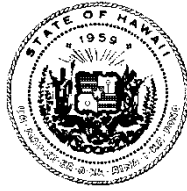




SB 262

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, as amended by Act 124, Session Laws of Hawaii 2014, to continue the Nursing Facility Sustainability Program by extending the sunset date of the Act and appropriating funding out of the nursing facility sustainability program special fund for fiscal year 2015-2016.
Companion:	
Package:	None
Current Referral:	HSH, WAM
Introducer(s):	CHUN OAKLAND, BAKER, GREEN, Riviere



**STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES**

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

February 3, 2015

Memorandum

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

FROM: Rachael Wong, DrPH, Director

SUBJECT: **S.B. 262 - RELATING TO THE NURSING FACILITY
SUSTAINABILITY PROGRAM**

Hearing: Thursday, February 5, 2015; 1:20 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of the bill is to continue the Nursing Facility Sustainability Program for an additional year, appropriate funds out of the Nursing Facility Program Special Fund and continue the exemption of the Special Fund from the Central Services Expenses assessment and Administrative Expenses assessment under sections 37-27(a) and 36-30(a), Hawaii Revised Statutes (HRS).

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure that proposes to extend the Nursing Facility Sustainability Program (NFSP) for another year. The DHS and the Healthcare Association of Hawaii have worked collaboratively on the Nursing Facility Sustainability Program Fund and this bill will continue to help sustain nursing facilities so that there will be continued access to needed resources by the residents of the State.

The Administration Bill, H.B. 934, also proposes to extend the NFSP. Both bills will address technical amendments to the statute and language that preserves the exemption from section 36-27, HRS, and section 36-30, HRS, be referenced.

Without these two exemptions from the Central Services (CS) expenses fee (section 36-27) and the Department Administrative (DA) expenses fee (section 36-30), the NFSP will have to pay \$600,000 in CS expenses assessed under section 36-27 and \$120,000 for DA services expenses assessed under section 36-30 for state fiscal year (FY) 2016. This is a total of \$720,000 that the DHS will not be able to use for direct services that would help sustain nursing facilities and improve services to Medicaid recipients.

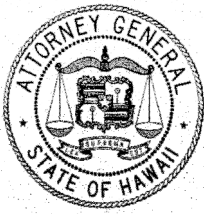
The Nursing Facility Sustainability Program fee is levied on non-governmental nursing facilities and the revenue from the program fee is used to leverage federal funds and increase reimbursements to nursing facilities, with a greater benefit to those providing proportionately more services to Medicaid recipients. These additional monies will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the long-term care safety-net.

In FY 2012-2013, the nursing facilities were assessed \$11,535,405 in sustainability fees and received \$21,086,740 in additional reimbursement; in FY 2013-2014 nursing facilities were assessed \$11,436,642 and received \$20,906,201 in additional reimbursement. In FY 2014-2015, it is anticipated that the nursing facilities will be assessed \$10,346,784 in fees and receive \$21,614,340 in additional reimbursements.

The DHS utilized 12% of the sustainability fees authorized for use by the DHS to restore the 3% reduction in reimbursement rates for the nursing facilities. In FY 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 FY year 2013-2014, the DHS retained \$1.37 million to provide \$2.8 million in increased reimbursement. In FY 2014-2015 the DHS anticipates retaining approximately \$1,410,000 in sustainability fees to improve services for Medicaid program recipients and increase reimbursement to the nursing facilities by \$3 million.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 262, RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING

DATE: Thursday, February 5, 2015 **TIME:** 1:20 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): RUSSELL A. SUZUKI, 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 and updates the referral dates in the statute. There are some technical problems with this measure as drafted, which have been addressed in two Administration measures, House Bill No. 934 and Senate Bill No. 1103, HMS-05(15), both relating to the nursing facility sustainability program.

Act 156, Session Laws of Hawaii 2012, exempted the nursing facility sustainability program special fund (the special fund) from the administrative expenses assessment imposed by section 36-30, Hawaii Revised Statutes (HRS). In 2014, the legislature exempted the special fund from the central service expenses assessment imposed by section 36-27, HRS, and made a minor amendment to the administrative expenses assessment exemption under section 36-30, HRS. See Act 124, Session Laws of Hawaii 2014. Both sections 36-27 and 36-30, HRS, are subject to repeal and reenactment on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009. Act 124, Session Laws of Hawaii 2014, provides that the exemption from HRS section 36-27 and amendment to the exemption under section 36-30 shall not be repealed at that time. The effect of repeal and reenactment of sections 36-27 and 36-30 will be that the special fund loses its exemption from the administrative expenses assessment since Act 124 only preserved the *changes* it made to section 36-30, HRS, and not the initial exemption of the administrative expenses assessment under Act 156, Session Laws of Hawaii 2012. Therefore, the special fund will then be subject to paying the administrative expenses assessment beginning

July 1, 2015. Under section 2 of this measure, the special fund is extended to December 31, 2016, therefore, the special fund would be subject to the administrative expenses assessment between July 1, 2015 and December 31, 2016.

