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# A BILL FOR AN ACT

RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

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

1           SECTION 1. The legislature finds that the nursing facility  
2 sustainability program was established in 2012 and has served a  
3 critical role in strengthening the long-term care system in  
4 Hawaii. In the seven years since its inception, the nursing  
5 facility sustainability program has helped long-term care  
6 facilities treat the most vulnerable patients in the State,  
7 especially low-income individuals who require these services.  
8 The program has been carried out in a public-private partnership  
9 to ensure that patients in Hawaii can access quality, affordable  
10 care.

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



1 assistance levels determined by each state's per capita income.  
2 States with the lowest per capita income receive higher federal  
3 matching rates. Under federal rules, the state share must be  
4 public funds that are not federal funds. The legislature finds  
5 that public funding to help sustain Hawaii's nursing facilities  
6 financially may be accessed through a provider 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 their medicaid programs  
10 due to rising state budget deficits, increasing health care  
11 costs, and expanding medicaid enrollment. Provider fees, which  
12 are collected from specific categories of health care providers  
13 that agree to the fee, may be imposed on nineteen different  
14 classes of health care services, including inpatient and  
15 outpatient hospital and nursing facility services.

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



1 losses incurred by long-term care facilities and maintain access  
2 to care for medicaid recipients. This allows nursing facilities  
3 in the State to continue to serve under- or uninsured patients  
4 in a timely, effective matter. This helps to ensure the overall  
5 sustainability of the health care system in the State.

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

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

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

13 (1) No less than eighty-eight per cent of the revenue from  
14 the nursing facility sustainability fee shall be used  
15 ~~[to match]~~ for one or more of the following:

16 (A) To match federal medicaid funds, with the  
17 combined total to be used to enhance capitated  
18 rates to medicaid managed care health plans for  
19 the purpose of increasing medicaid payments to  
20 private nursing facilities ~~[+]~~ to support the  
21 availability of services and ensure access to



- 1           care for the medicaid managed care health plan  
2           enrollees; or  
3           (B) To match federal medicaid funds, with the  
4           combined total to enhance capitated rates for the  
5           purpose of paying quality incentives;  
6           (2) Twelve per cent of the revenue from the nursing  
7           facility sustainability fee may be used by the  
8           department for other departmental purposes; and  
9           (3) All moneys remaining in the special fund on  
10           December 30, [~~2019,~~] 2021, shall be distributed to  
11           nursing facilities within thirty days in the same  
12           proportions as received from the nursing facilities."

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

15           "(c) The nursing facility sustainability fee shall not  
16           exceed [~~four~~] 5.5 per cent of net patient service revenue and  
17           shall be calculated and paid on a per resident day basis, unless  
18           the facility qualifies for an exemption identified in subsection  
19           (d) (1). The per resident daily fee shall [~~be \$13.46~~] not exceed  
20           \$20.00 for each affected facility, except for facilities



1 described in subsection (d) (2), which instead shall pay a per  
2 resident reduced daily fee [~~of \$5.85.~~] not to exceed \$9.00.

3 (d) In accordance with the redistribution method set forth  
4 in title 42 Code of Federal Regulations section 433.68(e) (1) and  
5 (2), the department shall seek a waiver of the broad-based and  
6 uniformity provider fee requirements under federal law from  
7 which to exclude certain nursing facilities and to permit  
8 certain high volume medicaid nursing facilities or facilities  
9 with a high number of total annual patient days to pay the  
10 sustainability fee at a lesser amount per resident day, as  
11 follows:

12 (1) The department shall exempt the following nursing  
13 facility providers from the nursing facility  
14 sustainability fee subject to federal approval under  
15 title 42 Code of Federal Regulations section  
16 433.68(e) (2):

17 (A) Nursing facilities with twenty-eight or fewer  
18 licensed beds;

19 (B) Nursing facilities owned [~~or~~], operated by, or  
20 affiliated with the Hawaii health systems  
21 corporation; and



- 1 (C) Continuing care retirement communities.
- 2 (2) The department shall reduce the fee for high volume  
3 medicaid nursing facilities or facilities with high  
4 patient volumes in order to meet the redistributive  
5 tests of title 42 Code of Federal Regulations section  
6 433.68(e)(2).
- 7 (3) The department, with agreement by the nursing facility  
8 trade associations located in Hawaii, may modify, add  
9 to, or reduce the categories of facilities exempt from  
10 the assessment if necessary to obtain and maintain  
11 approval of the waiver by the Centers for Medicare and  
12 Medicaid Services, if the modification is consistent  
13 with the purposes of this chapter."

