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# 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 the hospital  
2 sustainability program was established in 2012 and has served a  
3 critical role in strengthening the health care system in Hawaii.  
4 In the seven years since its inception, the hospital  
5 sustainability program has helped acute care facilities treat  
6 the most vulnerable patients in the State, especially low-income  
7 individuals who require hospital services. The program has been  
8 carried out in a public-private partnership to ensure that  
9 patients in Hawaii can access quality, affordable care.

10           The legislature further finds that, even with this program,  
11 hospitals in the State face major financial challenges. These  
12 challenges are due in part to inadequate payments from the  
13 medicaid program that do not cover the actual costs of care.  
14 Medicaid is jointly financed by the federal and state  
15 governments by statutory formula; the federal government pays  
16 between fifty per cent and seventy-four per cent, with  
17 assistance levels determined by each state's per capita income.



1 States with the lowest per capita income receive higher federal  
2 matching rates. Under federal rules, the state share must be  
3 paid from public funds that are not federal funds. The  
4 legislature finds that public funding to help financially  
5 sustain Hawaii's hospitals may be accessed through a provider  
6 fee.

7 The legislature further finds that provider fees exist in  
8 forty-nine states and the District of Columbia as a means of  
9 drawing down federal funds to sustain medicaid programs due to  
10 rising state budget deficits, increasing health care costs, and  
11 expanding medicaid enrollment. Provider fees, which are  
12 collected from specific categories of health care providers that  
13 agree to the fee, may be imposed on nineteen different classes  
14 of health care services, including inpatient and outpatient  
15 hospital and nursing facility services.

16 The legislature therefore finds that, in Hawaii, a provider  
17 fee on hospitals has resulted in substantial increases in  
18 medicaid payments without putting additional constraints on the  
19 State's budget. The additional federal funds obtained via the  
20 fee program authorized by the hospital sustainability program  
21 have helped to reduce the amount of losses' incurred by hospitals



1 and maintain access to care for medicaid recipients. This  
2 allows hospitals in the State to continue to serve uninsured or  
3 underinsured patients in a timely, effective manner, and helps  
4 to ensure the overall sustainability of the health care system  
5 in Hawaii.

6 The purpose of this Act is to preserve access to health  
7 care for medicaid recipients by extending the hospital  
8 sustainability program.

9 SECTION 2. Section 346G-3, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By adding a new definition to be appropriately inserted  
12 and to read:

13 "Medicaid cost report" means the annual cost report that a  
14 hospital submits to the State's medicaid agency."

15 2. By amending the definition of "private hospital" to  
16 read:

17 ~~"Private hospital" means [those non public hospitals named~~  
18 ~~in attachment A of the medicaid section 1115 demonstration~~  
19 ~~waiver that were in operation in calendar year 2016 and are~~  
20 ~~currently operating or any hospitals not named in attachment A~~  
21 ~~of the medicaid section 1115 demonstration waiver that became~~

1 ~~private hospitals in calendar year 2017 or 2018 and are~~  
2 ~~currently operating.]~~ all currently operating hospitals, except  
3 for hospitals that are:

- 4 (1) Operated by or affiliated with the Hawaii health  
5 systems corporation; or
- 6 (2) Charitable hospitals funded primarily through  
7 donations or other non-insurance sources of funding,  
8 and whose net patient revenue is less than forty per  
9 cent of operating expenses, per the medicaid cost  
10 report."

11 3. By deleting the definition of "section 1115 waiver".

12 [~~"Section 1115 waiver" means the medicaid section 1115~~  
13 ~~demonstration waiver under which the state medicaid program is~~  
14 ~~operating."~~]

15 SECTION 3. Section 346G-5, Hawaii Revised Statutes, is  
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) The hospital sustainability fee for inpatient care  
18 services may differ from the fee for outpatient care services  
19 but the fees charged to the hospital shall not in the aggregate  
20 exceed [~~three and one half~~] four per cent of the hospital's net  
21 patient service revenue. The inpatient hospital sustainability



1 fee shall not exceed [~~three and one-half~~] four per cent of net  
2 inpatient hospital service revenue. The outpatient hospital  
3 sustainability fee shall not exceed [~~three and one-half~~] four  
4 per cent of net outpatient hospital service revenue. Each fee  
5 shall be the same percentage for all affected hospitals, subject  
6 to subsection (d).

