
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 COVID-19 pandemic. Medicaid is jointly
15 financed by the federal and state governments by statutory
16 formula whereby the federal government pays between fifty per
17 cent and seventy-four per cent, with assistance levels



1 determined by each state's per capita income. States with the
2 lowest per capita income receive higher federal matching rates.
3 Under federal rules, the state share must be public funds that
4 are not federal funds. The legislature finds that public
5 funding to help financially sustain Hawaii's nursing facilities
6 should continue to be assessed through a provider fee, which is
7 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 preserve access to
6 health care for medicaid recipients and strengthen the nursing
7 sustainability program by:

- 8 (1) Repealing the sunset dates of Act 156, Session Laws of
9 Hawaii 2012, and Act 124, Session Laws of Hawaii 2014,
10 thereby making the program permanent and permanently
11 exempting the program from the central service and
12 administrative expenses assessments;
- 13 (2) Repealing the nursing facility tax; and
- 14 (3) Appropriating funds from the nursing facility
15 sustainability program special fund.

16 SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§237-24.7 Additional amounts not taxable.** In addition to
19 the amounts not taxable under section 237-24, this chapter shall
20 not apply to:



1 (1) Amounts received by the operator of a hotel from the
2 owner of the hotel or from a time share association,
3 and amounts received by the suboperator of a hotel
4 from the owner of the hotel, from a time share
5 association, or from the operator of the hotel, in
6 amounts equal to and which are disbursed by the
7 operator or suboperator for employee wages, salaries,
8 payroll taxes, insurance premiums, and benefits,
9 including retirement, vacation, sick pay, and health
10 benefits. As used in this paragraph:

11 "Employee" means employees directly engaged in
12 the day-to-day operation of the hotel and employed by
13 the operator or suboperator.

14 "Hotel" means an operation as defined in section
15 445-90 or a time share plan as defined in section
16 514E-1.

17 "Operator" means any person who, pursuant to a
18 written contract with the owner of a hotel or time
19 share association, operates or manages the hotel for
20 the owner or time share association.



1 "Owner" means the fee owner or lessee under a
2 recorded lease of a hotel.

3 "Suboperator" means any person who, pursuant to a
4 written contract with the operator, operates or
5 manages the hotel as a subcontractor of the operator.

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

8 (2) Amounts received by the operator of a county
9 transportation system operated under an operating
10 contract with a political subdivision, where the
11 political subdivision is the owner of the county
12 transportation system. As used in this paragraph:

13 "County transportation system" means a mass
14 transit system of motorized buses providing regularly
15 scheduled transportation within a county.

16 "Operating contract" or "contract" means a
17 contract to operate and manage a political
18 subdivision's county transportation system, which
19 provides that:



- 1 (A) The political subdivision shall exercise
- 2 substantial control over all aspects of the
- 3 operator's operation;
- 4 (B) The political subdivision controls the
- 5 development of transit policy, service
- 6 planning, routes, and fares; and
- 7 (C) The operator develops in advance a draft
- 8 budget in the same format as prescribed for
- 9 agencies of the political subdivision. The
- 10 budget must be subject to the same
- 11 constraints and controls regarding the
- 12 lawful expenditure of public funds as any
- 13 public sector agency, and deviations from
- 14 the budget must be subject to approval by
- 15 the appropriate political subdivision
- 16 officials involved in the budgetary process.

17 "Operator" means any person who, pursuant to an
18 operating contract with a political subdivision,
19 operates or manages a county transportation system.

