~[uncompensated-care]~~



1 medicaid managed care health plan payments shall be based on the
2 proportion of the fiscal year the program is in effect."

3 SECTION 3. Act 217, Session Laws of Hawaii 2012, section
4 5, as amended by section 2 of Act 141, Session Laws of Hawaii
5 2013, as amended by section 2 of Act 123, Session Laws of Hawaii
6 2014, as amended by section 2 of Act 70, Session Laws of Hawaii
7 2015, is amended to read as follows:

8 "SECTION 5. This Act shall take effect on July 1, 2012,
9 and shall be repealed on June 30, [~~2016,~~] 2017; provided that
10 section -4, Hawaii Revised Statutes, in section 2 of this
11 Act, and the amendment to section 36-30(a), Hawaii Revised
12 Statutes, in section 3 of this Act, shall be repealed on
13 December 31, [~~2016, provided further that the amendment to~~
14 ~~section 36-30(a), Hawaii Revised Statutes, in section 3 of this~~
15 ~~Act, shall not be repealed when section 36-30, Hawaii Revised~~
16 ~~Statutes, is reenacted on June 30, 2015, pursuant to section~~
17 ~~34(3) of Act 79, Session Laws of Hawaii 2009.] 2017."~~

18 SECTION 4. Act 123, Session Laws of Hawaii 2014, as
19 amended by section 3 of Act 70, Session Laws of Hawaii 2015, is
20 amended by amending section 7 to read as follows:



1 "SECTION 7. This Act shall take effect on June 29, 2014;
2 provided that:

3 (1) Section 5 shall take effect on July 1, 2014; and

4 ~~[(2) The amendments made to sections 36-27(a) and 36-30(a),~~
5 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~
6 ~~Act shall not be repealed when sections 36-27 and 36-~~
7 ~~30, Hawaii Revised Statutes, are reenacted on June 30,~~
8 ~~2015, pursuant to section 34 of Act 79, Session Laws~~
9 ~~of Hawaii 2009; and~~

10 ~~{3}~~] (2) The amendments made to sections 36-27(a) and
11 36-30(a), Hawaii Revised Statutes, in sections 3 and 4
12 of this Act shall be repealed on December 31, ~~[2016-]~~
13 2017."

14 SECTION 5. There is appropriated out of the hospital
15 sustainability program special fund the sum of \$65,000,000 or so
16 much thereof as may be necessary for fiscal year 2016-2017 for
17 the purposes of the hospital sustainability program special
18 fund.

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



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on June 29, 2016;
4 provided that section 5 of this Act shall take effect on July 1,
5 2016.

APPROVED this 6 day of JUN, 2016



GOVERNOR OF THE STATE OF HAWAII