
A BILL FOR AN ACT

RELATING TO NURSING FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the nursing facility
2 sustainability program was established in 2012 and has served a
3 critical role in strengthening the long-term care system in the
4 State. In the eleven years since its inception, the nursing
5 facility sustainability program has helped long-term care
6 facilities treat the most vulnerable patients in the State,
7 especially low-income individuals who require these services.
8 The program has been carried out in a public-private partnership
9 to ensure that patients in the State can access quality,
10 affordable care.

11 The legislature further finds that, even with this program,
12 nursing facilities in the State face major challenges. These
13 challenges are due in part to the health and financial pressures
14 related to the ongoing coronavirus disease 2019 pandemic.
15 Medicaid is jointly financed by the federal and state
16 governments by statutory formula whereby the federal government
17 pays between fifty per cent and seventy-four per cent, with



1 assistance levels determined by each state's per capita income.
2 States with the lowest per capita income receive higher federal
3 matching rates. Under federal rules, the state share must be
4 public funds that are not federal funds. The legislature finds
5 that public funding to help financially sustain Hawaii's nursing
6 facilities should continue to be assessed through a provider
7 fee, which is currently scheduled to repeal in 2024.

8 The legislature further finds that provider fees exist in
9 forty-nine states and the District of Columbia as a means of
10 drawing down federal funds to sustain their medicaid programs,
11 increase health care providers, and expand medicaid enrollment.
12 Provider fees, which are collected from specific categories of
13 health care providers, may be imposed on different classes of
14 health care services, including inpatient and outpatient
15 hospital and nursing facility services.

16 The legislature finds that a provider fee on nursing
17 facilities in the State has resulted in a substantial increase
18 in medicaid payments without putting additional constraints on
19 the State's budget. The additional federal funds obtained via
20 the fee program authorized by the nursing facility
21 sustainability program has also maintained access to care for



1 medicaid recipients. This has allowed nursing facilities in the
2 State to continue to serve under- or uninsured patients in a
3 timely, effective manner, and helped to ensure the overall
4 sustainability of the health care system in the State.

5 Therefore, the purpose of this Act is to:

6 (1) Preserve access to health care for medicaid recipients
7 by continuing and strengthening the nursing facility
8 sustainability fee program by:

9 (A) Continuing exemptions from the central service
10 expenses assessment and the administrative
11 expenses assessment under sections 36-27(a) and
12 36-30(a), Hawaii Revised Statutes, respectively;

13 (B) Making it permanent; and

14 (C) Appropriating moneys from the nursing facility
15 sustainability special fund; and

16 (2) Repeal chapter 346E, Hawaii Revised Statutes, relating
17 to the nursing facility tax.

18 SECTION 2. Section 36-27, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Except as provided in this section, and
21 notwithstanding any other law to the contrary, from time to



1 time, the director of finance, for the purpose of defraying the
2 prorated estimate of central service expenses of government in
3 relation to all special funds, except the:

4 (1) Special out-of-school time instructional program fund
5 under section 302A-1310;

6 (2) School cafeteria special funds of the department of
7 education;

8 (3) Special funds of the University of Hawaii;

9 (4) Convention center enterprise special fund under
10 section 201B-8;

11 (5) Special funds established by section 206E-6;

12 (6) Aloha Tower fund created by section 206J-17;

13 (7) Funds of the employees' retirement system created by
14 section 88-109;

15 (8) Hawaii hurricane relief fund established under chapter
16 431P;

17 (9) Hawaii health systems corporation special funds and
18 the subaccounts of its regional system boards;

19 (10) Universal service fund established under section
20 269-42;



- 1 (11) Emergency and budget reserve fund under section
- 2 328L-3;
- 3 (12) Public schools special fees and charges fund under
- 4 section 302A-1130;
- 5 (13) Sport fish special fund under section 187A-9.5;
- 6 (14) Neurotrauma special fund under section 321H-4;
- 7 (15) Glass advance disposal fee established by section
- 8 342G-82;
- 9 (16) Center for nursing special fund under section
- 10 304A-2163;
- 11 (17) Passenger facility charge special fund established by
- 12 section 261-5.5;
- 13 (18) Solicitation of funds for charitable purposes special
- 14 fund established by section 467B-15;
- 15 (19) Land conservation fund established by section 173A-5;
- 16 (20) Court interpreting services revolving fund under
- 17 section 607-1.5;
- 18 (21) Trauma system special fund under section 321-22.5;
- 19 (22) Hawaii cancer research special fund;
- 20 (23) Community health centers special fund;
- 21 (24) Emergency medical services special fund;



