

JAN 28 2015

A BILL FOR AN ACT

RELATING TO THE CIVIL MONETARY PENALTY SPECIAL FUND.

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

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§321- Civil monetary penalty special fund. (a) There
5 is established the civil monetary special fund, to be
6 administered by the department of health. The fund shall
7 consist of moneys collected by the United States Department of
8 Health and Human Services Centers for Medicare and Medicaid
9 Services as federally imposed civil monetary penalty funds when
10 health care facilities or agencies do not meet medicare
11 certification requirements as determined by the department of
12 health when it conducts medicare certification surveys and
13 complaint investigations on health care facilities or agencies
14 in Hawaii in accordance with section 1864 of the Social Security
15 Act. Moneys in the fund shall be expended by the department of
16 health as approved by the Centers for Medicare and Medicaid
17 Services. Not more than \$30,000 of the moneys in the fund may
18 be used during any fiscal year for the activities carried out by

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1 the department of health as approved by the Centers for Medicare
2 and Medicaid Services.

3 (b) Pursuant to federal law, civil monetary penalty
4 special funds moneys shall not be subject to deposit into the
5 general fund for any reason.

6 (c) The department of health shall submit a report to the
7 legislature concerning the status of the civil monetary penalty
8 special fund, including the amount of moneys deposited into and
9 expended from the civil monetary penalty special fund, and the
10 sources of receipts and uses of expenditures, no later than
11 twenty days prior to the convening of each regular session."

12 SECTION 2. There is appropriated out of the civil monetary
13 special fund the sum of \$_____ or so much thereof as may be
14 necessary for fiscal year 2015-2016 for purposes as approved by
15 the Centers for Medicare and Medicaid Services.

16 The sums appropriated shall be expended by the department
17 of health for purposes of this Act.

18 SECTION 3. Section 32-27, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "**§36-27 Transfers from special funds for central service**
21 **expenses.** (a) Except as provided in this section, and
22 notwithstanding any other law to the contrary, from time to
23 time, the director of finance, for the purpose of defraying the

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1 prorated estimate of central service expenses of government in
2 relation to all special funds, except the:

- 3 (1) Special out-of-school time instructional program fund
4 under section 302A-1310;
- 5 (2) School cafeteria special funds of the department of
6 education;
- 7 (3) Special funds of the University of Hawaii;
- 8 (4) State educational facilities improvement special fund;
- 9 (5) Convention center enterprise special fund under
10 section 201B-8;
- 11 (6) Special funds established by section 206E-6;
- 12 (7) Housing loan program revenue bond special fund;
- 13 (8) Housing project bond special fund;
- 14 (9) Aloha Tower fund created by section 206J-17;
- 15 (10) Funds of the employees' retirement system created by
16 section 88-109;
- 17 (11) Hawaii hurricane relief fund established under chapter
18 431P;
- 19 (12) Hawaii health systems corporation special funds and
20 the subaccounts of its regional system boards;
- 21 (13) Tourism special fund established under section 201B-
22 11;

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- 1 (14) Universal service fund established under section 269-
- 2 42;
- 3 (15) Emergency and budget reserve fund under section 328L-
- 4 3;
- 5 (16) Public schools special fees and charges fund under
- 6 section 302A-1130;
- 7 (17) Sport fish special fund under section 187A-9.5;
- 8 (18) Glass advance disposal fee established by section
- 9 342G-82;
- 10 (19) Center for nursing special fund under section 304A-
- 11 2163;
- 12 (20) Passenger facility charge special fund established by
- 13 section 261-5.5;
- 14 (21) Court interpreting services revolving fund under
- 15 section 607-1.5;
- 16 (22) Hawaii cancer research special fund;
- 17 (23) Community health centers special fund;
- 18 (24) Emergency medical services special fund;
- 19 (25) Rental motor vehicle customer facility charge special
- 20 fund established under section 261-5.6;
- 21 (26) Shared services technology special fund under section
- 22 27-43;

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1 (27) Automated victim information and notification system
2 special fund established under section 353-136;—and
3 ~~{(28)}~~ Deposit beverage container deposit special fund under
4 section 342G-104 [7]; and
5 (29) Civil monetary penalty special fund under section 321-

6
7 shall deduct five per cent of all receipts of all special
8 funds, which deduction shall be transferred to the general fund
9 of the State and become general realizations of the State. All
10 officers of the State and other persons having power to allocate
11 or disburse any special funds shall cooperate with the director
12 in effecting these transfers. To determine the proper revenue
13 base upon which the central service assessment is to be
14 calculated, the director shall adopt rules pursuant to chapter
15 91 for the purpose of suspending or limiting the application of
16 the central service assessment of any fund. No later than
17 twenty days prior to the convening of each regular session of
18 the legislature, the director shall report all central service
19 assessments made during the preceding fiscal year."

