

S .B. NO. 1360

JAN 25 2023

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
4 Hawaii. In the eleven 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 the continuing health and
13 financial pressures related to the COVID-19 pandemic and the
14 healthcare workforce shortage. The federal and state
15 governments jointly finance Medicaid by statutory formula; the
16 federal government pays between fifty per cent and seventy-four
17 per cent, with assistance levels determined by each state's per
18 capita income. States with the lowest per capita income receive
19 higher federal matching rates. Under federal rules, the state

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1 share must be paid from public funds that are not federal
2 funds. The legislature finds that public funding to help
3 financially sustain Hawaii's hospitals may be accessed through a
4 provider fee.

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

14 The legislature, therefore, finds that, in Hawaii, a
15 provider fee on hospitals can result in substantial increases in
16 medicaid payments without putting additional constraints on the
17 State's budget. The additional federal funds obtained via the
18 fee program authorized by the hospital sustainability program
19 can maintain access to care for medicaid recipients. The
20 hospital sustainability program will allow hospitals in the
21 State to continue to serve uninsured or underinsured patients in

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1 a timely, effective manner. This helps to ensure the overall
2 sustainability of the health care system in Hawaii.

3 The purpose of this Act is to continue to preserve access
4 to health care for medicaid recipients by continuing
5 indefinitely and strengthening the hospital sustainability
6 program, and making other nonsubstantive changes for consistency
7 and clarity, and to maximize the use of the hospital
8 sustainability program special fund by continuing the exemptions
9 from the central services expenses assessment and the
10 administrative expenses assessment under sections 36-27(a) and
11 36-30(a), Hawaii Revised Statutes, respectively, and to
12 appropriate \$100,000,000 from the hospital sustainability
13 program special fund.

14 SECTION 2. Section 346G-2, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§346G-2 Findings and declaration of necessity.** It is the
17 intent of the legislature to establish a special fund within the
18 state treasury to receive revenue from the imposition of a
19 hospital sustainability fee to be administered by the department
20 of human services, which shall use the revenue from the fee and
21 associated federal medicaid matching funds exclusively to make

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1 [direct] payments to hospitals and for other purposes as set
2 forth in this chapter."

3 SECTION 3. Section 346G-3, Hawaii Revised Statutes, is
4 amended by amending the definition of "private hospital" to read
5 as follows:

6 "Private hospital" means all currently operating
7 hospitals, except for hospitals that are:

8 (1) Operated by or affiliated with the Hawaii health
9 systems corporation; or

10 (2) Charitable hospitals funded primarily through
11 donations or other non-insurance sources of funding,
12 and whose net patient revenue is less than [~~forty~~]
13 fifty per cent of operating expenses, per the medicaid
14 cost report."

15 SECTION 4. Section 346G-4, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§346G-4 Hospital sustainability program special fund.

18 (a) There is created in the state treasury the hospital
19 sustainability program special fund to be administered by the
20 department into which shall be deposited all moneys collected
21 under this chapter.

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1 (b) Moneys in the hospital sustainability program special
2 fund shall consist of:

3 (1) All [~~revenue~~] revenues collected or received by the
4 department from the hospital sustainability fee[~~]~~ as
5 required by this chapter;

6 [~~(2) All federal medicaid funds received by the department~~
7 ~~as a result of matching expenditures made with the~~
8 ~~hospital sustainability fee;~~

9 ~~(3)]~~ (2) Any interest or penalties levied in conjunction
10 with the administration of this chapter; and

11 [~~(4)]~~ (3) Any designated appropriations, federal funds,
12 donations, gifts, or moneys from any other sources.

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

15 (1) No less than ninety per cent of the [~~revenue~~] moneys
16 from the hospital sustainability fee shall be used for
17 one or more of the following purposes:

18 (A) To match federal medicaid funds, with the
19 combined total to be used to enhance [~~capitated~~
20 ~~rates~~] payments to medicaid managed care health
21 plans for the sole purpose of increasing medicaid
22 payments to private hospitals;

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1 (B) To match federal medicaid funds for Hawaii's
2 medicaid disproportionate share hospital
3 allotment, as authorized by current federal law
4 for private hospitals;

5 (C) To match federal medicaid funds for a private
6 hospital upper payment limit pool; or

7 (D) To match federal medicaid funds with the combined
8 total to be used to enhance [~~capitated rates~~]
9 payments to medicaid managed care health plans
10 for the purpose of increasing medicaid payments
11 to private hospitals through quality or access
12 incentive programs[~~-~~]; and

13 (2) Ten per cent or less of the moneys in the hospital
14 sustainability program special fund may be used by the
15 department for other departmental purposes[~~-~~]; and

16 ~~(3) Any money remaining in the hospital sustainability~~
17 ~~program special fund six months after the repeal of~~
18 ~~this chapter, shall be distributed to hospitals within~~
19 ~~thirty days in the same proportions as received from~~
20 ~~the hospitals].~~

21 (d) The department shall use federal funds derived from
22 state hospital certified expenditures to make [~~supplemental~~]

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1 payments to state hospitals and may receive intergovernmental
2 transfers from the state hospitals to support [~~direct~~
3 ~~supplemental~~] payments and increased capitation rates to health
4 plans for the benefit of the state hospitals. During any period
5 in which the hospital sustainability fee is in effect, certified
6 expenditures of state hospitals shall not be used to make or
7 support [~~direct~~] payments to private hospitals."

