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# A BILL FOR AN ACT

RELATING TO HOSPITALS.

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

1       SECTION 1. Hospitals in the State face major financial  
2 challenges in providing quality health care for Hawaii  
3 residents. These challenges are largely the result of payments  
4 for care of medicaid enrollees that do not cover the actual  
5 costs of care. The legislature finds that federal funding to  
6 help financially sustain Hawaii's hospitals may be accessed  
7 through a provider fee.

8       Provider fees are used in forty-six states and the District  
9 of Columbia as a means of drawing down federal funds to sustain  
10 state medicaid programs due to rising state budget deficits,  
11 increasing health care costs, and expanding medicaid rolls.  
12 Implementation of a provider fee in Hawaii would help stabilize  
13 declining medicaid payments to facilities and slow the erosion  
14 of access to care for beneficiaries served by the program.

15       Medicaid is jointly financed by the federal and state  
16 governments, but by statutory formula, the federal government  
17 pays between fifty per cent and seventy-six per cent of medicaid  
18 costs incurred by states for care delivered to their medicaid



1 beneficiaries. Federal assistance percentages vary by state,  
2 with states that have lower per capita incomes receiving higher  
3 federal matching rates. Under federal rules, the state share  
4 must be paid through public funds that are not federal funds.

5 Provider fees, which are collected from specific categories  
6 of health care providers that agree to the fee, may be imposed  
7 on nineteen different classes of health care services, including  
8 inpatient and outpatient hospital and nursing facility services.  
9 However, there are limitations on the way provider fees may be  
10 structured. The Medicaid Voluntary Contribution and Provider-  
11 Specific Tax Amendments of 1991, P.L. 102-234, passed by  
12 Congress in 1991, imposes the following requirements:

13 (1) Broad-based. To be considered broad-based, a provider  
14 fee must be imposed on all health care items or  
15 services furnished by all non-federal, non-public  
16 providers in the class in the State. Provider fee  
17 programs may exclude public facilities without  
18 violating federal law;

19 (2) Uniformly imposed. In general, a provider fee is  
20 uniformly imposed if it is the same amount or rate for  
21 each provider in the class; and



1           (3) Hold harmless prohibition. States may not hold  
2           providers harmless. A provider fee is considered to  
3           hold the provider harmless if the providers paying the  
4           fee receive, directly or indirectly, a non-medicaid  
5           payment from the state or any offset or waiver that  
6           guarantees to hold the provider harmless for all or a  
7           portion of the fee. A provider fee is also considered  
8           to hold the provider harmless if the medicaid payments  
9           to the provider vary based only on the amount of the  
10          fees paid by the provider.

11          The maximum provider fee a state may impose is currently  
12          six per cent of net patient revenue. A number of proposals have  
13          been made, but not implemented, to eliminate medicaid provider  
14          fee programs to reduce the federal deficit. However, because  
15          provider fees are used by so many states, many of those who are  
16          knowledgeable about this subject view elimination of provider  
17          fees as unlikely due to their strong political support. A more  
18          realistic expectation is a reduction of the provider fee  
19          maximum, as proposed by President Barack Obama's fiscal year  
20          2012 budget, which would reduce the maximum to three and one-  
21          half per cent in 2017. This proposal recognizes that provider



1 fees are essential for most states to maintain a stable,  
2 functioning medicaid program.

3 In Hawaii, a provider fee would increase medicaid payments  
4 at a time when constraints on the State's budget have forced a  
5 reduction in payments and benefits. The additional federal  
6 funds obtained via the fee program would reduce the amount of  
7 losses incurred by hospitals. As such, the provider fee would  
8 help preserve access to health care for the medicaid population  
9 and sustain the State's entire health care system.

10 The purpose of this Act is to ensure access to health care  
11 for medicaid recipients by establishing a hospital  
12 sustainability fee, which is a provider fee on health care items  
13 or services provided by hospitals, and by establishing a  
14 hospital sustainability program special fund to receive moneys  
15 from the hospital sustainability fee to receive federal medicaid  
16 matching funds under the QUEST expanded medicaid section 1115  
17 demonstration waiver.

18 SECTION 2. The Hawaii Revised Statutes is amended by  
19 adding a new chapter to be appropriately designated and to read  
20 as follows:

21 **"CHAPTER**

22 **HOSPITAL SUSTAINABILITY PROGRAM**



1       **§ -1 Title.** This chapter shall be known and may be  
2 cited as the "Hospital Sustainability Program Act".