- 1 (25) Rental motor vehicle customer facility charge special
2 fund established under section 261-5.6;
- 3 (26) Shared services technology special fund under section
4 27-43;
- 5 (27) Automated victim information and notification system
6 special fund established under section 353-136;
- 7 (28) Deposit beverage container deposit special fund under
8 section 342G-104;
- 9 (29) Hospital sustainability program special fund
10 established under section 346G-4;
- 11 (30) Nursing facility sustainability program special fund
12 established under section 346F-4;
- 13 (31) Hawaii 3R's school improvement fund under section
14 302A-1502.4;
- 15 (32) After-school plus program revolving fund under section
16 302A-1149.5;
- 17 (33) Civil monetary penalty special fund under section
18 321-30.2; and
- 19 [+](34) [+] Stadium development special fund under section
20 109-3.5,



1 shall deduct five per cent of all receipts of all other special
2 funds, which deduction shall be transferred to the general fund
3 of the State and become general realizations of the State. All
4 officers of the State and other persons having power to allocate
5 or disburse any special funds shall cooperate with the director
6 in effecting these transfers. To determine the proper revenue
7 base upon which the central service assessment is to be
8 calculated, the director shall adopt rules pursuant to chapter
9 91 for the purpose of suspending or limiting the application of
10 the central service assessment of any fund. No later than
11 twenty days prior to the convening of each regular session of
12 the legislature, the director shall report all central service
13 assessments made during the preceding fiscal year."

14 SECTION 3. Section 36-30, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Each special fund, except the:

- 17 (1) Special out-of-school time instructional program fund
18 under section 302A-1310;
- 19 (2) School cafeteria special funds of the department of
20 education;
- 21 (3) Special funds of the University of Hawaii;



- 1 (4) Special funds established by section 206E-6;
- 2 (5) Aloha Tower fund created by section 206J-17;
- 3 (6) Funds of the employees' retirement system created by
- 4 section 88-109;
- 5 (7) Hawaii hurricane relief fund established under chapter
- 6 431P;
- 7 (8) Convention center enterprise special fund established
- 8 under section 201B-8;
- 9 (9) Hawaii health systems corporation special funds and
- 10 the subaccounts of its regional system boards;
- 11 (10) Universal service fund established under section
- 12 269-42;
- 13 (11) Emergency and budget reserve fund under section
- 14 328L-3;
- 15 (12) Public schools special fees and charges fund under
- 16 section 302A-1130;
- 17 (13) Sport fish special fund under section 187A-9.5;
- 18 (14) Neurotrauma special fund under section 321H-4;
- 19 (15) Center for nursing special fund under section
- 20 304A-2163;



- 1 (16) Passenger facility charge special fund established by
- 2 section 261-5.5;
- 3 (17) Court interpreting services revolving fund under
- 4 section 607-1.5;
- 5 (18) Trauma system special fund under section 321-22.5;
- 6 (19) Hawaii cancer research special fund;
- 7 (20) Community health centers special fund;
- 8 (21) Emergency medical services special fund;
- 9 (22) Rental motor vehicle customer facility charge special
- 10 fund established under section 261-5.6;
- 11 (23) Shared services technology special fund under section
- 12 27-43;
- 13 (24) Nursing facility sustainability program special fund
- 14 established [~~pursuant to~~] under section 346F-4;
- 15 (25) Automated victim information and notification system
- 16 special fund established under section 353-136;
- 17 (26) Hospital sustainability program special fund
- 18 established under section 346G-4;
- 19 (27) Civil monetary penalty special fund under section
- 20 321-30.2; and



1 [+] (28) [+] Stadium development special fund under section
2 109-3.5,
3 shall be responsible for its pro rata share of the
4 administrative expenses incurred by the department responsible
5 for the operations supported by the special fund concerned."