Because this measure extends the sunset date of the nursing facility sustainability program, it appears that the intent of the bill is to preserve the exemptions from sections 36-27 and 36-30, HRS, through December 31, 2016. In order to do so, it is important that the creation of, and any subsequent amendments to, each exemption under sections 36-27 and 36-30 be protected from repeal and reenactment under section 34 of Act 79, Session Laws of Hawaii 2009. This will require amending Act 156, Session Laws of Hawaii 2012, which first exempted the special fund from the administrative expenses assessment, as well as Act 124, Session Laws of Hawaii 2014, which amended the exemption from the administrative expenses assessment.

Although section 7 of Act 124, Session Laws of Hawaii 2014, addressed the effect of repeal and reenactment under section 34 of Act 79, Session Laws of Hawaii 2009, this did not effectively preserve the administrative expenses assessment exemption under section 36-30, HRS. As noted above, it only preserved the *change* made to the administrative expenses assessment exemption under Act 124. In addition, the inclusion of additional repeal and reenactment language in Act 124 caused confusion. We consulted with the Legislative Reference Bureau (LRB) staff during the drafting and review of the Administration measures, House Bill No. 934 and Senate Bill No. 1103, to address the concerns regarding clarity of the repeal and reenactment provisions. We therefore make the following recommendations, which are consistent with the recommendations contained in the Administration measures, to ensure that the exemptions from the central service expenses and administrative expenses assessments are preserved beyond June 30, 2015:

1. That section 2 of this measure amending section 5 of Act 156, Session Laws of Hawaii 2012, as amended, be amended to read as follows to preserve the exemption from the administrative expenses assessment under section 36-30, HRS through December 31, 2016:

SECTION 2. Act 156, Session Laws of Hawaii 2012, section 5, as amended by Act 142, Session Laws of Hawaii 2013, section 3, as amended by Act 124, Session Laws of Hawaii 2014, section 2, is amended to read as follows:

"SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, [~~2015;~~] 2016; provided that section -4, Hawaii Revised

Statutes, established by section 2 of this Act, and section 3 of this Act, shall be repealed on December 31, [2015-] 2016; and provided further that the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall not be repealed when section 36-30, Hawaii Revised Statutes, is reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009."

2. That section 3 of this measure, which amends Act 124, Session Laws of Hawaii 2014, be further amended to make clarifying amendments to paragraph (2), remove the unnecessary and confusing reference to repeal and reenactment in paragraph (3), and extend the repeal date of sections 3 and 4 of Act 124 to December 31, 2016:

SECTION 3. Act 124, Session Laws of Hawaii 2014, is amended by amending section 7 to read as follows:

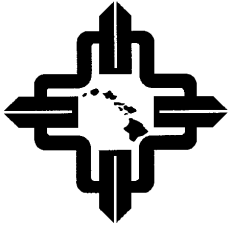
"SECTION 7. This Act shall take effect on June 29, 2014; provided that:

- (1) Section 5 shall take effect on July 1, 2014;
- (2) The amendments made to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009; and
- (3) ~~[The amendments made in sections]~~ Sections 3 and 4 shall be repealed on December 31, [2015-] 2016. [and sections 36-27 and 36-30, Hawaii Revised Statutes, shall be reenacted in the form provided in section 34 of Act 79, Session Laws of Hawaii 2009.]"

We note that this measure does not amend the exemptions of the special fund from sections 36-27 and 36-30, HRS, to make reference to amending session laws, as was done in the Administration measures for both the Hospital Sustainability Program and the Nursing Facility Sustainability Program, and in House Bill No. 581 and Senate Bill No. 806, relating to the Hospital Sustainability Program. For clarity, we recommend that the references to the Hospital Sustainability Program special fund and the Nursing Facility Sustainability Program special fund be described similarly in sections 36-27 and 36-30, HRS. Since both programs remain uncodified, we recommend that the method utilized in House Bill No. 581 to amend the description of the Hospital Sustainability Program special fund to include references to all amending session laws, including Session Laws of Hawaii 2015, be added to this measure to

similarly amend the description of the Nursing Facility Sustainability Program special fund. See, for example, House Bill No. 581, sections 3 and 4.

