

ACT 10

H.B. NO. 1637

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that federal civil monetary penalties may be assessed on medicare certified skilled nursing facilities by the Department of Health and Human Services Centers for Medicare and Medicaid Services and shared with states. Monetary penalties are assessed when facilities are cited for non-compliance with federal certification requirements as found during federal recertification surveys conducted in Hawaii on behalf of the Centers for

Medicare and Medicaid Services by the department of health office of health care assurance. Further, the legislature finds that the Centers for Medicare and Medicaid Services have implemented the civil money penalty reinvestment program, a three-year effort to reduce adverse events, improve staffing quality, and improve dementia care in nursing homes. The Centers for Medicare and Medicaid Services must approve any initiatives that are aimed to improve the health and well-being of residents such as music and memory and education programs. Facilities are not allowed to use funds to pay staff salaries or for construction purposes.

Further, the Centers for Medicare and Medicaid Services asks that states not have statutes limiting the dollar amount of federal civil monetary penalty funds awarded to projects that benefit nursing home residents. The Centers for Medicare and Medicaid Services considers it a reasonable goal for states to award at least fifty per cent of the fund balance to these projects, beyond funds that are held in an emergency reserve fund. Further, the legislature finds that a civil monetary penalty special fund, into which monetary penalties shared with Hawaii are deposited and expended, was created in the department of health. The civil monetary penalty special fund currently has a spending ceiling of \$30,000 per year. The ceiling was determined during a time of infrequent and lower amounts of assessed monetary penalties. However, during recent years, the special fund balance has increased significantly and, after the deposit of \$371,324 during fiscal year 2018-2019, the balance as of June 30, 2019, was \$1,051,157.

The purpose of this Act is to amend the civil monetary penalty special fund statute to eliminate the spending ceiling to align with the federal civil monetary penalty reinvestment program, thus allowing the department of health to establish an appropriate spending ceiling through the state budget process.

SECTION 2. Section 321-30.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the civil monetary penalty special fund, to be administered by the department of health. The fund shall consist of moneys collected by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services as federally imposed civil monetary penalty funds when health care facilities or agencies do not meet medicare certification requirements as determined by the department of health when it conducts medicare certification surveys and complaint investigations on health care facilities or agencies in Hawaii in accordance with section 1864 of the Social Security Act. Moneys in the fund shall be expended by the department of health as approved by the Centers for Medicare and Medicaid Services. [~~Not more than \$30,000 of the moneys~~] Moneys in the fund may be used during any fiscal year for the activities carried out by the department of health as approved by the Centers for Medicare and Medicaid Services.”

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

SECTION 4. This Act shall take effect upon its approval.

(Approved August 6, 2020.)