6 SECTION 4. Section 237-24.7, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§237-24.7 Additional amounts not taxable. In addition to
9 the amounts not taxable under section 237-24, this chapter shall
10 not apply to:

11 (1) Amounts received by the operator of a hotel from the
12 owner of the hotel or from a time share association,
13 and amounts received by the suboperator of a hotel
14 from the owner of the hotel, from a time share
15 association, or from the operator of the hotel, in
16 amounts equal to and which are disbursed by the
17 operator or suboperator for employee wages, salaries,
18 payroll taxes, insurance premiums, and benefits,
19 including retirement, vacation, sick pay, and health
20 benefits. As used in this paragraph:



1 "Employee" means employees directly engaged in
2 the day-to-day operation of the hotel and employed by
3 the operator or suboperator.

4 "Hotel" means an operation as defined in section
5 445-90 or a time share plan as defined in section
6 514E-1.

7 "Operator" means any person who, pursuant to a
8 written contract with the owner of a hotel or time
9 share association, operates or manages the hotel for
10 the owner or time share association.

11 "Owner" means the fee owner or lessee under a
12 recorded lease of a hotel.

13 "Suboperator" means any person who, pursuant to a
14 written contract with the operator, operates or
15 manages the hotel as a subcontractor of the operator.

16 "Time share association" means an "association"
17 as that term is defined in section 514E-1;

18 (2) Amounts received by the operator of a county
19 transportation system operated under an operating
20 contract with a political subdivision, where the



1 political subdivision is the owner of the county
2 transportation system. As used in this paragraph:

3 "County transportation system" means a mass
4 transit system of motorized buses providing regularly
5 scheduled transportation within a county.

6 "Operating contract" or "contract" means a
7 contract to operate and manage a political
8 subdivision's county transportation system, which
9 provides that:

10 (A) The political subdivision shall exercise
11 substantial control over all aspects of the
12 operator's operation;

13 (B) The political subdivision controls the
14 development of transit policy, service
15 planning, routes, and fares; and

16 (C) The operator develops in advance a draft
17 budget in the same format as prescribed for
18 agencies of the political subdivision. The
19 budget must be subject to the same
20 constraints and controls regarding the
21 lawful expenditure of public funds as any



1 public sector agency, and deviations from
 2 the budget must be subject to approval by
 3 the appropriate political subdivision
 4 officials involved in the budgetary process.

5 "Operator" means any person who, pursuant to an
 6 operating contract with a political subdivision,
 7 operates or manages a county transportation system.

8 "Owner" means a political subdivision that owns
 9 or is the lessee of all the properties and facilities
 10 of the county transportation system (including buses,
 11 real estate, parking garages, fuel pumps, maintenance
 12 equipment, office supplies, etc.), and that owns all
 13 revenues derived therefrom;

14 (3) Surcharge taxes on rental motor vehicles imposed by
 15 chapter 251 and passed on and collected by persons
 16 holding certificates of registration under that
 17 chapter;

18 (4) Amounts received by the operator of orchard properties
 19 from the owner of the orchard property in amounts
 20 equal to and which are disbursed by the operator for
 21 employee wages, salaries, payroll taxes, insurance



1 premiums, and benefits, including retirement,
2 vacation, sick pay, and health benefits. As used in
3 this paragraph:

4 "Employee" means an employee directly engaged in
5 the day-to-day operations of the orchard properties
6 and employed by the operator.

7 "Operator" means a producer who, pursuant to a
8 written contract with the owner of the orchard
9 property, operates or manages the orchard property for
10 the owner where the property contains an area
11 sufficient to make the undertaking economically
12 feasible.

13 "Orchard property" means any real property that
14 is used to raise trees with a production life cycle of
15 fifteen years or more producing fruits or nuts having
16 a normal period of development from the initial
17 planting to the first commercially saleable harvest of
18 not less than three years.

19 "Owner" means a fee owner or lessee under a
20 recorded lease of orchard property;



1 ~~[(5)] Taxes on nursing facility income imposed by chapter~~
2 ~~346E and passed on and collected by operators of~~
3 ~~nursing facilities;~~

4 ~~+(6)]~~ (5) Amounts received under property and casualty
5 insurance policies for damage or loss of inventory
6 used in the conduct of a trade or business located
7 within the State or a portion thereof that is declared
8 a natural disaster area by the governor pursuant to
9 section 209-2;