We respectfully request that this Committee amend the bill as suggested above.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

Senate Committee on Human Services and Housing
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

February 5, 2015
Conference Room 016
1:20 p.m.
Hawaii State Capitol

Testimony Supporting Senate Bill 262 Relating to the Nursing Facility Sustainability Program
Amends Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, as amended by Act 124, Session Laws of Hawaii 2014, to continue the Nursing Facility Sustainability Program by extending the sunset date of the Act and appropriating funding out of the nursing facility sustainability program special fund for fiscal year 2015-2016.

Linda Rosen, M.D., M.P.H.
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 support of SB 262 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 MedQUEST 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 program. 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 can receive under the State of Hawaii's Section 1115 waiver. As a matter of public policy, the public hospitals should be allowed to 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 may be realized and the private nursing facilities and the public hospitals as a whole will receive greater reimbursements than they are currently receiving.

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



Thursday, February 5, 2015 – 1:20 p.m.
Conference Room #016

Senate Committee on Human Services and Housing

To: Sen. Suzanne Chun Oakland, Chair
Sen. Josh Green, MD, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Support**
SB262 — Relating to the Nursing Facility Sustainability Program

The Healthcare Association of Hawaii's 160 member organizations include all of the acute care hospitals in Hawaii, all public and private skilled nursing facilities, all the Medicare-certified home health agencies, all hospices, all assisted living facilities, durable medical equipment suppliers and home infusion/pharmacies. Members also represent other healthcare providers from throughout the continuum including case management, air and ground ambulance, blood bank, dialysis, and more. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to testify in **support** of SB262, which extends the sunset date of the Nursing Facility Sustainability Program to June 30, 2016.

The Legislature created this program three 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.

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. It is important to note that the program requires no state or taxpayer funding. The program actually generates revenue for the state and its healthcare facilities.

The companion bill to this measure (HB582) was heard by the House Committee on Health last week, at which time the Department of the Attorney General provided suggested amendments to mirror the language found in HB934/SB1103, an administration bill. Since then, HAH discussed the amendments with the Department of Human Services, and is in support of these changes.

Thank you for the opportunity to testify in support of SB262.



HPCA

HAWAII PRIMARY CARE ASSOCIATION

Senate Committee on Human Services and Housing

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

Testimony on Senate Bill 262

Relating to the Nursing Facility Sustainability Program

Submitted by Robert Hirokawa, Chief Executive Officer

January 30, 2015, 10:10 am, Room 329

The Hawaii Primary Care Association supports Senate Bill 262, which makes adjustments to the Nursing Facility Sustainability Program and extends its sunset date to June 30, 2016.

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.

Thank you for the opportunity to testify.



THE QUEEN'S HEALTH SYSTEMS

**SB 262, Relating to the Nursing Facility Sustainability Program
Senate Committee on Human Services and Housing
Hearing—February 5, 2015 at 1:20 PM**

Dear Chairwoman Chun Oakland and Members of the Senate Committee on Human Services and Housing:

My name is Paula Yoshioka, and I am a Senior Vice President at The Queen's Health Systems. I would like to express my support for the Nursing Facility Sustainability Program and for the Healthcare Association of Hawaii's testimony regarding SB 262,

The Nursing Facility Sustainability Program issues a fee on nursing facilities in the state. The revenue generated by this fee is used to draw down matching federal funds. Nursing facilities, in turn, receive an increased reimbursement rates from the state based on the number of Medicaid patients they serve.

Nursing facilities in Hawaii are an integral part of the continuum of care that our community relies on. Extending this program for another year will help to ensure that our most underserved families have access to needed care.

Thank you for your time and consideration of this matter.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



**Testimony to the Senate Committee on Human Services and Housing
Thursday, February 5, 2015 at 1:20 P.M.
Conference Room 016, State Capitol**

**RE: SENATE BILL 262 RELATING TO THE NURSING FACILITY
SUSTAINABILITY PROGRAM**

Chair Chun Oakland, Vice Chair Green, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** SB 262, which amends Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, as amended by Act 124, Session Laws of Hawaii 2014, to continue the Nursing Facility Sustainability Program by extending the sunset date of the Act and appropriating funding out of the nursing facility sustainability program special fund for fiscal year 2015-2016..

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This bill helps the state and Hawaii hospitals utilize this program to leverage much needed federal dollars for nursing facilities. A sustainable hospital network and health care industry is vital to the health of our employees, business, and our overall quality of life.

Thank you for the opportunity to testify.