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

10 "(c) The hospital sustainability fee for inpatient care
11 services may differ from the fee for outpatient care services
12 but the fees charged to the hospital shall not in the aggregate
13 exceed [~~five and one-half~~] six per cent of the hospital's net
14 patient service revenue. The inpatient hospital sustainability
15 fee shall not exceed [~~five and one-half~~] six per cent of net
16 inpatient hospital service revenue. The outpatient hospital
17 sustainability fee shall not exceed [~~five and one-half~~] six per
18 cent of net outpatient hospital service revenue. Each fee shall
19 be the same percentage for all affected hospitals, subject to
20 subsection (d).

21 (d) The department shall exempt federal hospitals and
22 public hospitals from the hospital sustainability fees on

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1 inpatient services and outpatient care services. Children's
2 hospitals, psychiatric hospitals, and rehabilitation hospitals
3 may be assessed hospital sustainability fees on inpatient and
4 outpatient services at a different rate than other private
5 hospitals. The department may ~~[also exclude any facility from~~
6 ~~the hospital sustainability fee if it is determined that its~~
7 ~~exclusion is required to meet federal standards of approval.]~~,
8 upon good faith consultation and negotiations with the hospital
9 trade association located in Hawaii, modify, add to, or exclude
10 facilities in the assessment if necessary to obtain and maintain
11 approval of the waiver by the Centers for Medicare and Medicaid
12 Services, if the modification, addition or exclusion is
13 consistent with the purposes of this chapter."

14 SECTION 6. Section 346G-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§346G-6 Hospital sustainability fee assessments. (a)
17 Hospitals shall pay the hospital sustainability fee to the
18 department in accordance with this chapter. ~~[The fee shall be~~
19 ~~divided and paid in twelve equal installments on a monthly~~
20 ~~basis.]~~

21 (b) The department shall determine, with good faith
22 consultation with the hospital trade association located in

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1 Hawaii, the fee rate prospectively for the applicable fiscal
2 year.

3 ~~[(b)]~~ (c) The department shall ~~[collect,]~~ impose the
4 hospital sustainability fee ~~[and each hospital shall pay, if so~~
5 ~~required,]~~ on a monthly basis. The hospital shall pay the
6 hospital sustainability fee ~~[no later than the sixtieth day]~~
7 within sixty calendar days after the end of ~~[each]~~ the calendar
8 month~~[,]~~ that the department imposed the fee; provided that, if
9 required federal approvals have not been secured by the end of a
10 calendar month, the fees for that month shall be paid within ten
11 days after notification to the hospitals that the required
12 approvals have been received."

13 SECTION 7. Section 346G-7, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§346G-7 **Federal approval.** The department shall seek
16 waivers and any additional approvals from the Centers for
17 Medicare and Medicaid Services that may be necessary to
18 implement the hospital sustainability program~~[,]~~ including
19 approval of the contracts between the State and medicaid managed
20 care health plans."

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

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1 "(a) If a hospital fails to pay the full amount of any
2 hospital sustainability fee when due, there shall be added to
3 the fee, unless waived by the department for reasonable cause, a
4 penalty equal to [~~prime plus~~] two per cent of the fee that was
5 not paid when due. Any subsequent payments shall be credited
6 first to unpaid fee amounts beginning with the most delinquent
7 installment rather than to penalty or interest amounts."

8 SECTION 9. Section 346G-10, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§346G-10 Private hospital payments through enhanced**
11 **[~~rates~~] payments to medicaid managed care health plans.**

12 (a) The department shall use moneys [~~solely~~] from the hospital
13 sustainability program special fund solely to fulfill the
14 requirements of section 346G-4(c).