10 ~~+(7)]~~ (6) Amounts received as compensation by community
11 organizations, school booster clubs, and nonprofit
12 organizations under a contract with the chief election
13 officer for the provision and compensation of precinct
14 officials and other election-related personnel,
15 services, and activities, pursuant to section 11-5;

16 ~~+(8)]~~ (7) Interest received by a person domiciled outside
17 the State from a trust company (as defined in section
18 412:8-101) acting as payment agent or trustee on
19 behalf of the issuer or payees of an interest bearing
20 instrument or obligation, if the interest would not
21 have been subject to tax under this chapter if paid



1 directly to the person domiciled outside the State
2 without the use of a paying agent or trustee; provided
3 that if the interest would otherwise be taxable under
4 this chapter if paid directly to the person domiciled
5 outside the State, it shall not be exempt solely
6 because of the use of a Hawaii trust company as a
7 paying agent or trustee;

8 [~~(9)~~] (8) Amounts received by a management company from
9 related entities engaged in the business of selling
10 interstate or foreign common carrier
11 telecommunications services in amounts equal to and
12 which are disbursed by the management company for
13 employee wages, salaries, payroll taxes, insurance
14 premiums, and benefits, including retirement,
15 vacation, sick pay, and health benefits. As used in
16 this paragraph:

17 "Employee" means employees directly engaged in
18 the day-to-day operation of related entities engaged
19 in the business of selling interstate or foreign
20 common carrier telecommunications services and
21 employed by the management company.



1 "Management company" means any person who,
2 pursuant to a written contract with a related entity
3 engaged in the business of selling interstate or
4 foreign common carrier telecommunications services,
5 provides managerial or operational services to that
6 entity.

7 "Related entities" means:

8 (A) An affiliated group of corporations within
9 the meaning of section 1504 (with respect to
10 affiliated group defined) of the federal
11 Internal Revenue Code of 1986, as amended;

12 (B) A controlled group of corporations within
13 the meaning of section 1563 (with respect to
14 definitions and special rules) of the
15 federal Internal Revenue Code of 1986, as
16 amended;

17 (C) Those entities connected through ownership
18 of at least eighty per cent of the total
19 value and at least eighty per cent of the
20 total voting power of each such entity (or
21 combination thereof), including



1 partnerships, associations, trusts, S
 2 corporations, nonprofit corporations,
 3 limited liability partnerships, or limited
 4 liability companies; and

5 (D) Any group or combination of the entities
 6 described in paragraph (C) constituting a
 7 unitary business for income tax purposes;
 8 whether or not the entity is located within or without
 9 the State or licensed under this chapter; and

10 [~~10~~] (9) Amounts received as grants under section
 11 206M-15."

12 SECTION 5. Section 346D-4.5, Hawaii Revised Statutes, is
 13 amended by amending subsection (a) to read as follows:

14 "(a) There may be established a monthly needs allowance
 15 for individuals living in:

- 16 (1) Adult residential care home type I and type II
- 17 facilities;
- 18 (2) Licensed developmental disabilities domiciliary homes
- 19 as defined in section 321-15.9;
- 20 (3) Community care foster family homes as defined in
- 21 section 321-481;



- 1 (4) Certified adult foster homes as defined in section
- 2 321-11.2;
- 3 (5) Domiciliary care as defined in section 346-1;
- 4 (6) A nursing facility [~~as defined in section 346E-1~~]; or
- 5 (7) A community-based residence as part of the residential
- 6 alternatives community care program."

7 SECTION 6. Section 346F-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]**§346F-2**[~~+~~] Findings and declaration of necessity. It
10 is the intent of the legislature to establish a special fund
11 within the state treasury to receive revenue from the imposition
12 of a nursing facility sustainability fee to be administered by
13 the department, which shall use the revenue from the fee and
14 associated federal medicaid matching funds exclusively to make
15 payments to nursing facilities and for other purposes as set
16 forth in this chapter."

17 SECTION 7. Section 346F-4, Hawaii Revised Statutes, is
18 amended by amending subsections (b) through (d) to read as
19 follows:

20 "(b) Moneys in the special fund shall consist of:



1 (1) All revenues collected or received by the department
2 from the nursing facility sustainability fee as
3 required by this chapter;

4 ~~[-(2) All federal medicaid funds received by the department~~
5 ~~as a result of matching expenditures made with the~~
6 ~~nursing facility sustainability fees;~~

7 ~~-(3)]~~ (2) Any interest or penalties levied in conjunction
8 with the administration of this chapter; and

9 ~~[-(4)]~~ (3) Any designated appropriations, federal funds,
10 donations, gifts, or moneys from any other sources.