14 SECTION 4. Section 346F-10, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§346F-10 Enhanced rates to medicaid managed care health**  
17 **plans.** In accordance with title 42 Code of Federal Regulations  
18 part 438, the department shall use revenues from the nursing  
19 facility sustainability fee and federal matching funds to  
20 enhance the capitated rates paid to medicaid managed care health



1 plans for state fiscal years [~~2017-2018 and 2018-2019,~~] 2019-  
2 2020 and 2020-2021 consistent with the following objectives:

3 (1) The rate enhancement shall be used exclusively for  
4 increasing reimbursements to private nursing  
5 facilities to support the availability of services and  
6 to ensure access to care to the medicaid managed care  
7 health plan enrollees;

8 (2) The rate enhancement shall be made part of the monthly  
9 capitated rates by the department to medicaid managed  
10 care health plans, which shall provide documentation  
11 to the department and the nursing facility trade  
12 association located in Hawaii certifying that the  
13 revenues received under paragraph (1) are used in  
14 accordance with this section;

15 (3) The rate enhancement shall be actuarially sound and  
16 approved by the federal government for federal fund  
17 participation; [~~and~~]

18 (4) The department shall modify the fee-for-service  
19 reimbursement rates of the nursing facilities to  
20 recognize the medicaid portion of the nursing facility  
21 sustainability fee as an additional cost of serving



1           medicaid patients, and to provide a uniform percentage  
2           increase in preexisting facility-specific rates[-];  
3           and

4           (5) Payments made by the medicaid managed care health  
5           plans shall be made within thirty calendar days upon  
6           receipt of monthly capitation rates from the  
7           department."

8           SECTION 5. Section 346F-13, Hawaii Revised Statutes, is  
9           amended by amending subsection (a) to read as follows:

10           "(a) Collection of the nursing facility sustainability fee  
11           under section 346F-5 shall be discontinued if:

12           (1) The waiver in section 346F-7 or the enhanced  
13           capitation rates in section 346F-10 have not been  
14           approved by the Centers for Medicare and Medicaid  
15           Services;

16           (2) The department reduces funding for nursing facility  
17           services below the state appropriation in effect on  
18           June 30, [~~2018~~] 2020;

19           (3) The department or any other state agency uses the  
20           money in the special fund for any use other than the  
21           uses permitted pursuant to this chapter; or





1 (4) Federal financial participation to match the nursing  
 2 facility sustainability fee becomes unavailable under  
 3 federal law. In such case, the department shall  
 4 terminate the collection of the fee beginning on the  
 5 effective date of the federal statutory, regulatory,  
 6 or interpretive change."

7 SECTION 6. Act 156, Session Laws of Hawaii 2012,  
 8 section 5, as amended by section 3 of Act 142, Session Laws of  
 9 Hawaii 2013, as amended by section 2 of Act 124, Session Laws of  
 10 Hawaii 2014, as amended by section 2 of Act 69, Session Laws of  
 11 Hawaii 2015, as amended by section 2 of Act 59, Session Laws of  
 12 Hawaii 2016, as amended by section 5 of Act 60, Session Laws of  
 13 Hawaii 2017, is amended by amending section 5 to read as  
 14 follows:

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



1 SECTION 7. Act 124, Session Laws of Hawaii 2014,  
2 section 7, as amended by Act 69, Session Laws of Hawaii 2015, as  
3 amended by Act 59, Session Laws of Hawaii 2016, and as amended  
4 by section 6 of Act 60 Session Laws of Hawaii 2017, is amended  
5 by amending section 7 to read as follows:

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

8 (1) Section 5 shall take effect on July 1, 2014; and

9 (2) The amendments made to sections 36-27(a) and 36-30(a),  
10 Hawaii Revised Statutes, in sections 3 and 4 of this  
11 Act shall be repealed on December 31, [~~2019-~~] 2021."

12 SECTION 8. There is appropriated out of the nursing  
13 facility sustainability program special fund the sum of  
14 \$ or so much thereof as may be necessary for fiscal  
15 year 2019-2020 and the same sum or so much thereof as may be  
16 necessary for fiscal year 2020-2021 for uses consistent with  
17 section 346F-4, Hawaii Revised Statutes.

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

20 SECTION 9. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect on June 29, 2019;  
2 provided that section 7 shall take effect on July 1, 2019, and  
3 section 8 shall take effect on July 1, 2050.



**Report Title:**

Nursing Facility Sustainability Program; Department of Human Services; Appropriation

**Description:**

Extends the nursing facility sustainability fee program to 2021. Allows the nursing facility sustainability fee to be used to enhance capitated rates for the purpose of paying quality incentives. Increases the nursing facility sustainability fee limit from 4.0 per cent to 5.5 per cent of net patient service revenue. Increases the per resident daily maximum fee from \$13.46 to \$20 for each facility, and increases the per resident reduced daily maximum fee from \$5.85 to \$9 for facilities that meet certain exceptions. Appropriates funds. Appropriation effective 7/1/2050. (SD2)

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

