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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 The legislature finds that the nursing facility SECTION 1. sustainability program was established in 2012 and has served a 2 3 critical role in strengthening the long-term care system in 4 Hawaii. In the nine 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 via a public-private 9 partnership to ensure that patients in Hawaii can access 10 quality, affordable care.

11 The legislature further finds that, even with this program, 12 nursing facilities in the State face major challenges. These 13 challenges are due in part to the health and financial pressures 14 related to the coronavirus disease 2019 (COVID-19) pandemic. 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

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assistance levels determined by each state's per capita income.
 States with the lowest per capita income receive higher federal
 matching rates. Under federal rules, the state share must be
 public funds that are not federal funds. The legislature notes
 that public funding to help sustain Hawaii's nursing facilities
 financially may be accessed through a provider fee.

7 The legislature also 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 may be imposed on different classes of health care services, 14 including inpatient and outpatient hospital and nursing facility 15 services.

16 The legislature therefore finds that, in Hawaii, a provider 17 fee on nursing facilities can result 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 can maintain access to care for medicaid

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1	recipients, which will allow nursing facilities in the State to
2	continue to serve under-insured or uninsured patients in a
3	timely, effective manner and help ensure the overall
4	sustainability of the health care system in the State during the
5	challenging time of the COVID-19 pandemic.
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	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

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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)	Twel	ve per cent of the revenue from the nursing
7		faci	lity sustainability fee may be used by the
8		depa	rtment for other departmental purposes; and
9	(3)	All	moneys remaining in the special fund on
10		[ <del>Dec</del>	e <del>mber 30, 2021,</del> ] <u>June 30, 2024,</u> shall be
11		dist	ributed to nursing facilities within thirty days
12		in t	he same proportions as received from the nursing
13		faci	lities."
14	SECT	ION 3	. Section 346F-5, Hawaii Revised Statutes, is
15	amended by	y ame	nding subsection (c) to read as follows:
16	"(C)	The	nursing facility sustainability fee shall not
17	exceed 5.	5 per	cent of overall net patient service revenue and
18	shall be	calcu	lated and paid on a per resident day basis, unless
19	the facil	ity q	ualifies for an exemption identified in
20	subsectio	n (d)	(1). The [per resident daily fee shall not exceed
21	<del>\$20.00 fo</del>	<del>r eac</del>	h affected facility, except for] facilities

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1	described in subsection (d)(2)[ $_7$ which instead] shall pay a [per
2	resident] reduced daily fee [not to exceed \$9.00.] compared to
3	other facilities participating in the program."
4	SECTION 4. Section 346F-6, Hawaii Revised Statutes, is
5	amended by amending subsection (c) to read as follows:
6	"(c) The department shall collect and each nursing
7	facility shall pay in twelve equal installments the nursing
8	facility sustainability fee in section 346F-5 on a monthly
9	basis, subject to the terms of this section. The fee shall be
10	due within [ <del>thirty</del> ] <u>sixty</u> days after the end of each month, with
11	the initial payment due on the later of July 31, 2012, or
12	forty-five days after the required federal approvals for the
13	assessment and any increase in health plan capitation payments
14	have been secured from the Centers for Medicare and Medicaid
15	Services."
16	SECTION 5. Section 346F-10, Hawaii Revised Statutes, is
17	amended to read as follows:
18	"§346F-10 Enhanced rates to medicaid managed care health
19	plans. In accordance with title 42 Code of Federal Regulations

20 part 438, the department shall use revenues from the nursing21 facility sustainability fee and federal matching funds to

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1	enhance t	he capitated rates paid to medicaid managed care health
2	plans for	[state fiscal years 2019-2020 and 2020-2021,] <u>the</u>
3	period of	July 1 through December 31, 2021, and calendar
4	years 202	2 and 2023, consistent with the following objectives:
5	(1)	The rate enhancement shall be used exclusively for
6		increasing reimbursements to private nursing
7		facilities to support the availability of services and
8		to ensure access to care to the medicaid managed care
9		health plan enrollees;
10	(2)	The rate enhancement shall be made part of the monthly
11		capitated rates by the department to medicaid managed
12		care health plans, which shall provide documentation
13		to the department and the nursing facility trade
14		association located in Hawaii certifying that the
15		revenues received under paragraph (1) are used in
16		accordance with this section;
17	(3)	The rate enhancement shall be actuarially sound and
18		approved by the federal government for federal fund
19		participation;
20	(4)	The department shall modify the fee-for-service
21		reimbursement rates of the nursing facilities to