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

13 (1) No less than eighty-eight per cent of the revenue from
14 the nursing facility sustainability fee shall be used
15 for one or more of the following:

16 (A) To match federal medicaid funds, with the
17 combined total to be used to enhance capitated
18 rates to medicaid managed care health plans for
19 the purpose of increasing medicaid payments to
20 private nursing facilities to support the
21 availability of services and ensure access to



1 care for the medicaid managed care health plan
2 enrollees; or

3 (B) To match federal medicaid funds, with the
4 combined total to enhance capitated rates for the
5 purpose of paying quality incentives; and

6 (2) Twelve per cent of the revenue from the nursing
7 facility sustainability fee may be used by the
8 department for other departmental purposes [~~+~~ and

9 ~~(3) All moneys remaining in the special fund on June 30,~~
10 ~~2024, shall be distributed to nursing facilities~~
11 ~~within thirty days in the same proportions as received~~
12 ~~from the nursing facilities].~~

13 (d) The department shall utilize federal funds derived
14 from state long-term care facility certified expenditures to
15 make [~~supplemental~~] payments to state long-term care facilities
16 to the extent permitted by federal law. The department may
17 receive intergovernmental transfers from the state long-term
18 care facilities to support [~~direct supplemental~~] payments and
19 increased capitation rates to health plans for the benefit of
20 the state long-term care facilities. During any period in which
21 the nursing facility sustainability fee is in effect, certified



1 expenditures of state long-term care facilities shall not be
2 used to make or support [~~direct~~] payments to private nursing
3 facilities."

4 SECTION 8. Section 346F-5, Hawaii Revised Statutes, is
5 amended by amending subsections (b) through (d) to read as
6 follows:

7 "(b) The nursing [~~+~~]facility[~~+~~] sustainability fee shall
8 be based on the [~~net patient service revenue~~] total resident
9 days of all nursing facilities that are subject to the
10 sustainability fee, as determined by the department.

11 (c) The nursing facility sustainability fee shall not
12 exceed [~~5-5~~] six per cent of overall net patient service revenue
13 and shall be calculated and paid on a per resident day basis,
14 unless the facility qualifies for an exemption identified in
15 subsection (d)(1). The facilities described in subsection
16 (d)(2) shall pay a reduced daily fee compared to other
17 facilities participating in the program.

18 (d) In accordance with the redistribution method set forth
19 in title 42 Code of Federal Regulations section 433.68(e)(1) and
20 (2), the department shall seek a waiver of the broad-based and
21 uniformity provider fee requirements under federal law from



1 which to exclude certain nursing facilities and to permit
2 certain high volume medicaid nursing facilities or facilities
3 with a high number of total annual patient days to pay the
4 sustainability fee at a lesser amount per resident day, as
5 follows:

6 (1) The department shall exempt the following nursing
7 facility providers from the nursing facility
8 sustainability fee subject to federal approval under
9 title 42 Code of Federal Regulations section
10 433.68(e)(2):

11 (A) Nursing facilities with twenty-eight or fewer
12 licensed beds;

13 (B) Nursing facilities owned, operated by, or
14 affiliated with the Hawaii health systems
15 corporation; and

16 (C) Continuing care retirement communities.

17 (2) The department shall reduce the fee for [~~high-volume~~
18 ~~medicaid nursing facilities or facilities with high~~
19 ~~patient volumes~~] facilities with high medicaid
20 resident days in order to meet the redistributive



1 tests of title 42 Code of Federal Regulations section
2 433.68(e)(2).

3 (3) The department, [~~with agreement by~~] upon good faith
4 consultation and negotiation with the nursing facility
5 trade associations located in Hawaii, may modify, add
6 to, or [~~reduce the categories of~~] exclude the
7 facilities exempt from or subject to the assessment if
8 necessary to obtain and maintain approval of the
9 waiver by the Centers for Medicare and Medicaid
10 Services, if the modification is consistent with the
11 purposes of this chapter."