20 "Owner" means a political subdivision that owns
21 or is the lessee of all the properties and facilities



1 of the county transportation system (including buses,
2 real estate, parking garages, fuel pumps, maintenance
3 equipment, office supplies, etc.), and that owns all
4 revenues derived therefrom;

5 (3) Surcharge taxes on rental motor vehicles imposed by
6 chapter 251 and passed on and collected by persons
7 holding certificates of registration under that
8 chapter;

9 (4) Amounts received by the operator of orchard properties
10 from the owner of the orchard property in amounts
11 equal to and which are disbursed by the operator for
12 employee wages, salaries, payroll taxes, insurance
13 premiums, and benefits, including retirement,
14 vacation, sick pay, and health benefits. As used in
15 this paragraph:

16 "Employee" means an employee directly engaged in
17 the day-to-day operations of the orchard properties
18 and employed by the operator.

19 "Operator" means a producer who, pursuant to a
20 written contract with the owner of the orchard
21 property, operates or manages the orchard property for



1 the owner where the property contains an area
2 sufficient to make the undertaking economically
3 feasible.

4 "Orchard property" means any real property that
5 is used to raise trees with a production life cycle of
6 fifteen years or more producing fruits or nuts having
7 a normal period of development from the initial
8 planting to the first commercially saleable harvest of
9 not less than three years.

10 "Owner" means a fee owner or lessee under a
11 recorded lease of orchard property;

12 ~~[(5) Taxes on nursing facility income imposed by chapter~~
13 ~~346E and passed on and collected by operators of~~
14 ~~nursing facilities;~~

15 ~~+(6)]~~ (5) Amounts received under property and casualty
16 insurance policies for damage or loss of inventory
17 used in the conduct of a trade or business located
18 within the State or a portion thereof that is declared
19 a natural disaster area by the governor pursuant to
20 section 209-2;



1 [~~(7)~~] (6) Amounts received as compensation by community
2 organizations, school booster clubs, and nonprofit
3 organizations under a contract with the chief election
4 officer for the provision and compensation of precinct
5 officials and other election-related personnel,
6 services, and activities, pursuant to section 11-5;
7 [~~(8)~~] (7) Interest received by a person domiciled outside
8 the State from a trust company (as defined in section
9 412:8-101) acting as payment agent or trustee on
10 behalf of the issuer or payees of an interest bearing
11 instrument or obligation, if the interest would not
12 have been subject to tax under this chapter if paid
13 directly to the person domiciled outside the State
14 without the use of a paying agent or trustee; provided
15 that if the interest would otherwise be taxable under
16 this chapter if paid directly to the person domiciled
17 outside the State, it shall not be exempt solely
18 because of the use of a Hawaii trust company as a
19 paying agent or trustee;
20 [~~(9)~~] (8) Amounts received by a management company from
21 related entities engaged in the business of selling



1 interstate or foreign common carrier
2 telecommunications services in amounts equal to and
3 which are disbursed by the management company for
4 employee wages, salaries, payroll taxes, insurance
5 premiums, and benefits, including retirement,
6 vacation, sick pay, and health benefits. As used in
7 this paragraph:

8 "Employee" means employees directly engaged in
9 the day-to-day operation of related entities engaged
10 in the business of selling interstate or foreign
11 common carrier telecommunications services and
12 employed by the management company.

13 "Management company" means any person who,
14 pursuant to a written contract with a related entity
15 engaged in the business of selling interstate or
16 foreign common carrier telecommunications services,
17 provides managerial or operational services to that
18 entity.

19 "Related entities" means:

20 (A) An affiliated group of corporations within
21 the meaning of section 1504 (with respect to



1 affiliated group defined) of the federal
2 Internal Revenue Code of 1986, as amended;
3 (B) A controlled group of corporations within
4 the meaning of section 1563 (with respect to
5 definitions and special rules) of the
6 federal Internal Revenue Code of 1986, as
7 amended;
8 (C) Those entities connected through ownership
9 of at least eighty per cent of the total
10 value and at least eighty per cent of the
11 total voting power of each such entity (or
12 combination thereof), including
13 partnerships, associations, trusts, S
14 corporations, nonprofit corporations,
15 limited liability partnerships, or limited
16 liability companies; and
17 (D) Any group or combination of the entities
18 described in paragraph (C) constituting a
19 unitary business for income tax purposes;
20 whether or not the entity is located within or without
21 the State or licensed under this chapter; and



1 "~~[+]~~§346F-2~~[+]~~ Findings and declaration of necessity. It
2 is the intent of the legislature to establish a special fund
3 within the state treasury to receive revenue from the imposition
4 of a nursing facility sustainability fee to be administered by
5 the department, which shall use the revenue from the fee and
6 associated federal medicaid matching funds exclusively to make
7 payments to nursing facilities and for other purposes as set
8 forth in this chapter."

