

# S.B. NO. 1103

JAN 28 2015

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## A BILL FOR AN ACT

RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

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

1       SECTION 1. Act 156, Session Laws of Hawaii 2012, section  
2   2, as amended by Act 142, Session Laws of Hawaii 2013, as  
3   amended by Act 124, Session Laws of Hawaii 2014, is amended by  
4   amending section 2 as follows:

5       (1) By amending subsection (c) of section     -4, Hawaii  
6   Revised Statutes, to read as follows:

7       "(c) Revenue from the nursing facility sustainability fee  
8   shall be used exclusively as follows:

9       (1) No less than eighty-eight per cent of the revenue from  
10      the nursing facility sustainability fee shall be used  
11      to match federal medicaid funds, with the combined  
12      total to be used to enhance capitated rates to  
13      medicaid managed care health plans for the purpose of  
14      increasing medicaid payments to private nursing  
15      facilities;

16      (2) Twelve per cent of the revenue from the nursing  
17      facility sustainability fee may be used by the  
18      department for other departmental purposes; and

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1           (3) All moneys remaining in the special fund on December  
2                   30, [~~2015,~~] 2016, shall be distributed to nursing  
3                   facilities within thirty days in the same proportions  
4                   as received from the nursing facilities."

5           (2) By amending section       -10, Hawaii Revised Statutes,  
6 to read as follows:

7           "§       -10   **Enhanced rates to medicaid managed care health**  
8 **plans.** In accordance with title 42 Code of Federal Regulations  
9 section 438, the department shall use revenues from the nursing  
10 facility sustainability fee and federal matching funds to  
11 enhance the capitated rates paid to medicaid managed care health  
12 plans for the state fiscal year [~~2014-2015~~] 2015-2016 consistent  
13 with the following objectives:

14           (1) The rate enhancement shall be used exclusively for  
15                   increasing reimbursements to private nursing  
16                   facilities to support the availability of services and  
17                   to ensure access to care to the medicaid managed care  
18                   health plan enrollees;

19           (2) The rate enhancement shall be made part of the monthly  
20                   capitated rates by the department to medicaid managed  
21                   care health plans, which shall provide documentation  
22                   to the department and the nursing facility trade  
23                   associations located in Hawaii certifying that the

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revenues received under paragraph (1) are used in  
accordance with this section;

(3) The rate enhancement shall be actuarially sound and  
approved by the federal government for federal fund  
participation; and

(4) The department shall modify the fee-for-service  
reimbursement rates of the nursing facilities to  
recognize the medicaid portion of the nursing facility  
sustainability fee as an additional cost of serving  
medicaid patients, and to provide a uniform percentage  
increase in pre-existing facility-specific rates."

(3) By amending subsection (a) of section -13, Hawaii  
Revised Statutes, to read as follows:

"(a) Collection of the nursing facility sustainability fee  
under section -5 shall be discontinued if:

(1) The waiver in section -7 or the enhanced capitation  
rates in section -10 have not been approved by the  
Centers for Medicare and Medicaid Services;

(2) The department reduces funding for nursing facility  
services below the state appropriation in effect on  
June 30, ~~[2014,]~~ 2015;

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

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

SECTION 2. Act 156, Session Laws of Hawaii 2012, as amended by section 3 of Act 142, Session Laws of Hawaii 2013, and as amended by section 2 of Act 124, Session Laws of Hawaii 2014, 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 June 30, ~~[2015-]~~ 2016; provided that section -4, Hawaii Revised Statutes, established by section 2 of this Act, and section 3 of this Act, shall be repealed on December 31, ~~[2015-]~~ 2016; and provided further that the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act shall not be repealed when section 36-30, Hawaii Revised Statutes, is reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009."

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SECTION 3. Act 124, Sessions Laws of Hawaii 2014, 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 5 shall take effect on July 1, 2014;

(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 not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009; and

(3) ~~[The amendments made in sections 3 and 4 shall be repealed on December 31, 2015, and sections 36-27 and 36-30, Hawaii Revised Statutes, shall be reenacted in the form provided in section 34 of Act 79, Session Laws of Hawaii 2009.]~~ Sections 3 and 4 shall be repealed on December 31, 2016."