20 SECTION 4. Section 36-30, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

22 "**§36-30 Special fund reimbursements for departmental**
23 **administrative expenses.** (a) Each special fund, except the:

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- 1 (1) Transportation use special fund established by section
2 261D-1;
- 3 (2) Special out-of-school time instructional program fund
4 under section 302A-1310;
- 5 (3) School cafeteria special funds of the department of
6 education;
- 7 (4) Special funds of the University of Hawaii;
- 8 (5) State educational facilities improvement special fund;
- 9 (6) Special funds established by section 206E-6;
- 10 (7) Aloha Tower fund created by section 206J-17;
- 11 (8) Funds of the employees' retirement system created by
12 section 88-109;
- 13 (9) Hawaii hurricane relief fund established under section
14 431P-2;
- 15 (10) Convention center enterprise special fund established
16 under section 201B-8;
- 17 (11) Hawaii health systems corporation special funds and the
18 subaccounts of its regional system boards;
- 19 (12) Tourism special fund established under section 201B-11;
- 20 (13) Universal service fund established under section 269-
21 42;
- 22 (14) Emergency and budget reserve fund under section 328L-
23 3;

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- 1 (15) Public schools special fees and charges fund under
- 2 section 302A-1130;
- 3 (16) Sport fish special fund under section 187A-9.5;
- 4 (17) Center for nursing special fund under section 304A-
- 5 2163;
- 6 (18) Passenger facility charge special fund established by
- 7 section 261-5.5;
- 8 (19) Court interpreting services revolving fund under
- 9 section 607-1.5;
- 10 (20) Hawaii cancer research special fund;
- 11 (21) Community health centers special fund;
- 12 (22) Emergency medical services special fund;
- 13 (23) Rental motor vehicle customer facility charge special
- 14 fund established under section 261-5.6;
- 15 (24) Shared services technology special fund under section
- 16 27-43;
- 17 (25) Nursing facility sustainability program special fund,
- 18 under Act 156, Session Laws of Hawaii 2012;
- 19 (26) Automated victim information and notification system
- 20 special fund established under section 353-136; [~~and~~]
- 21 (27) Hospital sustainability program special fund under Act
- 22 217, Session Laws of Hawaii 2012[~~7~~]; and
- 23 (28) Civil monetary penalty special fund under 321- ,

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1 shall be responsible for its pro rata share of the
2 administrative expenses incurred by the department responsible
3 for the operations supported by the special fund concerned."

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

6 SECTION 6. This Act, upon its approval, shall take effect
7 on July 1, 2015.

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9

INTRODUCED BY: 

10

BY REQUEST

Report Title:

Civil Monetary Penalties Special Fund; Medicare Penalties

Description:

A special fund is needed to deposit moneys from federal fines assessed against skilled nursing facilities and home health agencies during inspections conducted by the Department of Health on behalf of the U.S. Centers for Medicare and Medicaid Services. These moneys cannot be comingled with any other federal or state funds.

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: Health

TITLE: A BILL FOR AN ACT RELATING TO THE CIVIL MONETARY PENALTY SPECIAL FUND.

PURPOSE: To create a special fund into which to deposit federal civil monetary penalty (CMP) moneys received from the U.S. Centers for Medicare and Medicaid Services (CMS) and establish an authorized level of expenditure from the special fund.

MEANS: Add a new section to chapter 321, Hawaii Revised Statutes (HRS), and amend section 36-27 and 36-30, HRS.

JUSTIFICATION: A special fund is needed to deposit federal civil monetary penalty moneys received from CMS resulting from federal fines assessed against medicare certified facilities or agencies during federal certification surveys conducted by the Department of Health Office of Health Care Assurance (OHCA) on behalf of CMS.

These moneys may only be used for purposes and activities specified by CMS, and therefore cannot be comingled with state licensing fees in the OHCA special fund established under section 321-1.4, HRS, nor should the moneys be deposited into other accounts used for other federal funds or general funds.

These moneys cannot be subject to conversion to general funds.

Beginning January 1, 2012, states must obtain prior approval from CMS for the use of federally imposed CMP funds. States may direct collected CMP funds to a variety of capable organizations as long as funds are

used in accordance with statutory intent, the use is consistent with federal law and policy, and the use is pre-approved by CMS.

Both the Social Security Act, title 42 United States Code section 1129, and section 6111 of the Patient Protection and Affordable Care Act of 2009, Public Law 111-148, allow funds to be used to support activities that benefit medicare beneficiaries who use services at medicare certified health care facilities or agencies, including assistance to support and protect residents of a facility that closes or is decertified (including offsetting costs of relocating residents to home- and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in medicare certified facilities or agencies, and facility improvement initiatives approved by CMS such as joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by CMS.

For this reason there can be no comingling of the CMP moneys with any other funds, and this special fund needs to be exempt from assessment of administrative costs in section 36-27 and 36-30, HRS.

Impact on the public: None.

Impact on the department and other agencies: Having a separate special fund will help the department segregate the CMP moneys and ensure proper monitoring and reporting to CMS. The department is responsible for the safekeeping of the CMP moneys and is required to make regular reports to CMS on the fund balance and purpose of expenditures. The department will expend

from this account for purposes approved and authorized by CMS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 720.

OTHER AFFECTED
AGENCIES: Department of Budget and Finance.

EFFECTIVE DATE: July 1, 2015.