

[CHAPTER 346F]
NURSING FACILITY SUSTAINABILITY PROGRAM

Section

- 346F-1 Title
- 346F-2 Findings and declaration of necessity
- 346F-3 Definitions
- 346F-4 Nursing facility sustainability program special fund
- 346F-5 Nursing facility sustainability fee
- 346F-6 Nursing facility sustainability fee assessment
- 346F-7 Federal approval
- 346F-8 Multifacility locations
- 346F-9 Penalties for failure to pay nursing facility sustainability fee
- 346F-10 Enhanced rates to medicaid managed care health plans
- 346F-11 Payment of rate enhancement
- 346F-12 Special designation of nursing facility sustainability program special fund
- 346F-13 Termination
- 346F-14 Severability

Note

Chapter repealed June 30, 2017, except for §346F-4, which is repealed December 31, 2017. L 2012, c 156, §5; L 2013, c 142, §3; L 2014, c 124, §2; L 2015, c 69, §2; L 2016, c 59, §2.

" **[§346F-1] Title.** This chapter shall be known and may be cited as the "Nursing Facility Sustainability Program Act". [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[§346F-2] Findings and declaration of necessity.** It is the intent of the legislature to establish a special fund within the state treasury to receive revenue from the nursing facility sustainability fee to be administered by the department, which shall use the revenue from the fee and associated federal medicaid matching funds to make payments to nursing facilities and for other purposes as set forth in this chapter. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(1), 3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[§346F-3] Definitions.** As used in this chapter:
"Continuing care retirement community" means an entity providing nursing facility services, along with assisted living or independent living on a contiguous campus with the number of assisted living and independent living beds in the aggregate

being at least twice the number of nursing facility beds. For purposes of this definition, "contiguous" means land adjoining or touching other property held by the same or related organization, and includes land divided by a public road.

"Department" means the department of human services.

"Net patient service revenue" means gross inpatient revenues from services provided to nursing facility patients less reductions from gross inpatient revenue resulting from an inability to collect payment of charges. Inpatient service revenue excludes non-patient care revenues, such as revenues from beauty and barber services, vending income, interest and contributions, revenues from the sale of meals, and all outpatient revenues. Reductions from gross revenue include contractual adjustments, uncompensated care, administrative, courtesy, and policy discounts and adjustments, and other revenue deductions.

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

"Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge; provided that one resident day shall be deemed to exist when admission and discharge occur on the same day. A resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(1), 3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[§346F-4] Nursing facility sustainability program special fund.** [Section repealed December 31, 2017. L 2016, c 59, §2.]

(a) There is created in the state treasury the nursing facility sustainability program special fund to be administered by the department into which shall be deposited all moneys collected under this chapter.

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

- (1) All revenues collected or received by the department from the nursing facility sustainability fee required by this chapter;
- (2) All federal medicaid funds received by the department as a result of matching expenditures made with the nursing facility sustainability fees;
- (3) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (4) Any appropriations, federal funds, donations, gifts, or moneys from any other sources.

(c) Revenue from the nursing facility sustainability fee shall be used exclusively as follows:

- (1) No less than eighty-eight per cent of the revenue from the nursing facility sustainability fee shall be used to match federal medicaid funds, with the combined total to be used to enhance capitated rates to medicaid managed care health plans for the purpose of increasing medicaid payments to private nursing facilities;
- (2) Twelve per cent of the revenue from the nursing facility sustainability fee may be used by the department for other departmental purposes; and
- (3) All moneys remaining in the special fund on December 30, 2017, shall be distributed to nursing facilities within thirty days in the same proportions as received from the nursing facilities.

(d) The department shall utilize federal funds derived from state long-term care facility certified expenditures to make supplemental payments to state long-term care facilities to the extent permitted by federal law. The department may receive intergovernmental transfers from the state long-term care facilities to support direct supplemental payments and increased capitation rates to health plans for the benefit of the state long-term care facilities. During any period in which the nursing facility sustainability fee is in effect, certified expenditures of state long-term care facilities shall not be used to make or support direct payments to private nursing facilities. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(1), 3; am L 2014, c 124, §§1(1), 2; am L 2015, c 69, §§1(1), 2; am L 2016, c 59, §1(1)]

" **[§346F-5] Nursing facility sustainability fee.** (a) Effective July 1, 2012, the department shall charge and collect a provider fee on health care items or services provided by nursing facilities.

(b) The nursing [facility] sustainability fee shall be based on the net patient service revenue of all nursing facilities that are subject to the sustainability fee, as determined by the department.

(c) The nursing facility sustainability fee shall not exceed four per cent of net patient service revenue and shall be calculated and paid on a per resident day basis, unless the facility qualifies for an exemption identified in subsection (d)(1). The per resident daily fee shall be \$13.46 for each affected facility, except for facilities described in subsection (d)(2), which instead shall pay a per resident daily fee of \$5.85.