12 SECTION 9. Section 346F-6, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) The department shall collect and each nursing
15 facility shall pay [~~in twelve equal installments~~], if so
16 required and on a monthly basis, the nursing facility
17 sustainability fee [~~in section 346F-5 on a monthly basis,~~
18 ~~subject to the terms of this section. The fee shall be due~~
19 ~~within sixty days after the end of each month, with the initial~~
20 ~~payment due on the later of July 31, 2012, or forty five days~~
21 ~~after the required federal approvals for the assessment and any~~



1 ~~increase in health plan capitation payments have been secured~~
2 ~~from the Centers for Medicare and Medicaid Services.]~~ no later
3 than the sixtieth day after the end of each calendar month;
4 provided that, if required federal approvals have not been
5 secured by the end of a calendar month, the fees for that month
6 shall be paid within ten days after the notification to the
7 nursing facilities that the required approvals have been
8 received."

9 SECTION 10. Section 346F-9, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) If a nursing facility fails to pay the full amount of
12 the nursing facility sustainability fee when due, there shall be
13 added to the fee, unless waived by the department for reasonable
14 cause, a penalty equal to two per cent of the fee that was not
15 paid when due. Any subsequent payments shall be credited first
16 to unpaid fee amounts [~~rather than to penalty or interest~~
17 ~~amounts,~~] beginning with the most delinquent installment[~~-~~]
18 rather than to penalty or interest amounts."

19 SECTION 11. Section 346F-10, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§346F-10 Enhanced rates to medicaid managed care health
2 plans. (a) In accordance with title 42 Code of Federal
3 Regulations part 438, the department shall use revenues from the
4 nursing facility sustainability fee and federal matching funds
5 to enhance the capitated rates paid to medicaid managed care
6 health plans [~~for the period of July 1 through December 31,~~
7 ~~2021, and calendar years 2022 and 2023,~~] consistent with the
8 following objectives:

9 ~~[(1) The rate enhancement shall be used exclusively for
10 increasing reimbursements to private nursing
11 facilities to support the availability of services and
12 to ensure access to care to the medicaid managed care
13 health plan enrollees;]~~

14 (1) The department shall use moneys from the nursing
15 facility sustainability program solely to fulfill the
16 requirements of section 346F-4(c);

17 (2) The rate enhancement shall be [~~made part of the~~
18 ~~monthly capitated rates~~] paid by the department to
19 medicaid managed care health plans, which shall
20 provide documentation to the department and the
21 nursing facility trade association located in Hawaii



1 certifying that the revenues received under paragraph
2 ~~[(1)]~~ (3) are used in accordance with this section;

3 (3) The rate enhancement shall be used exclusively to
4 increase reimbursements to private nursing facilities
5 to support the availability of services and to ensure
6 access to care for medicaid managed care health plan
7 enrollees;

8 ~~[(3)]~~ (4) The rate enhancement shall be actuarially sound
9 and approved by the federal government for federal
10 fund participation;

11 ~~[(4)]~~ (5) The department shall modify the fee-for-service
12 reimbursement rates of the nursing facilities to
13 recognize the medicaid portion of the nursing facility
14 sustainability fee as an additional cost of serving
15 medicaid patients, and to provide a uniform percentage
16 increase in preexisting facility-specific rates; ~~[and]~~

17 ~~[(5)]~~ (6) Payments made by the medicaid managed care health
18 plans shall be made within thirty calendar days upon
19 receipt of ~~[monthly capitation rates]~~ payment from the
20 department ~~[-]~~; and



1 (7) Each managed health care plan shall expend one hundred
2 per cent of any increased payments it receives under
3 this section to carry out the goals of the nursing
4 facility sustainability program.

5 (b) If federal approval pursuant to section 346F-7 is not
6 received until after the end of any month for which the nursing
7 facility sustainability fee is applicable, the department shall
8 make the initial monthly payments within five days after receipt
9 of the nursing facility sustainability fee for the respective
10 month.

11 (c) To the extent the nursing facility sustainability
12 program is not effective for the entire year, the nursing
13 facility sustainability fee, the state medicaid expenses and
14 administrative fee, and the corresponding payments to fulfill
15 the requirements of section 346F-4(c) shall be based on the
16 proportion of the fiscal year the program is in effect."