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1		recognize the medicaid portion of the nursing facility
2		sustainability fee as an additional cost of serving
3		medicaid patients, and to provide a uniform percentage
4		increase in preexisting facility-specific rates; and
5	(5)	Payments made by the medicaid managed care health
6		plans shall be made within thirty calendar days upon
7		receipt of monthly capitation rates from the
8		department."
9	SECT	ION 6. Section 346F-13, Hawaii Revised Statutes, is
10	amended b	y amending subsection (a) to read as follows:
11	"(a)	Collection of the nursing facility sustainability fee
12	under sec	tion 346F-5 shall be discontinued if:
13	(1)	The waiver in section 346F-7 or the enhanced
14		capitation rates in section 346F-10 have not been
15		approved by the Centers for Medicare and Medicaid
16		Services;
17	(2)	The department reduces funding for nursing facility
18		services below the state appropriation in effect on
19		June 30, [ <del>2020;</del> ] <u>2021;</u>

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1 (3)The department or any other state agency uses the 2 money in the special fund for any use other than the 3 uses permitted pursuant to this chapter; or 4 (4)Federal financial participation to match the nursing 5 facility sustainability fee becomes unavailable under 6 federal law. In such case, the department shall 7 terminate the collection of the fee beginning on the 8 effective date of the federal statutory, regulatory, 9 or interpretive change."

10 SECTION 7. Act 156, Session Laws of Hawaii 2012, as amended by section 3 of Act 142, Session Laws of Hawaii 2013, as 11 12 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as 13 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as 14 amended by section 2 of Act 59, Session Laws of Hawaii 2016, as 15 amended by section 5 of Act 60, Session Laws of Hawaii 2017, as 16 amended by section 6 of Act 163, Session Laws of Hawaii 2019, is 17 amended by amending section 5 to read as follows:

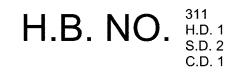
18 "SECTION 5. This Act shall take effect on July 1, 2012,
19 and shall be repealed on [June 30, 2021;] December 31, 2023;
20 provided that section -4, Hawaii Revised Statutes,
21 established by section 2 of this Act, and the amendment made to

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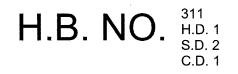
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1	section 36-30(a), Hawaii Revised Statutes, in section 3 of this
2	Act, shall be repealed on [ <del>December 31, 2021.</del> ] <u>June 30, 2024.</u> "
3	SECTION 8. Act 124, Session Laws of Hawaii 2014, as
4	amended by section 3 of Act 69, Session Laws of Hawaii 2015, as
5	amended by section 3 of Act 59, Session Laws of Hawaii 2016, as
6	amended by section 6 of Act 60, Session Laws of Hawaii 2017, as
7	amended by section 7 of Act 163, Session Laws of Hawaii 2019, is
8	amended by 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 [section] sections 36-27(a)
13	and 36-30(a), Hawaii Revised Statutes, in sections 3
14	and 4 of this Act shall be repealed on [December $31_r$
15	<del>2021.</del> ] <u>June 30, 2024.</u> "
16	SECTION 9. There is appropriated out of the nursing
17	facility sustainability program special fund the sum of
18	\$20,000,000 or so much thereof as may be necessary for fiscal
19	year 2021-2022 and the same sum or so much thereof as may be
20	necessary for fiscal year 2022-2023 for uses consistent with
21	section 346F-4, Hawaii Revised Statutes.

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The sums appropriated shall be expended by the department
 of human services for the purposes of this Act.
 SECTION 10. Statutory material to be repealed is bracketed
 and stricken. New statutory material is underscored.
 SECTION 11. This Act shall take effect on June 29, 2021;
 provided that sections 8 and 9 of the Act shall take effect on
 July 1, 2021.



#### Report Title:

Nursing Facility Sustainability Program; Special Fund; Department of Human Services; Appropriation

#### Description:

Extends the nursing facility sustainability program to 2024. Specifies that the nursing facility sustainability fee limit is 5.5 per cent of overall net patient service revenue. Removes the per resident daily maximum fee of \$20 for each facility. Specifies that facilities that meet certain exceptions shall pay a reduced daily fee in comparison to other participating facilities. Allows nursing facilities sixty days to pay the nursing facility sustainability fee. Appropriates funds. Effective 6/29/2021. (CD1)

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