

S.B. NO. 1229

JAN 24 2019

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 that was established in 2012 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
18 assistance levels determined by each state's per capita income.

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

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

15 The legislature additionally finds that, in Hawaii, a
16 provider fee on nursing facilities has resulted in a substantial
17 increase in medicaid payments, without putting additional
18 constraints on the State's budget. The additional federal funds
19 obtained via the fee program authorized by the nursing facility
20 sustainability program have helped to reduce the amount of
21 losses incurred by long-term care facilities and maintain access
22 to care for un- or under-insured patients in a timely, effective

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1 matter. This helps to ensure the overall sustainability of the
2 healthcare system in the State.

3 The purpose of this Act is to preserve access to health
4 care for medicaid recipients by extending the nursing facility
5 sustainability fee program.

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

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

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

13 (A) Match federal medicaid funds, with the combined
14 total to be used to enhance capitated rates to
15 medicaid managed care health plans for the
16 purpose of increasing medicaid payments to
17 private nursing facilities[+] to support the
18 availability of services and to ensure access to
19 care to the medicaid managed care health plan
20 enrollees; or

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1 (B) Match federal medicaid funds with the combined
2 total to enhance capitated rates for the purpose
3 of paying quality incentives;

4 (2) Twelve per cent of the revenue from the nursing
5 facility sustainability fee may be used by the
6 department for other departmental purposes; and

7 (3) All moneys remaining in the special fund on December
8 30, [~~2019~~] 2021, shall be distributed to nursing
9 facilities within thirty days in the same proportions
10 as received from the nursing facilities."

11 SECTION 3. Section 346F-5, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) The nursing facility sustainability fee shall not
14 exceed [~~four~~] five and a half per cent of net patient service
15 revenue and shall be calculated and paid on a per resident day
16 basis, unless the facility qualifies for an exemption identified
17 in subsection (d) (1). The per resident daily fee shall [~~be~~
18 ~~\$13.46~~] not exceed \$20 for each affected facility, except for
19 facilities described in subsection (d) (2), which instead shall
20 pay a per resident reduced daily fee [~~of \$5.85.~~] not to exceed
21 \$9."

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

3 "§346F-10 Enhanced rates to medicaid managed care health
4 plans. In accordance with title 42 Code of Federal Regulations
5 part 438, the department shall use revenues from the nursing
6 facility sustainability fee and federal matching funds to
7 enhance the capitated rates paid to medicaid managed care health
8 plans for state fiscal years [~~2017-2018 and 2018-2019,~~] 2019-
9 2020 and 2020-2021, consistent with the following objectives:

- 10 (1) The rate enhancement shall be used exclusively for
11 increasing reimbursements to private nursing
12 facilities to support the availability of services and
13 to ensure access to care to the medicaid managed care
14 health plan enrollees;
- 15 (2) The rate enhancement shall be made part of the monthly
16 capitated rates by the department to medicaid managed
17 care health plans, which shall provide documentation
18 to the department and the nursing facility trade
19 association located in Hawaii certifying that the
20 revenues received under paragraph (1) are used in
21 accordance with this section;

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

4 (4) The department shall modify the fee-for-service
5 reimbursement rates of the nursing facilities to
6 recognize the medicaid portion of the nursing facility
7 sustainability fee as an additional cost of serving
8 medicaid patients, and to provide a uniform percentage
9 increase in preexisting facility-specific rates[~~-~~];
10 and

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

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

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

19 (1) The waiver in section 346F-7 or the enhanced
20 capitation rates in section 346F-10 have not been
21 approved by the Centers for Medicare and Medicaid
22 Services;

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

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

7 (4) Federal financial participation to match the nursing
8 facility sustainability fee becomes unavailable under
9 federal law. In such case, the department shall
10 terminate the collection of the fee beginning on the
11 effective date of the federal statutory, regulatory,
12 or interpretive change."

13 SECTION 6. Act 156, Session Laws of Hawaii 2012, as
14 amended by section 3 of Act 142, Session Laws of Hawaii 2013, as
15 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as
16 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as
17 amended by section 2 of Act 59, Session Laws of Hawaii 2016, and
18 as amended by section 5 of Act 60, Session Laws of Hawaii 2017,
19 is amended by amending section 5 to read as follows:

20 "SECTION 5. This Act shall take effect on July 1, 2012,
21 and shall be repealed on June 30, [~~2019,~~] 2021; provided that
22 section -4, Hawaii Revised Statutes, established by section 2

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1 of this Act, and the amendment made to section 36-30(a), Hawaii
2 Revised Statutes, in section 3 of this Act, shall be repealed on
3 December 31, [~~2019-~~] 2021."

