

**[CHAPTER 346G]
HOSPITAL SUSTAINABILITY PROGRAM**

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Note

Chapter repealed June 30, 2017, except for §346G-4, which is repealed December 31, 2017. L 2012, c 217, §5; L 2013, c 141, §2; L 2014, c 123, §2; L 2015, c 70, §2; L 2016, c 60, §3.

" **[§346G-1] Title.** This chapter shall be known and may be cited as the "Hospital Sustainability Program Act". [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

" **[§346G-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 imposition of a hospital sustainability fee to be administered by the department of human services, which shall use the revenue from the fee and associated federal medicaid matching funds to make direct payments to hospitals and for other purposes as set forth in this chapter. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

" **[§346G-3] Definitions.** As used in this chapter:
"Department" means the department of human services.
"Fiscal year" means a twelve-month period from July 1 of a particular calendar year to June 30 of the following calendar year, inclusive.

"Hospital" means any facility licensed pursuant to chapter 11-93, Hawaii Administrative Rules.

"Inpatient care" means the care of patients whose conditions require admission to a hospital.

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

"Outpatient care" means all services furnished by hospitals to patients who are registered as hospital outpatients.

"Private hospital" means those non-public hospitals named in attachment A of the medicaid section 1115 demonstration waiver that were in operation in calendar year 2015 and are currently operating or any hospitals not named in attachment A of the medicaid section 1115 demonstration waiver that became private hospitals in calendar year 2016 and are currently operating.

"Section 1115 waiver" means the medicaid section 1115 demonstration waiver under which the state medicaid program is operating. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §§1(1), 2; am L 2015, c 70, §§1(1), 2; am L 2016, c 60, §2(1)]

" **[§346G-4] Hospital sustainability program special fund.**

[Section repealed December 31, 2017. L 2016, c 60, §3.] (a) There is created in the state treasury the hospital 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 hospital sustainability program special fund shall consist of:

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

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

- (1) No less than eighty-eight per cent of the revenue from the hospital sustainability fee shall be used for one or more of the following:
 - (A) Match federal medicaid funds, with the combined total to be used to enhance capitated rates to medicaid managed care health plans for the sole purpose of increasing medicaid payments to private hospitals;
 - (B) Match federal medicaid funds for Hawaii's medicaid disproportionate share hospital allotment as authorized by current federal law for private hospitals;
 - (C) Match federal medicaid funds for a private hospital upper payment limit pool; or
 - (D) 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 hospitals through a quality incentive pool;
- (2) Twelve per cent of the moneys in the hospital sustainability program special fund may be used by the department for other departmental purposes; and
- (3) Any money remaining in the hospital sustainability program special fund six months after the repeal of this chapter, shall be distributed to hospitals within thirty days in the same proportions as received from the hospitals.

(d) The department shall utilize federal funds derived from state hospital certified expenditures to make supplemental payments to state hospitals and is authorized to receive intergovernmental transfers from the state hospitals to support direct supplemental payments and increased capitation rates to health plans for the benefit of the state hospitals. During any period in which the hospital sustainability fee is in effect, certified expenditures of state hospitals shall not be used to make or support direct payments to private hospitals. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §§1(2), 2; am L 2016, c 60, §2(2)]

" **[\$346G-5] Hospital sustainability fee.** (a) Effective July 1, 2012, or, if later, the effective date of any necessary federal approvals, the department shall charge and collect provider fees, to be known as the hospital sustainability fee, on inpatient and outpatient care services provided by private hospitals.

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

(c) The hospital sustainability fee for inpatient care services may differ from the fee for outpatient care services but the fees shall not in the aggregate exceed three per cent of net patient service revenue as derived from the hospital's medicare cost report ending during state fiscal year 2013-2014. The inpatient hospital sustainability fee shall not exceed three per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall be three per cent of net outpatient hospital service revenue. Each fee shall be the same percentage for all affected hospitals, subject to subsection (d).

(d) The department shall exempt children's hospitals, federal hospitals, public hospitals, and psychiatric hospitals from the hospital sustainability fees on inpatient services. In addition, the department shall exempt children's hospitals, public hospitals, rehabilitation hospitals, psychiatric hospitals, and any hospitals with net outpatient revenues of less than \$57,000,000 per year based upon fiscal year 2013-2014 cost reports from the hospital sustainability fee on outpatient care services.