(d) In accordance with the redistribution method set forth in title 42 Code of Federal Regulations section 433.68(e)(1) and

(2), the department shall seek a waiver of the broad-based and uniformity provider fee requirements under federal law from which to exclude certain nursing facilities and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual patient days to pay the sustainability fee at a lesser amount per resident day, as follows:

- (1) The department shall exempt the following nursing facility providers from the nursing facility sustainability fee subject to federal approval under title 42 Code of Federal Regulations section 433.68(e)(2):
 - (A) Nursing facilities with twenty-eight or fewer licensed beds;
 - (B) Nursing facilities owned or operated by the Hawaii health systems corporation; and
 - (C) Continuing care retirement communities.
- (2) The department shall reduce the fee for high volume medicaid nursing facilities or facilities with high patient volumes in order to meet the redistributive tests of title 42 Code of Federal Regulations section 433.68(e)(2).
- (3) The department, with agreement by the nursing facility trade associations located in Hawaii, may modify, add to, or reduce the categories of facilities exempt from the assessment if necessary to obtain and maintain approval of the waiver by the Centers for Medicare and Medicaid Services, if the modification is consistent with the purposes of this chapter. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §§1(2), 2]

" **[§346F-6] Nursing facility sustainability fee assessment.**

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

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

(c) The department shall collect and each nursing facility shall pay in twelve equal installments the nursing facility sustainability fee in section 346F-5 on a monthly basis, subject to the terms of this section. The fee shall be due within thirty days after the end of each month, with the initial payment due on the later of July 31, 2012, or forty-five days after the required federal approvals for the assessment and any increase in health plan capitation payments have been secured

from the Centers for Medicare and Medicaid Services. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[\$346F-7] Federal approval.** The department shall seek a waiver and other approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the nursing facility sustainability program, including the approval of the contracts between the State and medicaid managed care health plans. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(2), 3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[\$346F-8] Multifacility locations.** If an entity conducts, operates, or maintains more than one nursing facility, the entity shall pay the nursing facility sustainability fee for each nursing facility separately. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, 2]

" **[\$346F-9] Penalties for failure to pay nursing facility sustainability fee.** (a) If a nursing facility fails to pay the full amount of the nursing facility sustainability fee when due, there shall be added to the fee, unless waived by the department for reasonable cause, a penalty equal to two per cent of the fee that was not paid when due. Any subsequent payments shall be credited first to unpaid fee amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

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

- (1) Withholding any medical assistance reimbursement payments until such time as the fee amount is paid in full;
- (2) Suspension or revocation of the nursing facility license; or
- (3) Development of a plan that requires the nursing facility to pay any delinquent fee in installments. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[\$346F-10] Enhanced rates to medicaid managed care health plans.** In accordance with title 42 Code of Federal Regulations section 438, the department shall use revenues from the nursing facility sustainability fee and federal matching funds to enhance the capitated rates paid to medicaid managed care health plans for the state fiscal year 2016-2017 consistent with the following objectives:

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private nursing facilities to support the availability of services and to ensure access to care to the medicaid managed care health plan enrollees;
- (2) The rate enhancement shall be made part of the monthly capitated rates by the department to medicaid managed care health plans, which shall provide documentation to the department and the nursing facility trade association located in Hawaii certifying that the revenues received under paragraph (1) are used in accordance with this section;
- (3) The rate enhancement shall be actuarially sound and approved by the federal government for federal fund participation; and
- (4) The department shall modify the fee-for-service reimbursement rates of the nursing facilities to recognize the medicaid portion of the nursing facility sustainability fee as an additional cost of serving medicaid patients, and to provide a uniform percentage increase in preexisting facility-specific rates. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(3), 3; am L 2014, c 124, §§1(2), 2; am L 2015, c 69, §§1(3), 2; am L 2016, c 59, §1(2)]

" **[\$346F-11] Payment of rate enhancement.** The rate enhancements referred to in section 346F-10 shall be retroactive to July 1, 2012. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department of all necessary approvals. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(3), 3; am L 2014, c 124, §2; am L 2015, c 69, §2]

Revision Note

"July 1, 2012" substituted for "the effective date of this chapter".

" **[\$346F-12] Special designation of nursing facility sustainability program special fund.** Notwithstanding section 37-53 and any law or administrative rule to the contrary, the specific purposes set out in section 346F-4(c) are established as being preeminent uses of the nursing facility sustainability program special fund and shall not be used for any other purposes, notwithstanding any authority granted to the governor or any other state official by any other statutory provisions relating to the allocation or reallocation of funds. [L 2012, c

156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §2]

" **[§346F-13] Termination.** (a) Collection of the nursing facility sustainability fee under section 346F-5 shall be discontinued if:

- (1) The waiver in section 346F-7 or the enhanced capitation rates in section 346F-10 have not been approved by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for nursing facility services below the state appropriation in effect on June 30, 2016;
- (3) The department or any other state agency uses the money in the special fund for any use other than the uses permitted pursuant to this chapter; or
- (4) Federal financial participation to match the nursing facility sustainability fee becomes unavailable under federal law. In such case, the department shall terminate the collection of the fee beginning on the effective date of the federal statutory, regulatory, or interpretive change.

(b) If collection of the nursing facility sustainability fee is discontinued as provided in this section, any remaining money in the special fund shall be returned to the nursing facilities from which the fee was collected within thirty days in the same proportions as received from the nursing facilities. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §§2(4), 3; am L 2014, c 124, §§1(3), 2; am L 2015, c 69, §§1(4), 2; am L 2016, c 59, §1(3)]

" **[§346F-14] Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 2012, c 156, pt of §2, §5; am L 2013, c 142, §3; am L 2014, c 124, §2; am L 2015, c 69, §2]