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

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

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

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

15 SECTION 8. There is appropriated out of the nursing
16 facility sustainability program special fund the sum of
17 \$21,000,000 or so much thereof as may be necessary for fiscal
18 year 2019-2020 and the same sum or so much thereof as may be
19 necessary for fiscal year 2020-2021 for uses consistent with the
20 nursing facility sustainability program special fund.

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

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1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act, upon its approval, shall take effect
4 on June 29, 2019; provided that section 7 shall take effect on
5 July 1, 2019.

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INTRODUCED BY: 

9

BY REQUEST

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Report Title:

Nursing Facility Sustainability Program; Appropriation

Description:

Continues the nursing facility sustainability program for two additional years. Appropriates funds out of the nursing facility sustainability program special fund for fiscal years 2019-2020 and 2020-2021.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

PURPOSE: To continue the Nursing Facility Sustainability Program, established by Act 156, Session Laws of Hawaii 2012, last amended by Act 60 Session Laws of Hawaii 2017, by extending the sunset date of the Act to June 30, 2021, updating the referral dates in the statute, appropriating funding out of the Nursing Facility Sustainability Program Special Fund for fiscal years 2019-2020 and 2020-2021, updating the assessment rates and making technical amendments to ensure that the Special Fund is, through December 31, 2021, exempted from the central service expenses assessment and the administrative expenses assessment under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, respectively.

MEANS: Amend sections 346F-4(c), 346F-5(c), 346F-10, and 346F-13(a), Hawaii Revised Statutes, section 5 of Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, Act 124, Session Laws of Hawaii 2014, Act 69, Session Laws of Hawaii 2015, Act 59, Session Laws of Hawaii 2016, Act 60, Session Laws of Hawaii 2017, and section 7 of Act 124, Session Laws of Hawaii 2014, as amended by Act 69, Session Laws of Hawaii 2015, Act 59, Session Laws of Hawaii 2016, and Act 60, Session Laws of Hawaii 2017. Appropriates funds from the Nursing Facility Sustainability Program Special Fund.

JUSTIFICATION: Act 156, Session Laws of Hawaii 2012, last amended by Act 60, Session Laws of Hawaii 2017, established a Nursing Facility Sustainability Program and the Nursing Facility Sustainability Program Special Fund (the Special Fund). The Special Fund receives moneys from the nursing facility

sustainability fee, which is used to receive federal Medicaid matching funds, and is used to increase reimbursements to the nursing facilities through capitation payments with a greater benefit to those providing proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the safety net as well as to incentivize quality using a pay for performance.

Twelve percent of the revenues from the fees collected is used by the Department to increase and improve services for Medicaid program recipients.

The Nursing Facility Sustainability Program currently will be repealed on June 30, 2019, with funding provisions to be repealed on December 31, 2019.

This bill proposes to extend the Nursing Facility Sustainability Program and the Special Fund for an additional two years.

Technical Amendments:

This bill extends the Nursing Facility Sustainability Program for two years past the repeal date of June 30, 2019, and extends the Special Fund for an additional six months thereafter. Therefore, unless the proposed technical amendments are adopted, the exemptions from the central service expenses and administrative expenses assessments will be lost when paragraphs 36-27(a)(32) and 36-30(a)(26), Hawaii Revised Statutes, are repealed on December 31, 2019, and the Special Fund will then be subject to those assessments. The DHS estimates that the Special Fund would be subject to the central service expenses assessment for the period January 1, 2019 through December 31, 2019, in the amount of at least \$2,500,000, and the administrative expenses assessment

for the same period in the amount of \$500,000.

Impact on the public: Hawaii residents benefit by having more sustainable nursing facilities and, thereby, having increased access to necessary long-term care services. Health care services for low-income, vulnerable residents will be increased and improved.

Impact on the department and other agencies: The Department of Human Services will benefit by receiving some additional funds to support its programs.

GENERAL FUND: None.

OTHER FUNDS: \$15,000,000 Nursing Facility Sustainability Program Special Fund for fiscal year 2019-2020 and \$15,000,000 for fiscal year 2020-2021.

PPBS PROGRAM DESIGNATION: HMS 401.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: June 29, 2019.