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the

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1 prorated estimate of central service expenses of government in  
2 relation to all special funds, except the:

- 3 (1) Special out-of-school time instructional program fund  
4 under section 302A-1310;
- 5 (2) School cafeteria special funds of the department of  
6 education;
- 7 (3) Special funds of the University of Hawaii;
- 8 (4) State educational facilities improvement special fund;
- 9 (5) Convention center enterprise special fund under  
10 section 201B-8;
- 11 (6) Special funds established by section 206E-6;
- 12 (7) Housing loan program revenue bond special fund;
- 13 (8) Housing project bond special fund;
- 14 (9) Aloha Tower fund created by section 206J-17;
- 15 (10) Funds of the employees' retirement system created by  
16 section 88-109;
- 17 (11) Hawaii hurricane relief fund established under chapter  
18 431P;
- 19 (12) Hawaii health systems corporation special funds and  
20 the subaccounts of its regional system boards;
- 21 (13) Tourism special fund established under section 201B-  
22 11;

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- 1       (14) Universal service fund established under section 269-
- 2               42;
- 3       (15) Emergency and budget reserve fund under section 328L-
- 4               3;
- 5       (16) Public schools special fees and charges fund under
- 6               section 302A-1130;
- 7       (17) Sport fish special fund under section 187A-9.5;
- 8       (18) Glass advance disposal fee established by section
- 9               342G-82;
- 10       (19) Center for nursing special fund under section 304A-
- 11              2163;
- 12       (20) Passenger facility charge special fund established by
- 13              section 261-5.5;
- 14       (21) Court interpreting services revolving fund under
- 15              section 607-1.5;
- 16       (22) Hawaii cancer research special fund;
- 17       (23) Community health centers special fund;
- 18       (24) Emergency medical services special fund;
- 19       (25) Rental motor vehicle customer facility charge special
- 20              fund established under section 261-5.6;
- 21       (26) Shared services technology special fund under section
- 22              27-43;

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- 1       (27) Automated victim information and notification system
- 2               special fund established under section 353-136;
- 3       (28) Deposit beverage container deposit special fund under
- 4               section 342G-104;
- 5       (29) Hospital sustainability program special fund under Act
- 6               217, Session Laws of Hawaii 2012, as amended by Act
- 7               141, Session Laws of Hawaii 2013;
- 8       (30) Nursing facility sustainability program special fund
- 9               under Act 156, Session Laws of Hawaii 2013[+], as
- 10              amended by Act 142, Session Laws of Hawaii 2013, and
- 11              Act 124, Session Laws of Hawaii 2014;
- 12       (31) Hawaii 3R's school improvement fund under section
- 13               302A-1502.4; and
- 14       (32) After-school plus program revolving fund under section
- 15               302A-1149.5,
- 16 shall deduct five per cent of all receipts of all special funds,
- 17 which deduction shall be transferred to the general fund of the
- 18 State and become general realizations of the State. All
- 19 officers of the State and other persons having power to allocate
- 20 or disburse any special funds shall cooperate with the director
- 21 in effecting these transfers. To determine the proper revenue
- 22 base upon which the central service assessment is to be
- 23 calculated, the director shall adopt rules pursuant to chapter



91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Funds of the employee's retirement system created by section 88-109;
- (9) Hawaii hurricane relief fund established under section 431P-2;

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- 1       (10)   Convention center enterprise special fund established
- 2               under section 201B-8;
- 3       (11)   Hawaii health systems corporation special funds and
- 4               the subaccounts of its regional system boards;
- 5       (12)   Tourism special fund established under section 201B-
- 6               11;
- 7       (13)   Universal service fund established under section 269-
- 8               42;
- 9       (14)   Emergency and budget reserve fund under section 328L-
- 10              3;
- 11       (15)   Public schools special fees and charges fund under
- 12              section 302A-1130;
- 13       (16)   Sport fish special fund under section 187A-9.5;
- 14       (17)   Center for nursing special fund under section 304A-
- 15              2163;
- 16       (18)   Passenger facility charge special fund established by
- 17              section 261-5.5;
- 18       (19)   Court interpreting services revolving fund under
- 19              section 607-1.5;
- 20       (20)   Hawaii cancer research special fund;
- 21       (21)   Community health centers special fund;
- 22       (22)   Emergency medical services special fund;

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(23) Rental motor vehicle customer facility charge special fund established under section 261-5.6;

(24) Shared services technology special fund under section 27-43;

(25) Nursing facility sustainability program special fund established pursuant to Act 156, Session Laws of Hawaii 2012[+], as amended by Act 142, Session Laws of Hawaii 2013, and Act 124, Session Laws of Hawaii 2014;

(26) Automated victim information and notification system special fund established under section 353-136; and

(27) Hospital sustainability program special fund under Act 217, Session Laws of Hawaii 2012, as amended by Act 141, Session Laws of Hawaii 2013,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 6. There is appropriated out of the nursing facility sustainability program special fund the sum of \$12,000,000 or so much thereof as may be necessary for fiscal year 2015-2016 to be used for purposes consistent with the nursing facility sustainability program special fund.

