

**ACT 110**

S.B. NO. 404

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 established in 2012 has served a critical role in strengthening Hawaii's health care system. In the eleven years since the program's inception, the hospital sustainability program has helped acute care facilities treat the State's most vulnerable patients, especially low-income individuals requiring hospital services. The program has been carried out in a public-private partnership to ensure patients in Hawaii have access to quality, affordable care.

The legislature further finds that, even with the program, hospitals in the State face major financial challenges. These challenges are due in part to the continuing health and financial pressures related to the coronavirus disease

2019 pandemic and health care workforce shortage. The federal and state governments jointly finance medicaid by statutory formula. The federal government pays between fifty per cent and seventy-four per cent, with a state's per capita income determining the percentage. States with lower per capita incomes relative to the national average receive higher federal matching rates. Federal rules mandate that a state must pay the state's share from public funds that are not federal funds.

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 amid rising state budget deficits, increasing health care costs, and expanding medicaid enrollment. Provider fees, which are collected from and agreed to by specific categories of providers, may be imposed on nineteen different classes of health care services, including inpatient and outpatient hospital and nursing facility services. Public funding to help financially sustain Hawaii's hospitals should continue by assessing a provider fee through the hospital sustainability program, which is currently scheduled to be repealed in 2024.

The legislature therefore finds that, in Hawaii, a provider fee for hospitals has resulted in a substantial increase in medicaid payments without placing additional constraints on the State's budget. The additional federal funds obtained via the hospital sustainability program allow hospitals in the State to continue to serve uninsured or underinsured patients in a timely and effective manner, thereby maintaining access to care for medicaid recipients, and helping 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 and strengthen the hospital sustainability program by:

- (1) Amending the definition of "private hospital";
- (2) Clarifying the uses of the hospital sustainability program special fund;
- (3) Increasing the hospital sustainability fee cap for various facilities;
- (4) Requiring the department of human services to consult and negotiate with the hospital trade association in the State regarding hospital sustainability fee participation and rates;
- (5) Clarifying the circumstances under which the hospital sustainability fee shall be discontinued and the distribution of remaining funds;
- (6) Repealing the sunset dates of Act 217, Session Laws of Hawaii 2012, and Act 123, Session Laws of Hawaii 2014, thereby making the hospital sustainability program permanent and permanently exempting the hospital sustainability program from the central service and administrative expenses assessments; and
- (7) Appropriating funds out of the hospital sustainability program special fund.

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

**“[§346G-2] Findings and declaration of necessity.** It is the intent of the legislature to establish a special fund within the state treasury to receive revenue from the imposition of a hospital sustainability fee to be administered by the department of human services, which shall use the revenue from the fee and associated federal medicaid matching funds exclusively to make ~~direct~~ payments to hospitals and for other purposes as ~~set forth~~ described in this chapter.”

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

““Private hospital” means 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]~~ fifty per cent of operating expenses, per the medic-aid cost report.”

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

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

- (1) All ~~[revenue]~~ revenues collected or received by the department from the hospital sustainability fee~~[:]~~ as required by this chapter;
- ~~[(2) All federal medicaid funds received by the department as a result of matching expenditures made with the hospital sustainability fee;~~
- ~~[(3)]~~ (2) Any interest or penalties levied in conjunction with the administration of this chapter; and
- ~~[(4)]~~ (3) Any designated appropriations, federal funds, donations, gifts, or moneys from any other sources.

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

- (1) No less than ninety per cent of the revenue from the hospital sustainability fee shall be used for one or more of the following purposes:
  - (A) To match federal medicaid funds, with the combined total to be used to enhance ~~[capitated rates]~~ payments to medicaid managed care health plans for the sole purpose of increasing medicaid payments to private hospitals;
  - (B) To match federal medicaid funds for Hawaii’s medicaid disproportionate share hospital allotment, as authorized by current federal law for private hospitals;
  - (C) To match federal medicaid funds for a private hospital upper payment limit pool; or
  - (D) To match federal medicaid funds with the combined total to be used to enhance ~~[capitated rates]~~ payments to medicaid managed care health plans for the purpose of increasing medicaid payments to private hospitals through quality or access incentive programs~~[-]; and~~
- (2) Ten per cent of the moneys in the hospital sustainability program special fund may be used by the department for other departmental purposes~~[-]; and~~
- (3) ~~Any money remaining in the hospital sustainability program special fund six months after the repeal of this chapter, shall be distributed to hospitals within thirty days in the same proportions as received from the hospitals].~~

(d) The department shall use federal funds derived from state hospital certified expenditures to make ~~[supplemental]~~ payments to state hospitals and may receive intergovernmental transfers from the state hospitals to support ~~[direct supplemental]~~ payments and increased capitation rates to health plans for the benefit of the state hospitals. During any period in which the hospital sustainability fee is in effect, certified expenditures of state hospitals shall not be used to make or support ~~[direct]~~ payments to private hospitals.”