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

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

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

16 ~~[(2) All federal medicaid funds received by the department~~
17 ~~as a result of matching expenditures made with the~~
18 ~~nursing facility sustainability fees;~~

19 ~~-(3)]~~ (2) Any interest or penalties levied in conjunction
20 with the administration of this chapter; and



1 ~~[(4)]~~ (3) Any designated appropriations, federal funds,
2 donations, gifts, or moneys from any other sources.

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

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

8 (A) To match federal medicaid funds, with the
9 combined total to be used to enhance capitated
10 rates to medicaid managed care health plans for
11 the purpose of increasing medicaid payments to
12 private nursing facilities to support the
13 availability of services and ensure access to
14 care for the medicaid managed care health plan
15 enrollees; or

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

19 (2) Twelve per cent of the revenue from the nursing
20 facility sustainability fee may be used by the
21 department for other departmental purposes~~[, and~~



1 ~~(3) All moneys remaining in the special fund on June 30,~~
2 ~~2024, shall be distributed to nursing facilities~~
3 ~~within thirty days in the same proportions as received~~
4 ~~from the nursing facilities].~~

5 (d) The department shall utilize federal funds derived
6 from state long-term care facility certified expenditures to
7 make [~~supplemental~~] payments to state long-term care facilities
8 to the extent permitted by federal law. The department may
9 receive intergovernmental transfers from the state long-term
10 care facilities to support [~~direct supplemental~~] payments and
11 increased capitation rates to health plans for the benefit of
12 the state long-term care facilities. During any period in which
13 the nursing facility sustainability fee is in effect, certified
14 expenditures of state long-term care facilities shall not be
15 used to make or support [~~direct~~] payments to private nursing
16 facilities."

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

20 "(b) The nursing [+]~~facility~~[+] sustainability fee shall
21 be based on the [~~net patient service revenue~~] total resident



1 days of all nursing facilities that are subject to the
2 sustainability fee, as determined by the department.

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

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

19 (1) The department shall exempt the following nursing
20 facility providers from the nursing facility
21 sustainability fee subject to federal approval under



- 1 title 42 Code of Federal Regulations section
2 433.68(e)(2):
- 3 (A) Nursing facilities with twenty-eight or fewer
4 licensed beds;
- 5 (B) Nursing facilities owned, operated by, or
6 affiliated with the Hawaii health systems
7 corporation; and
- 8 (C) Continuing care retirement communities.
- 9 (2) The department shall reduce the fee for [~~high volume~~
10 ~~medicaid nursing facilities or facilities with high~~
11 ~~patient volumes~~] facilities with high medicaid
12 resident days in order to meet the redistributive
13 tests of title 42 Code of Federal Regulations section
14 433.68(e)(2).
- 15 (3) The department, [~~with agreement by~~] upon good faith
16 consultation and negotiations with the nursing
17 facility trade [~~associations~~] association located in
18 Hawaii, may modify, add to, or [~~reduce the categories~~
19 ~~of~~] exclude facilities [~~exempt~~] from the assessment if
20 necessary to obtain and maintain approval of the
21 waiver by the Centers for Medicare and Medicaid