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

(f) Notwithstanding section 346G-6, nothing shall require the department to exempt a facility from the hospital sustainability fee if it is not approved by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §§1(2), 2; am L 2015, c 70, §§1(3), 2; am L 2016, c 60, §2(3)]

" **[§346G-6] Hospital sustainability fee assessments.** (a) Hospitals shall pay the hospital sustainability fee to the department in accordance with this chapter. The fee shall be divided and paid in twelve equal installments on a monthly basis.

(b) The department shall collect, and each hospital shall pay, the hospital sustainability fee not later than the thirtieth day after the end of each calendar month; provided that if required federal approvals have not been secured by the

end of a calendar month the fees for that month shall be paid within ten days after notification to the hospitals that the required approvals have been received. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2; am L 2016, c 60, §2(4)]

" **[\$346G-7] Federal approval.** The department shall seek waivers and any additional approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the hospital sustainability program. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

" **[\$346G-8] Multifacility locations.** If an entity conducts, operates, or maintains more than one hospital licensed by the department of health, the entity shall pay the hospital sustainability fees for each hospital separately, unless it operates and files more than one hospital under a single medicare cost report. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §§1(4), 2]

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

(b) In addition to the penalty imposed by subsection (a), the department may seek any of the following remedies for the failure of any hospital 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 hospital license; or
- (3) Development of a plan that requires the hospital to pay any delinquent fee in installments. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

" **[\$346G-10] Private hospital payments through enhanced rates to medicaid managed care health plans.** (a) The department shall use moneys solely from the hospital

sustainability program special fund to fulfill the requirements of section 346G-4(c).

(b) In accordance with title 42 Code of Federal Regulations section 438, the department shall use revenues from the hospital 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 hospitals 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 hospital 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;
- (4) The rate enhancements shall be retroactive to July 1, 2012, or the effective date approved by the federal government, whichever is later. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department for all necessary approvals; and
- (5) Payments made by the medicaid managed care health plans shall be made within thirty business days upon receipt of monthly capitation rates from the department.

(c) If federal approval pursuant to section 346G-7 is not received until after the end of any month for which the hospital sustainability fee is applicable, the department shall make the initial monthly payments within five days after receipt of the hospital sustainability fee for the respective month.

(d) To the extent the hospital sustainability program is not effective for the entire year, the hospital sustainability fee, the state medicaid expenses and administrative fee, and the corresponding medicaid managed care health plan payments shall be based on the proportion of the fiscal year the program is in effect. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §§1(3), (4), 2; am L 2015, c 70, §§1(5), 2; am L 2016, c 60, §2(5)]

Revision Note

In subsection (b)(4), "July 1, 2012" substituted for "the effective date of this Act".

" **[\$346G-11] Special designation of hospital sustainability program special fund.** Notwithstanding section 37-53, and any law or any administrative rule to the contrary, the specific purposes set out in section 346G-4(c) are established as being exclusive uses of the hospital sustainability program special fund. The hospital sustainability program special fund shall not and may 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 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

" **[\$346G-12] Termination.** (a) Collection of the hospital sustainability fee established by section 346G-5 shall be discontinued if:

- (1) The required federal approvals specified in section 346G-7 are not granted or are revoked by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for hospital services below the state appropriation in effect as of July 1, 2012;
- (3) The department or any other state agency uses the money in the hospital sustainability program special fund for any use other than the uses permitted by this chapter; or
- (4) Federal financial participation to match the revenue from the hospital sustainability fee becomes unavailable under federal law; provided that the department shall terminate the imposition of the hospital sustainability fee beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

(b) Notwithstanding section 346G-4(c), if collection of the hospital sustainability fee is discontinued as provided in this section, any remaining moneys in the hospital sustainability program special fund shall be distributed within thirty days to the private hospitals on the same basis as the hospital sustainability fee was collected. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]

Revision Note

In subsection (a)(2), "July 1, 2012" substituted for "the effective date of this chapter".

" **[\$346G-13] 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 that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 2012, c 217, pt of §2, §5; am L 2013, c 141, pt of §1, §2; am L 2014, c 123, §2; am L 2015, c 70, §2]