7 (d) The department shall exempt children's hospitals,  
8 federal hospitals, public hospitals, and psychiatric hospitals  
9 from the hospital sustainability fees on inpatient services. In  
10 addition, the department shall exempt from the hospital  
11 sustainability fee on outpatient care services [~~children's~~  
12 ~~hospitals,~~] federal hospitals and public hospitals [~~,~~  
13 ~~rehabilitation hospitals, psychiatric hospitals, and any~~  
14 ~~hospitals with net outpatient revenues of less than \$57,000,000~~  
15 ~~per year based upon the hospital's medicare cost report for the~~  
16 ~~fiscal year ending three years prior to the state fiscal year~~  
17 ~~for which the hospital's net patient service revenue is~~  
18 ~~calculated~~]; provided that the department may exclude any  
19 facility from the hospital sustainability fee [~~on outpatient~~  
20 ~~care services~~] if it is determined that its exclusion is  
21 required to meet federal standards of approval."



1 SECTION 4. Section 346G-10, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) In accordance with title 42 Code of Federal  
4 Regulations part 438, the department shall use revenues from the  
5 hospital sustainability fee and federal matching funds to  
6 enhance the capitated rates paid to medicaid managed care health  
7 plans for state fiscal years [~~2017-2018 and 2018-2019,~~] 2019-  
8 2020 and 2020-2021, consistent with the following objectives:

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

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



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

4 (4) The rate enhancements shall be retroactive to July 1,  
5 2012, or the effective date approved by the federal  
6 government, whichever is later. Retroactive rate  
7 enhancements shall be paid within thirty days of  
8 notification by the Centers for Medicare and Medicaid  
9 Services to the department of all necessary approvals;  
10 and

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

15 SECTION 5. Section 346G-12, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Collection of the hospital sustainability fee  
18 established by section 346G-5 shall be discontinued if:

19 (1) The required federal approvals specified in section  
20 346G-7 are not granted or are revoked by the Centers  
21 for Medicare and Medicaid Services;



1 (2) The department reduces funding for hospital services  
2 below the state appropriation in effect as of July 1,  
3 [~~2012,~~] 2020;

4 (3) The department or any other state agency uses the  
5 money in the hospital sustainability program special  
6 fund for any use other than the uses permitted by this  
7 chapter; or

8 (4) Federal financial participation to match the revenue  
9 from the hospital sustainability fee becomes  
10 unavailable under federal law; provided that the  
11 department shall terminate the imposition of the  
12 hospital sustainability fee beginning on the date the  
13 federal statutory, regulatory, or interpretive change  
14 takes effect."

15 SECTION 6. Act 217, Session Laws of Hawaii 2012, section  
16 5, as amended by section 2 of Act 141, Session Laws of Hawaii  
17 2013, as amended by section 2 of Act 123, Session Laws of Hawaii  
18 2014, as amended by section 2 of Act 70, Session Laws of Hawaii  
19 2015, as amended by section 3 of Act 60, Session Laws of Hawaii  
20 2016, as amended by section 5 of Act 59, Session Laws of Hawaii  
21 2017, is amended to read as follows:





1 "SECTION 5. This Act shall take effect on July 1, 2012,  
2 and shall be repealed on June 30, [~~2019~~] 2021; provided that  
3 section -4, Hawaii Revised Statutes, in section 2 of this  
4 Act, and the amendment to section 36-30(a), Hawaii Revised  
5 [~~Statutes~~] Statutes, in section 3 of this Act, shall be repealed  
6 on December 31, [~~2019~~] 2021."

7 SECTION 7. Act 123, Session Laws of Hawaii 2014, section  
8 7, as amended by section 3 of Act 70, Session Laws of Hawaii  
9 2015, as amended by section 4 of Act 60, Session Laws of Hawaii  
10 2016, as amended by section 6 of Act 59, Session Laws of Hawaii  
11 2017, is amended to read as follows:

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

- 14 (1) Section 5 shall take effect on July 1, 2014; and  
15 (2) The amendments made to sections 36-27(a) and 36-30(a),  
16 Hawaii Revised Statutes, in sections 3 and 4 of this  
17 Act shall be repealed on December 31, [~~2019~~] 2021."

18 SECTION 8. There is appropriated out of the hospital  
19 sustainability program special fund the sum of \$88,000,000 or so  
20 much thereof as may be necessary for fiscal year 2019-2020 and  
21 the same sum or so much thereof as may be necessary for fiscal



1 year 2020-2021 for the purposes of the hospital sustainability  
2 program special fund.

3 The sums appropriated shall be expended by the department  
4 of human services for the purposes of this Act.

5 SECTION 9. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act shall take effect on June 29, 2019;  
8 provided that sections 7 and 8 of this Act shall take effect on  
9 July 1, 2019.



**Report Title:**

Hospital Sustainability Program; Department of Human Services;  
Medicaid; Appropriation

**Description:**

Extends the hospital sustainability program for two years.  
Clarifies exemptions from the hospital sustainability fee and  
increases the allowable aggregate fees to be charged.  
Appropriates funds out of the hospital sustainability special  
fund for fiscal years 2019-2020 and 2020-2021. (HB1270 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