1 Services, if the modification, addition, or exclusion
2 is consistent with the purposes of this chapter."

3 SECTION 7. Section 346F-6, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The department shall [~~collect and each nursing~~
6 ~~facility shall pay in twelve equal installments]~~ impose the
7 nursing facility sustainability fee [~~in section 346F-5 on a~~
8 ~~monthly basis, subject to the terms of this section. The fee~~
9 ~~shall be due within sixty days after the end of each month, with~~
10 ~~the initial payment due on the later of July 31, 2012, or forty-~~
11 ~~five days after the required federal approvals for the~~
12 ~~assessment and any increase in health plan capitation payments~~
13 ~~have been secured from the Centers for Medicare and Medicaid~~
14 ~~Services.] on a monthly basis, which a nursing facility shall
15 pay no later than the sixtieth day after the end of the calendar
16 month that the department imposed the fee; provided that if
17 required federal approvals have not been secured by the end of a
18 calendar month, the fees for that month shall be paid within ten
19 days after the notification to the nursing facilities that the
20 required approvals have been received."~~



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

3 "(a) If a nursing facility fails to pay the full amount of
4 the nursing facility sustainability fee when due, there shall be
5 added to the fee, unless waived by the department for reasonable
6 cause, a penalty equal to two per cent of the fee that was not
7 paid when due. Any subsequent payments shall be credited first
8 to unpaid fee amounts [~~rather than to penalty or interest~~
9 ~~amounts,~~] beginning with the most delinquent installment[~~-~~],
10 rather than to penalty or interest amounts."

11 SECTION 9. Section 346F-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§346F-10 Enhanced rates to medicaid managed care health**
14 **plans.** (a) In accordance with title 42 Code of Federal
15 Regulations part 438, the department shall use revenues from the
16 nursing facility sustainability fee and federal matching funds
17 to enhance the capitated rates paid to medicaid managed care
18 health plans [~~for the period of July 1 through December 31,~~
19 ~~2021, and calendar years 2022 and 2023,~~] consistent with the
20 following objectives:



1 (1) ~~The [rate enhancement shall be used exclusively for~~
2 ~~increasing reimbursements to private nursing~~
3 ~~facilities to support the availability of services and~~
4 ~~to ensure access to care to the medicaid managed care~~
5 ~~health plan enrollees;]~~ department shall use moneys
6 from the nursing facility sustainability program
7 solely to fulfill the requirements of section 346F-
8 4(c);

9 (2) The rate enhancement shall be ~~[made part of the~~
10 ~~monthly capitated rates]~~ paid by the department to
11 medicaid managed care health plans, which shall
12 provide documentation to the department and the
13 nursing facility trade association located in ~~[Hawaii]~~
14 the State certifying that the revenues received under
15 paragraph ~~[(1)]~~ (3) are used in accordance with this
16 section;

17 (3) The rate enhancement shall be used exclusively to
18 increase reimbursements to private nursing facilities
19 to support the availability of services and ensure
20 access to care for medicaid managed care health plan
21 enrollees;



1 ~~[(3)]~~ (4) The rate enhancement shall be actuarially sound
2 and approved by the federal government for federal
3 fund participation;

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

10 ~~[(5)]~~ (6) Payments made by the medicaid managed care health
11 plans shall be made within thirty calendar days upon
12 receipt of ~~[monthly capitation rates]~~ payment from the
13 department~~[-]~~; and

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

18 (b) If federal approval pursuant to section 346F-7 is not
19 received until after the end of any month for which the nursing
20 facility sustainability fee is applicable, the department shall
21 make the initial monthly payments within five days after receipt



1 of the nursing facility sustainability fee for the respective
2 month.