15 (b) In accordance with 42 Code of Federal Regulations part
16 438, the department shall use revenues from the hospital
17 sustainability fee and federal matching funds to enhance [~~the~~
18 ~~capitated rates paid~~] payments to medicaid managed care health
19 plans [~~for the period of July 1 through December 31, 2021, and~~
20 ~~calendar years 2022 and 2023,~~] consistent with the following
21 objectives:

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- 1 (1) The ~~[rate enhancement]~~ enhanced payments shall be used
2 exclusively ~~[for increasing]~~ to increase
3 reimbursements to private hospitals, to support the
4 availability of services and to ensure access to care
5 ~~[to the]~~ for medicaid managed care health plan
6 enrollees;
- 7 (2) The ~~[rate enhancement]~~ enhanced payments shall be
8 ~~[made part of the monthly capitated rates]~~ paid by the
9 department to medicaid managed care health plans,
10 which shall provide documentation to the department
11 and the hospital trade association located in Hawaii
12 certifying that the revenues received under paragraph
13 (1) are used in accordance with this section;
- 14 (3) The ~~[rate enhancement]~~ enhanced payment rates shall be
15 actuarially sound and approved by the federal
16 government for federal fund participation;
- 17 (4) The rate enhancements shall be retroactive to July 1,
18 2012, or the effective date approved by the federal
19 government, whichever is later. Retroactive rate
20 enhancements shall be paid within thirty days of
21 notification by the Centers for Medicare and Medicaid

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1 Services to the department of all necessary approvals;
2 [and]

3 (5) Payments made by the medicaid managed care health
4 plans shall be made within thirty business days upon
5 receipt of [~~monthly capitation rates~~] payment from the
6 department [-]; and

7 (6) Each medicaid managed health care plan shall expend
8 100 per cent of any' increased payments it receives
9 under this section to carry out the goals of this
10 program.

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

16 (d) To the extent the hospital sustainability program is
17 not effective for the entire year, the hospital sustainability
18 fee, the state medicaid expenses and administrative fee, and the
19 corresponding payments to fulfill the requirements of section
20 346G-4(c) shall be based on the proportion of the fiscal year
21 the program is in effect."

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1 SECTION 10. Section 346G-12, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

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

5 (1) The required federal approvals specified in section
6 346G-7 are not granted or are revoked by the Centers
7 for Medicare and Medicaid Services;

8 (2) The department reduces [~~funding for hospital services~~
9 ~~below the state appropriation in effect as of July 1,~~
10 ~~2021,~~] reimbursement rates for private hospital
11 services to medicaid patients with the intention of
12 using the sustainability funds to supplant the planned
13 or permanent reduction in reimbursement rates;

14 (3) The department or any other state agency uses the
15 money in the hospital sustainability program special
16 fund for any use other than the uses permitted by this
17 chapter; or

18 (4) Federal financial participation to match the revenue
19 from the hospital sustainability fee becomes
20 unavailable under federal law; provided that the
21 department shall terminate the imposition of the
22 hospital sustainability fee beginning on the date the

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1 federal statutory, regulatory, or interpretive change
2 takes effect.

3 (b) If collection of the hospital sustainability fee is
4 discontinued [~~as provided in this section~~], any remaining moneys
5 in the hospital sustainability program special fund shall be
6 distributed [~~pursuant to section 346G-4(e)~~] to hospitals within
7 six months of the date of discontinuation in the same
8 proportions as received from the hospitals."

9 SECTION 11. Act 217, Session Laws of Hawaii 2012, as
10 amended by section 2 of Act 141, Session Laws of Hawaii 2013, as
11 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as
12 amended by Section 2 of Act 70, Session Laws of Hawaii 2015, as
13 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as
14 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as
15 amended by section 6 of Act 173, Session Laws of Hawaii 2019, as
16 amended by section 7 of Act 38, Session Laws of Hawaii 2021 is
17 amended by amending section 5 to read as follows:

18 "SECTION 5. This Act shall take effect on July 1, 2012[~~7~~
19 ~~and shall be repealed on December 31, 2023; provided that~~
20 ~~section 4, Hawaii Revised Statutes, established by section 2 of~~
21 ~~this Act, and the amendment made to section 36-30(a), Hawaii~~

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1 ~~Revised Statutes, in section 3 of this Act, shall be repealed on~~
2 ~~June 30, 2024]."~~

3 SECTION 12. Act 123, Session Laws of Hawaii 2014, as
4 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as
5 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as
6 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as
7 amended by section 7 of Act 173, Session Laws of Hawaii 2019, as
8 amended by section 8 of Act 38, Session Laws of Hawaii 2021 is
9 amended by amending section 7 to read as follows:

10 "SECTION 7. This Act shall take effect on June 29, 2014;
11 provided that[+

12 ~~(1) Section]~~ section 5 shall take effect on July 1, 2014[+
13 and

14 ~~(2) The amendments made to sections 36-27(a) and 36-30(a),~~
15 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~
16 ~~Act shall be repealed on June 30, 2024]."~~

17 SECTION 13. There is appropriated out of the hospital
18 sustainability program special fund \$100,000,000 or so much
19 thereof as may be necessary for fiscal year 2023-2024 and the
20 same sum or so much thereof as may be necessary for fiscal year
21 2024-2025 for the purposes of the hospital sustainability
22 program special fund.