SECTION 5. 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 ~~[five and one-half]~~ six per cent of the hospital’s net patient service revenue. The inpatient hospital sustainability fee shall not exceed ~~[five and one-half]~~ six per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall not exceed ~~[five and one-half]~~ six 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 federal hospitals and public hospitals from the hospital sustainability fees on inpatient services and outpatient care services.

Children’s hospitals, psychiatric hospitals, and rehabilitation hospitals may be assessed hospital sustainability fees on inpatient and outpatient services at a different rate than other private hospitals. The department ~~[may also exclude any facility from the hospital sustainability fee if it is determined that its exclusion is required to meet federal standards of approval].~~ upon good faith consultation and negotiations with the hospital trade association located in the State, may modify, add to, or exclude facilities included in the assessment if necessary to obtain or maintain approval of the waiver by the Centers for Medicare and Medicaid Services, if the modification, addition, or exclusion is consistent with the purposes of this chapter.”

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

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

~~(b) The department shall determine, upon good faith consultation and negotiations with the hospital trade association located in the State, the prospective fee rate for the applicable fiscal year.~~

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

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

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

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

“(a) If a hospital fails to pay the full amount of any hospital sustainability fee when due, there shall be added to the fee, unless waived by the department for reasonable cause, a penalty equal to ~~[prime plus]~~ two per cent of the fee that was not paid when due. Any subsequent payments shall be credited first to

unpaid fee amounts beginning with the most delinquent installment rather than to penalty or interest amounts.”

SECTION 9. Section 346G-10, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**“§346G-10 Private hospital payments through enhanced [rates] payments to medicaid managed care health plans.** (a) The department shall use moneys ~~[solely]~~ from the hospital sustainability program special fund solely to fulfill the requirements of section 346G-4(c).

(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]~~ payments to medicaid managed care health plans ~~[for the period of July 1 through December 31, 2021, and calendar years 2022 and 2023]~~, consistent with the following objectives:

- (1) The ~~[rate enhancement]~~ enhanced payments shall be used exclusively ~~[for increasing]~~ to increase reimbursements to private hospitals, ~~[to]~~ support the availability of services, and ~~[to]~~ ensure access to care ~~[to the]~~ for medicaid managed care health plan enrollees;
- (2) The ~~[rate enhancement]~~ enhanced payments shall be ~~[made part of the monthly capitated rates]~~ paid by the department to medicaid managed care health plans, which shall provide documentation to the department and the hospital trade association located in ~~[Hawaii]~~ the State certifying that the revenues received under paragraph (1) are used in accordance with this section;
- (3) The ~~[rate enhancement]~~ enhanced payment rates shall be actuarially sound and approved by the federal government for federal fund participation;
- (4) The ~~[rate enhancements]~~ enhanced payment rates shall be retroactive to July 1, 2012, or the effective date approved by the federal government, whichever is later. Retroactive ~~[rate enhancements]~~ enhanced payment rates 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]~~ payment from the department~~[-]; and~~
- (6) Each managed care health plan shall expend one hundred per cent of any increased payments received under this section to carry out the goals of the hospital sustainability program.”

SECTION 10. Section 346G-12, Hawaii Revised Statutes, is amended to read as follows:

**“§346G-12 Termination.** (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, 2021;]~~ reimbursement rates for private hospital services provided to medicaid patients, with the intent to use the sustainability funds to supplant the planned or permanent reduction in reimbursement rates;

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

SECTION 11. Act 217, Session Laws of Hawaii 2012, 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, as amended by section 6 of Act 173, Session Laws of Hawaii 2019, as amended by section 7 of Act 38, Session Laws of Hawaii 2021, 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 December 31, 2023; provided that section 4, Hawaii Revised Statutes, in section 2 of this Act, and the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall be repealed on June 30, 2024.”~~

SECTION 12. Act 123, Session Laws of Hawaii 2014, 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, as amended by section 7 of Act 173, Session Laws of Hawaii 2019, as amended by section 8 of Act 38, Session Laws of Hawaii 2021, 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] 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, in sections 3 and 4 of this Act shall be repealed on June 30, 2024].”~~

SECTION 13. There is appropriated out of the hospital sustainability program special fund the sum of \$173,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 and the same sum or so much thereof as may be necessary for fiscal year 2024-2025 for the purposes of the hospital sustainability program.

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

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

SECTION 15. This Act shall take effect upon its approval; provided that section 13 of this Act shall take effect on July 1, 2023.

(Approved June 22, 2023.)