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

9 SECTION 10. Section 346F-13, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§346F-13 Termination.** (a) Collection of the nursing
12 facility sustainability fee under section 346F-5 shall be
13 discontinued if:

- 14 (1) The waiver in section 346F-7 or the enhanced
15 capitation rates in section 346F-10 have not been
16 approved by the Centers for Medicare and Medicaid
17 Services;
- 18 (2) The department reduces [~~funding for nursing facility~~
19 ~~services below the state appropriation in effect on~~
20 ~~June 30, 2021;~~] reimbursement rates for private
21 nursing facility services to medicaid patients with



1 the intention of using the sustainability funds to
2 supplant the planned or permanent reduction in rates;

3 (3) The department or any other state agency uses the
4 money in the special fund for any use other than the
5 uses permitted pursuant to this chapter; or

6 (4) Federal financial participation to match the nursing
7 facility sustainability fee becomes unavailable under
8 federal law. In such case, the department shall
9 terminate the collection of the fee beginning on the
10 effective date of the federal statutory, regulatory,
11 or interpretive change.

12 (b) If [~~collection of~~] the nursing facility sustainability
13 fee is discontinued [~~as provided in this section~~], any
14 [~~remaining~~] money remaining in the nursing facility
15 sustainability program special fund shall be [~~returned~~]
16 distributed to the nursing facilities [~~from which the fee was~~
17 ~~collected~~] within [~~thirty days~~] six months of the date of
18 discontinuation in the same proportions as received from the
19 nursing facilities."

20 SECTION 11. Chapter 346E, Hawaii Revised Statutes, is
21 repealed.



1 SECTION 12. Act 156, Session Laws of Hawaii 2012, as
2 amended by section 3 of Act 142, Session Laws of Hawaii 2013, as
3 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as
4 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as
5 amended by section 2 of Act 59, Session Laws of Hawaii 2016, as
6 amended by section 5 of Act 60, Session Laws of Hawaii 2017, as
7 amended by section 6 of Act 163, Session Laws of Hawaii 2019, as
8 amended by section 7 of Act 24, Session Laws of Hawaii 2021, is
9 amended by amending section 5 to read as follows:

10 "SECTION 5. This Act shall take effect on July 1, 2012[~~7~~
11 ~~and shall be repealed on December 31, 2023; provided that~~
12 ~~section 4, Hawaii Revised Statutes, established by section 2~~
13 ~~of this Act, and the amendment made to section 36-30(a), Hawaii~~
14 ~~Revised Statutes, in section 3 of this Act, shall be repealed on~~
15 ~~June 30, 2024]."~~

16 SECTION 13. Act 124, Session Laws of Hawaii 2014, as
17 amended by section 3 of Act 69, Session Laws of Hawaii 2015, as
18 amended by section 3 of Act 59, Session Laws of Hawaii 2016, as
19 amended by section 6 of Act 60, Session Laws of Hawaii 2017, as
20 amended by section 7 of Act 163, Session Laws of Hawaii 2019, as



1 amended by section 8 of Act 24, Session Laws of Hawaii 2021, is
2 amended by amending section 7 to read as follows:

3 "SECTION 7. This Act shall take effect on June 29, 2014[~~+~~
4 ~~provided that:~~

5 ~~(1) Section 5 shall take effect on July 1, 2014; and~~
6 ~~(2) The amendments made to sections 36-27(a) and 36-30(a),~~
7 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~
8 ~~Act shall be repealed on June 30, 2024]."~~

9 SECTION 14. There is appropriated out of the nursing
10 facility sustainability program special fund the sum of
11 \$ or so much thereof as may be necessary for fiscal
12 year 2023-2024 and the same sum or so much thereof as may be
13 necessary for fiscal year 2024-2025 for purposes consistent with
14 section 346F-4, Hawaii Revised Statutes.

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

17 SECTION 15. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 16. This Act shall take effect on June 30, 3000.



Report Title:

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

Description:

Repeals the sunset dates of Act 156, SLH 2012, and Act 124, SLH 2014, to make the nursing sustainability program permanent and permanently exempt the program from the central service and administrative expenses assessments. Repeals the nursing facility tax. Appropriates funds from the nursing facility sustainability program special fund. Effective 6/30/3000.
(HD1)

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