

ACT 163

H.B. NO. 1449

A Bill for an Act Relating to the Nursing Facility Sustainability Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the nursing facility sustainability program was established in 2012 and has served a critical role in strengthen-

ing the long-term care system in Hawaii. In the seven years since its inception, the nursing facility sustainability program has helped long-term care facilities treat the most vulnerable patients in the State, especially low-income individuals who require these services. The program has been carried out in a public-private partnership to ensure that patients in Hawaii can access quality, affordable care.

The legislature further finds that, even with this program, nursing facilities in the State face major financial challenges. These challenges are due in part to inadequate payments from the medicaid program that do not cover the actual costs of care. Medicaid is jointly financed by the federal and state governments by statutory formula; the federal government pays between fifty per cent and seventy-four per cent, with 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 finds that public funding to help sustain Hawaii's nursing facilities financially may be accessed through a provider fee.

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

The legislature therefore finds that, in Hawaii, a provider fee on nursing facilities has resulted in a substantial increase in medicaid payments, without putting additional constraints on the State's budget. The additional federal funds obtained via the fee program authorized by the nursing facility sustainability program have helped to reduce the amount of losses incurred by long-term care facilities and maintain access to care for medicaid recipients. This allows nursing facilities in the State to continue to serve under- or uninsured patients in a timely, effective matter. This helps to ensure the overall sustainability of the health care system in the State.

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

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

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

- (1) No less than eighty-eight per cent of the revenue from the nursing facility sustainability fee shall be used ~~[to match]~~ for one or more of the following:
 - (A) To match federal medicaid funds, with the combined total to be used to enhance capitated rates to medicaid managed care health plans for the purpose of increasing medicaid payments to private nursing facilities[;] to support the availability of services and ensure access to care for the medicaid managed care health plan enrollees; or
 - (B) To match federal medicaid funds, with the combined total to enhance capitated rates for the purpose of paying quality incentives;
- (2) Twelve per cent of the revenue from the nursing facility sustainability fee may be used by the department for other departmental purposes; and

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

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

“(c) The nursing facility sustainability fee shall not exceed ~~four~~ 5.5 per cent of net patient service revenue and shall be calculated and paid on a per resident day basis, unless the facility qualifies for an exemption identified in subsection (d)(1). The per resident daily fee shall ~~be \$13.46~~ not exceed \$20.00 for each affected facility, except for facilities described in subsection (d)(2), which instead shall pay a per resident reduced daily fee ~~[of \$5.85;]~~ not to exceed \$9.00.

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

- (1) The department shall exempt the following nursing facility providers from the nursing facility sustainability fee subject to federal approval under title 42 Code of Federal Regulations section 433.68(e)(2):
 - (A) Nursing facilities with twenty-eight or fewer licensed beds;
 - (B) Nursing facilities owned ~~[or]~~, operated by, or affiliated with the Hawaii health systems corporation; and
 - (C) Continuing care retirement communities.
- (2) The department shall reduce the fee for high volume medicaid nursing facilities or facilities with high patient volumes in order to meet the redistributive tests of title 42 Code of Federal Regulations section 433.68(e)(2).
- (3) The department, with agreement by the nursing facility trade associations located in Hawaii, may modify, add to, or reduce the categories of facilities exempt from the assessment if necessary to obtain and maintain approval of the waiver by the Centers for Medicare and Medicaid Services, if the modification is consistent with the purposes of this chapter.”

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

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

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private nursing facilities to support the availability of services and to ensure access to care to the medicaid managed care health plan enrollees;
- (2) The rate enhancement shall be made part of the monthly capitated rates by the department to medicaid managed care health plans, which shall provide documentation to the department and the nursing facility trade association located in Hawaii certifying that the

- revenues received under paragraph (1) are used in accordance with this section;
- (3) The rate enhancement shall be actuarially sound and approved by the federal government for federal fund participation; ~~and~~
 - (4) The department shall modify the fee-for-service reimbursement rates of the nursing facilities to recognize the medicaid portion of the nursing facility sustainability fee as an additional cost of serving medicaid patients, and to provide a uniform percentage increase in preexisting facility-specific rates~~[-]; and~~
 - (5) Payments made by the medicaid managed care health plans shall be made within thirty calendar days upon receipt of monthly capitation rates from the department.

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

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

- (1) The waiver in section 346F-7 or the enhanced capitation rates in section 346F-10 have not been approved by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for nursing facility services below the state appropriation in effect on June 30, ~~[2018;]~~ 2020;
- (3) The department or any other state agency uses the money in the special fund for any use other than the uses permitted pursuant to this chapter; or
- (4) Federal financial participation to match the nursing facility sustainability fee becomes unavailable under federal law. In such case, the department shall terminate the collection of the fee beginning on the effective date of the federal statutory, regulatory, or interpretive change.”

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

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

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

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

- (1) Section 5 shall take effect on July 1, 2014; and
- (2) The amendments made to section¹ 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall be repealed on December 31, ~~[2019;]~~ 2021.”

SECTION 8. There is appropriated out of the nursing facility sustainability program special fund the sum of \$21,000,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 for uses consistent with section 346F-4, Hawaii Revised Statutes.

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

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

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

(Approved June 27, 2019.)

Note

1. Prior to amendment “sections” appeared here.