3       **§ -2 Findings and declaration of necessity.** It is the  
4 intent of the legislature to encourage the maximum drawdown of  
5 federal medicaid funds by establishing a fund within the state  
6 treasury to receive revenue from the imposition of a hospital  
7 sustainability fee and to use the fee to receive federal  
8 medicaid matching funds under the Section 1115 waiver.

9       **§ -3 Definitions.** As used in this chapter:

10       "Acute care day" means a calendar day of care provided to a  
11 hospital patient, including the day of admission and excluding  
12 the day of discharge of the patient.

13       "Department" means the department of human services.

14       "Fiscal year" means a twelve-month period from July 1 of a  
15 particular calendar year to June 30 of the following calendar  
16 year, inclusive.

17       "Hospital" means any institution with an organized medical  
18 staff that admits patients for inpatient care, diagnosis,  
19 observation, and treatment.

20       "Inpatient care" means the care of patients whose  
21 conditions require admission to a hospital.



1 "Net patient service revenue" means gross revenue from  
2 inpatient and outpatient care provided to hospital patients,  
3 less reductions from gross revenue resulting from an inability  
4 to collect payment of charges. Inpatient and outpatient care  
5 revenue excludes non-patient care revenues, such as beauty and  
6 barber services, parking, rental income, vending income,  
7 interest and contributions, and revenues from the sale of meals.  
8 Reductions from gross revenue include bad debt; contractual  
9 adjustments; uncompensated care; administrative, courtesy, and  
10 policy discounts and adjustments; and other similar revenue  
11 deductions.

12 "Outpatient care" means all services furnished by hospitals  
13 to patients who are registered as hospital outpatients.

14 "Section 1115 waiver" means the QUEST expanded medicaid  
15 section 1115 demonstration waiver (Number 11-W-00001/9).

16 **§ -4 Hospital sustainability program special fund. (a)**

17 There is created in the state treasury the hospital  
18 sustainability program special fund into which shall be  
19 deposited all moneys collected under this chapter.

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



- 1 (1) All revenue received by the department from the
- 2 hospital sustainability fee;
- 3 (2) All federal medicaid funds received by the department
- 4 as a result of matching revenue from the hospital
- 5 sustainability fee;
- 6 (3) Any interest or penalties levied in conjunction with
- 7 the administration of this chapter; and
- 8 (4) Any appropriations, federal funds, donations, gifts,
- 9 or moneys from any other sources.

10 (c) Revenue from the hospital sustainability fee shall be  
11 used exclusively as follows:

- 12 (1) No less than ninety-five per cent of the revenue from
- 13 the hospital sustainability fee shall be used:

14 (A) To match federal medicaid funds, with the

15 combined total to be used to enhance capitated

16 rates to the QUEST and QUEST expanded access

17 plans for increasing medicaid hospital payments

18 to the maximum permitted by federal law;

19 (B) To match any remaining federal uncompensated care

20 cost funds under the current Section 1115 waiver

21 if certified public expenditures are not

22 sufficient to draw down the allotted amount; or



(C) To match any additional federal medicaid funds available for uncompensated care authorized by any Section 1115 waiver effective after June 30, 2013; and

(2) An amount not to exceed five per cent of the revenue from the hospital sustainability fee shall be used to pay the expenses of the State associated with the administration of this chapter.

**§ -5 Hospital sustainability fee.** (a) Effective July 1, 2012, the department shall charge and collect a provider fee, to be known as the hospital sustainability fee, on health care items or services provided by hospitals.

(b) The hospital sustainability fee shall be based on the net patient service revenue of all hospitals that are subject to the hospital sustainability fee.

(c) The hospital sustainability fee shall not exceed three per cent of net patient service revenue as derived from the hospitals' medicare cost report ending during state fiscal year 2010; provided that certain hospitals may be exempted from the fee or pay a reduced fee, as determined by the department and its successor organization within the broad-based and uniformity waiver requirements imposed by federal law.





**§ -6 Hospital sustainability fee assessments. (a)**

Hospitals shall pay the hospital sustainability fee to the department in accordance with this chapter.

(b) The department shall collect, and each hospital shall pay, the hospital sustainability fee on a monthly basis subject to the terms of this subsection. The fee shall be due on the first day of the month, with the initial payment due on the first day of the ensuing quarter after approval of this chapter by the Centers for Medicare and Medicaid Services as specified in section -7.