17 SECTION 12. Section 346F-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§346F-13 Termination.** (a) Collection of the nursing
20 facility sustainability fee under section 346F-5 shall be
21 discontinued if:



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- 1 (1) The waiver in section 346F-7 or the enhanced
2 capitation rates in section 346F-10 have not been
3 approved by the Centers for Medicare and Medicaid
4 Services;
- 5 (2) The department reduces [~~funding for nursing facility~~
6 ~~services below the state appropriation in effect on~~
7 ~~June 30, 2021;~~] reimbursement rates for private
8 nursing facility services to medicaid patients with
9 the intention of using the sustainability funds to
10 supplant the planned or permanent reduction in rates;
- 11 (3) The department or any other state agency uses the
12 money in the special fund for any use other than the
13 uses permitted pursuant to this chapter; or
- 14 (4) Federal financial participation to match the nursing
15 facility sustainability fee becomes unavailable under
16 federal law. In such case, the department shall
17 terminate the collection of the fee beginning on the
18 effective date of the federal statutory, regulatory,
19 or interpretive change.
- 20 (b) If [~~collection of~~] the nursing facility sustainability
21 fee is discontinued [~~as provided in this section~~], any



1 ~~[remaining]~~ money remaining in the nursing facility
 2 sustainability program special fund shall be ~~[returned]~~
 3 distributed to the nursing facilities ~~[from which the fee was~~
 4 ~~collected]~~ within ~~[thirty days]~~ six months of the date of
 5 discontinuation in the same proportions as received from the
 6 nursing facilities."

7 SECTION 13. Chapter 346E, Hawaii Revised Statutes, is
 8 repealed.

9 SECTION 14. Act 156, Session Laws of Hawaii 2012, as
 10 amended by section 3 of Act 142, Session Laws of Hawaii 2013, as
 11 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as
 12 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as
 13 amended by section 2 of Act 59, Session Laws of Hawaii 2016, as
 14 amended by section 5 of Act 60, Session Laws of Hawaii 2017, as
 15 amended by section 6 of Act 163, Session Laws of Hawaii 2019, as
 16 amended by section 7 of Act 24, 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~~
 21 ~~of this Act, and the amendment made to section 36-30(a), Hawaii~~



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

3 SECTION 15. Act 124, Session Laws of Hawaii 2014, as
4 amended by section 3 of Act 69, Session Laws of Hawaii 2015, as
5 amended by section 3 of Act 59, Session Laws of Hawaii 2016, as
6 amended by section 6 of Act 60, Session Laws of Hawaii 2017, as
7 amended by section 7 of Act 163, Session Laws of Hawaii 2019, as
8 amended by section 8 of Act 24, 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 5 shall take effect on July 1, 2014; and~~
13 ~~(2) The amendments made to sections 36-27(a) and 36-30(a),~~
14 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~
15 ~~Act shall be repealed on June 30, 2024]."~~

16 SECTION 16. There is appropriated out of the nursing
17 facility sustainability program special fund the sum of
18 \$24,000,000 or so much thereof as may be necessary for fiscal
19 year 2023-2024 and the same sum or so much thereof as may be
20 necessary for fiscal year 2024-2025 for purposes consistent with
21 section 346F-4, Hawaii Revised Statutes.



H.B. NO. 1369

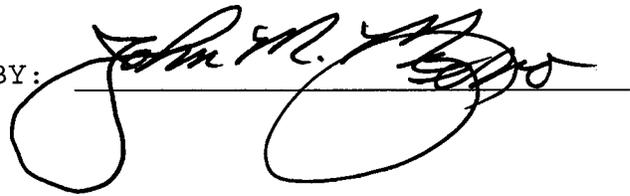
1 The sums appropriated shall be expended by the department
2 of human services for the purposes of this Act.

3 SECTION 17. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 18. This Act shall take effect on July 1, 2023.

6

INTRODUCED BY: _____



JAN 25 2023



H.B. NO. 1369

Report Title:

Department of Human Services; Nursing Facility Sustainability Program; Special Fund; Nursing Facility Tax; Repeal; Appropriation

Description:

Makes permanent and amends the Nursing Facility Sustainability Program. Makes certain assessment exemptions permanent as to the Nursing Facility Sustainability Program Special Fund. Repeals chapter 346E, Hawaii Revised Statutes, relating to the Nursing Facility Tax. Appropriates funds from the Nursing Facility Sustainability Program Special Fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