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

3 SECTION 14. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 15. This Act shall take effect upon its approval.

6

7

INTRODUCED BY: 

8

BY REQUEST

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Report Title:

Hospital Sustainability Program; Appropriation

Description:

Strengthens and continues the Hospital Sustainability Program indefinitely. Appropriates funds out of the Hospital Sustainability Program Special Fund for fiscal years 2023-2024 and 2024-2025. Makes other non-substantive changes for consistency and clarify.

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 HOSPITAL SUSTAINABILITY PROGRAM.

PURPOSE: To strengthen and to continue indefinitely the Hospital Sustainability Program, established by Act 217, Session Laws of Hawaii 2012, now part of chapter 346G, Hawaii Revised Statutes (HRS). The bill removes the sunset dates, appropriates \$100,000,000 out of the Hospital Sustainability Program Special Fund for each of the fiscal years 2023-2024 and 2024-2025, and ensures that the Special Fund is exempted from the central service expenses assessment and the administrative expenses assessment under sections 36-27(a) and 36-30(a), HRS, respectively. The bill also makes non-substantive changes for consistency and clarity.

MEANS: Amend sections 346G-2, 346G-3, 346G-4, 346G-5(c) and (d), 346G-6, 346G-7, 346G-9(a), 346G-10, and 346G-12(a) and (b), Hawaii Revised Statutes, and section 5 of Act 217, Session Laws of Hawaii 2012, and section 7 of Act 123, Session Laws of Hawaii 2014, as last amended by Act 38, Session Laws of Hawaii 2021; and appropriate funds from the Hospital Sustainability Program Special Fund.

JUSTIFICATION: Act 217, Session Laws of Hawaii 2012, as last amended by Act 38, Session Laws of Hawaii 2021, established a Hospital Sustainability Program and the Hospital Sustainability Program Special Fund (the Special Fund). The Special Fund receives moneys from the hospital sustainability fee, which are used to match with federal Medicaid matching funds. These are used to increase reimbursements to the hospitals and payments for performance to the hospitals, with a greater benefit to those providing

proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of hospitals in Hawaii to continue as a critical part of the safety net. The Hospital Sustainability Program has been particularly crucial during the pandemic as hospitals dealt with pandemic surges, workforce shortages, and increased costs.

In fiscal year 2012-2013, the hospitals were assessed \$40,103,774 in sustainability fees and received \$77,468,401 in additional reimbursements. In fiscal year 2013-2014, the providers were assessed \$44,490,855 in sustainability fees and received additional reimbursements of \$81,309,367. In fiscal year 2014-2015, the providers were assessed \$46,621,994 in sustainability fees and received \$84,687,653 in additional reimbursements. In fiscal year 2017-2018, the providers were assessed \$68,765,751 in sustainability fees and received \$71,870,533 in additional reimbursements. In fiscal year 2018-2019, the providers were assessed \$62,935,303 in sustainability fees and received \$92,051,866 in additional net reimbursements. In fiscal year 2019-2020, the providers were assessed \$70,200,000 and received \$103,000,000 in net additional reimbursements.

Ninety percent of the revenues from the fees collected are to be used by the Department to fund Medicaid services for the purposes outlined and ten percent to administer the Medicaid program.

Without this Act, the Hospital Sustainability Program will be repealed on December 31, 2023, with funding provisions to be repealed on June 30, 2024. Ending the Hospital Sustainability Program will terminate the State's ability to use federal Medicaid matching funds for the Hospital Sustainability program's purposes.

This bill proposes to clarify, strengthen and continue the Hospital Sustainability Program and the Special Fund permanently, and make the exemptions from the special fund central services and administrative expenses assessments permanent.

Act 217, Session Laws of Hawaii 2012, as amended, exempts the Special Fund from assessments for central services expenses and administrative expenses under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes; sections 36-27(a)(31) and 36-30(a)(28), HRS, will be repealed on June 30, 2024.

Unless the sunset dates are repealed, the exemptions from the central service expenses and administrative expenses assessments, the Department estimates that the Special Fund may be subject to the central service expenses assessment of \$5,000,000 each year and the administrative expenses assessment in the amount of \$1,000,000. Therefore, these funds would not be available for hospitals.

Impact on the public: Hawaii residents benefit by having more sustainable hospitals and increasing access to necessary medical care. 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: \$100,000,000 Hospital Sustainability Program Special Fund for each of the fiscal years 2023-2024 and 2024-2025.

PPBS PROGRAM DESIGNATION: HMS 401 and HMS 902.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.