**§ -7 Federal approval.** The department shall seek the necessary broad-based or uniformity waiver and any additional approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the hospital sustainability program, including a Section 1115 waiver renewal and approval of the contracts between the State and the medicaid health plans.

**§ -8 Multifacility locations.** If an entity conducts, operates, or maintains more than one hospital licensed by the department of health, the entity shall pay the hospital sustainability fee for each hospital separately.

**§ -9 Penalties for failure to pay hospital sustainability fee. (a)** If a hospital fails to pay the full



1 amount of the hospital sustainability fee when due, there shall  
2 be added to the fee, unless waived by the department for  
3 reasonable cause, a penalty equal to five per cent of the fee  
4 that was not paid when due. Any subsequent payments shall be  
5 credited first to unpaid fee amounts beginning with the most  
6 delinquent installment rather than to penalty or interest  
7 amounts.

8 (b) In addition to the penalty imposed by subsection (a),  
9 the department may seek any of the following remedies for the  
10 failure of any hospital to pay its fee when due:

- 11 (1) Withholding any medical assistance reimbursement  
12 payments until such time as the fee amount is paid in  
13 full;
- 14 (2) Suspension or revocation of the hospital license; or
- 15 (3) Development of a plan that requires the hospital to  
16 pay any delinquent fee in installments.

17 **§ -10 Enhanced rates to QUEST and QUEST Expanded Access**  
18 **plans.** In accordance with title 42 Code of Federal Regulations  
19 part 438, the department shall use revenue from the hospital  
20 sustainability fee and federal matching funds to enhance the  
21 capitated rates paid to the QUEST and QUEST expanded access



1 plans for the subject fiscal year, consistent with the following  
2 objectives:

3 (1) The rate enhancement shall be used exclusively to  
4 increase hospital reimbursements to support the  
5 availability of hospital services and to ensure access  
6 for medicaid beneficiaries;

7 (2) The rate enhancement shall be made part of the monthly  
8 capitated rates by the department to the QUEST and  
9 QUEST expanded access plans, which shall provide  
10 documentation to the department and certify that funds  
11 received are used in accordance with this section;

12 (3) The QUEST and QUEST expanded access plans shall use  
13 the rate enhancement to reimburse hospitals based on  
14 the inpatient and outpatient use of their QUEST and  
15 QUEST expanded access enrollees; and

16 (4) The rate enhancement shall be actuarially sound and  
17 approved by the federal government for federal fund  
18 participation.

19 **§ -11 Termination.** (a) Collection of the hospital  
20 sustainability fee established by section -5 shall be  
21 discontinued if:



1 (1) The hospital sustainability program waiver specified  
2 in section -5 or section -7 is not approved by the  
3 Centers for Medicare and Medicaid Services;

4 (2) The department reduces funding for hospital services  
5 below the state appropriation in effect as of the  
6 effective date of this chapter;

7 (3) The department or any other state agency uses the  
8 money in the hospital sustainability program special  
9 fund for any use other than the uses permitted by this  
10 chapter; or

11 (4) Federal financial participation to match the revenue  
12 from the hospital sustainability fee becomes  
13 unavailable under federal law; provided that the  
14 department shall terminate the imposition of the  
15 hospital sustainability fee beginning on the date the  
16 federal statutory, regulatory, or interpretive change  
17 takes effect.

18 (b) If collection of the hospital sustainability fee is  
19 discontinued as provided in this section, all moneys in the  
20 hospital sustainability program special fund shall be  
21 distributed among the hospitals on the same basis as the  
22 hospital sustainability fee was assessed.



1       **S   -12 Severability.** If any provision of this chapter or  
2 the application thereof to any person or circumstances is held  
3 invalid, the invalidity shall not affect other provisions or  
4 applications of the chapter that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this chapter are severable."

7       SECTION 3. This Act shall take effect on January 1, 2050,  
8 and shall be repealed on June 30, 2013.



**Report Title:**

Hospital Sustainability Fee; Hospital Sustainability Program  
Special Fund

**Description:**

Establishes a hospital sustainability fee and special fund to receive moneys from the hospital sustainability fee to receive federal medicaid matching funds under the QUEST Expanded Medicaid Section 1115 Demonstration Waiver. Requires the Department of Human Services to charge and collect a provider fee on health care items or services provided by hospitals. Effective 1/1/50. Repeals 6/30/2013. (SD1)

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