

ACT 173

H.B. NO. 1270

A Bill for an Act Relating to the Hospital Sustainability Program.

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

SECTION 1. The legislature finds that the hospital sustainability program was established in 2012 and has served a critical role in strengthening the health care system in Hawaii. In the seven years since its inception, the hospital sustainability program has helped acute care facilities treat the most vulnerable patients in the State, especially low-income individuals who require hospital 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, hospitals 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 paid from public funds that are not federal funds. The legislature finds that public funding to help financially sustain Hawaii's hospitals 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 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 hospitals has resulted in substantial increases in medicaid payments without putting additional constraints on the State's budget. The additional federal funds obtained

via the fee program authorized by the hospital sustainability program have helped to reduce the amount of losses incurred by hospitals and maintain access to care for medicaid recipients. This allows hospitals in the State to continue to serve uninsured or underinsured patients in a timely, effective manner, and helps to ensure the overall sustainability of the health care system in Hawaii.

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

SECTION 2. Section 346G-3, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read: ““Medicaid cost report” means the annual cost report that a hospital submits to the State’s medicaid agency.”

2. By amending the definition of “private hospital” to read: ““Private hospital” means [those non-public hospitals named in attachment A of the medicaid section 1115 demonstration waiver that were in operation in calendar year 2016 and are currently operating or any hospitals not named in attachment A of the medicaid section 1115 demonstration waiver that became private hospitals in calendar year 2017 or 2018 and are currently operating.] all currently operating hospitals, except for hospitals that are:

- (1) Operated by or affiliated with the Hawaii health systems corporation; or
- (2) Charitable hospitals funded primarily through donations or other non-insurance sources of funding, and whose net patient revenue is less than forty per cent of operating expenses, per the medicaid cost report.”

3. By deleting the definition of “section 1115 waiver”.
[““Section 1115 waiver” means the medicaid section 1115 demonstration waiver under which the state medicaid program is operating.”]

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

“(c) The hospital sustainability fee for inpatient care services may differ from the fee for outpatient care services but the fees charged to the hospital shall not in the aggregate exceed ~~[three and one-half]~~ four per cent of the hospital’s net patient service revenue. The inpatient hospital sustainability fee shall not exceed ~~[three and one-half]~~ four per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall not exceed ~~[three and one-half]~~ four per cent of net outpatient hospital service revenue. Each fee shall be the same percentage for all affected hospitals, subject to subsection (d).

(d) The department shall exempt children’s hospitals, federal hospitals, public hospitals, and psychiatric hospitals from the hospital sustainability fees on inpatient services. In addition, the department shall exempt from the hospital sustainability fee on outpatient care services ~~[children’s hospitals,] federal hospitals and public hospitals[, rehabilitation hospitals, psychiatric hospitals, and any hospitals with net outpatient revenues of less than \$57,000,000 per year based upon the hospital’s medicare cost report for the fiscal year ending three years prior to the state fiscal year for which the hospital’s net patient service revenue is calculated];~~ provided that the department may exclude any facility from the hospital sustainability fee ~~[on outpatient care services]~~ if it is determined that its exclusion is required to meet federal standards of approval.”

SECTION 4. Section 346G-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In accordance with title 42 Code of Federal Regulations part 438, the department shall use revenues from the hospital 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 hospitals 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 hospital 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;
- (4) The rate enhancements shall be retroactive to July 1, 2012, or the effective date approved by the federal government, whichever is later. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department of all necessary approvals; and
- (5) Payments made by the medicaid managed care health plans shall be made within thirty business days upon receipt of monthly capitation rates from the department.”

SECTION 5. Section 346G-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) The required federal approvals specified in section 346G-7 are not granted or are revoked by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for hospital services below the state appropriation in effect as of July 1, ~~[2012;]~~ 2020;
- (3) The department or any other state agency uses the money in the hospital sustainability program special fund for any use other than the uses permitted by this chapter; or
- (4) Federal financial participation to match the revenue from the hospital sustainability fee becomes unavailable under federal law; provided that the department shall terminate the imposition of the hospital sustainability fee beginning on the date the federal statutory, regulatory, or interpretive change takes effect.”

SECTION 6. Act 217, Session Laws of Hawaii 2012, section 5, as amended by section 2 of Act 141, Session Laws of Hawaii 2013, as amended by section 2 of Act 123, Session Laws of Hawaii 2014, as amended by section 2 of Act 70, Session Laws of Hawaii 2015, as amended by section 3 of Act 60, Session Laws of Hawaii 2016, as amended by section 5 of Act 59, Session Laws of Hawaii 2017, is amended 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, in section 2 of this Act, and the amendment to section 36-30(a), Hawaii

Revised [~~Statutes,~~] Statutes, in section 3 of this Act, shall be repealed on December 31, [~~2019-~~] 2021.”

SECTION 7. Act 123, Session Laws of Hawaii 2014, section 7, as amended by section 3 of Act 70, Session Laws of Hawaii 2015, as amended by section 4 of Act 60, Session Laws of Hawaii 2016, as amended by section 6 of Act 59, Session Laws of Hawaii 2017, is amended 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 sections 36-27(a) and 36-30(a), Hawaii Revised Statutes,¹ in sections 3 and 4 of this Act shall be repealed on December 31, [~~2019-~~] 2021.”

SECTION 8. There is appropriated out of the hospital sustainability program special fund the sum of \$88,000,000 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 the purposes of the hospital sustainability program special fund.

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 of this Act shall take effect on July 1, 2019.

(Approved June 27, 2019.)

Note

1. Prior to amendment “statues” appeared here.