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



**Report Title:**

Nursing Facility Sustainability Program; Nursing Facility Sustainability Program Special Fund

**Description:**

Amends Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, and as amended by Act 124, Session Laws of Hawaii 2014, to continue the Nursing Facility Sustainability Program by extending the sunset date of the Act, updating the referral dates in the statute, and appropriating funding out of the nursing facility sustainability program special fund for fiscal year 2015-2016. Effective June 29, 2015.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

PURPOSE: To continue the Nursing Facility Sustainability Program, established by Act 156, Session Laws of Hawaii 2012 (Act 156), as amended by Act 142, Session Laws of Hawaii 2013 (Act 142), and Act 124 Session Laws of Hawaii 2014 (Act 124), by extending the sunset date of Act 156 to June 30, 2016, updating the referral dates in the statute, appropriating funding out of the Nursing Facility Sustainability Program Special Fund for fiscal year 2015-2016, and making technical amendments to ensure that the Special Fund is, through December 31, 2016 exempted from the central service expenses assessment and the administrative expenses assessment under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, respectively.

MEANS: Amend sections 2 and 5 of Act 156, as amended by Act 142 and Act 124, and add appropriation language. In addition, this bill makes technical amendments to section 5 of Act 156 and to Act 124 to preserve the exemptions under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, and includes similar technical language to section 8 of this bill.

JUSTIFICATION: Act 156, as amended by Act 142 and Act 124, established the Nursing Facility Sustainability Program and the Nursing Facility Sustainability Program Special Fund (the Special Fund). The Special Fund receives moneys from the nursing facility sustainability fee, which is used to receive federal Medicaid matching funds under the Medicaid Section 1115 Demonstration Waiver and is used to increase reimbursements to the nursing facilities. The Nursing

Facility Sustainability Program will be repealed on June 30, 2015, with funding provisions repealed on December 31, 2015.

This bill proposes to extend the Nursing Facility Sustainability Program and the Special Fund for another year.

Under this program, a fee is levied on non-governmental nursing facilities and uses that revenue largely to leverage federal funds and increase reimbursement to nursing facilities, with a greater benefit to those providing proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the long-term care safety-net.

In fiscal year 2012-2013, the nursing facilities were assessed \$11,535,405 in sustainability fees and received \$21,086,740 in additional reimbursement. In fiscal year 2013-2014 nursing facilities were assessed \$11,436,642 and received \$20,906,201 in additional reimbursement. In fiscal year 2014-2015 it is anticipated that the nursing facilities will be assessed \$10,346,784 in fees and receive \$21,614,340 in additional reimbursements.

The twelve percent of the revenues from the fees collected is to be used by the Department of Human Services (DHS) to increase and improve services for Medicaid program recipients.

In fiscal year 2012-2013, the DHS retained \$1,384,248 of the sustainability fees. All of the retained fees were used to restore the three percent reduction in reimbursement rates from the previous year and the nursing facilities received approximately \$2,900,000 in increased reimbursement. For fiscal year 2013-2014, the DHS retained \$1,370,000 and it is estimated that the DHS will retain

approximately \$1,410,000 in sustainability fees for fiscal year 2014-2015.

Technical amendments: Act 156, as amended by Act 142 and Act 124, exempts the Special Fund from assessments for central services expenses and administrative expenses under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, preserving approximately \$820,000 each year to support increased reimbursement to nursing facilities. Both of these statutes will be repealed on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009, and will be reenacted in the form in which they read on June 30, 2009. This will eliminate the Special Fund's exemptions from the assessments and reduce the funds available for nursing facility reimbursement.

This bill extends the Nursing Facility Sustainability Program for one year past the repeal and reenactment date of June 30, 2015, and extends the Special Fund for an additional six months thereafter. Therefore, unless the proposed technical amendments are adopted, the exemptions from the central service expenses and administrative expenses assessments will be lost when sections 36-27(a) and 36-30(a) are repealed and reenacted on June 30, 2015, and the Special Fund will then be subject to those assessments. The DHS estimates that the Special Fund will be subject to the central service expenses assessment for the period July 1, 2015, through June 30, 2106, in the amount of \$600,000, and the administrative expenses assessment for the same period in the amount of \$120,000.

Impact on the public: Hawaii residents benefit by having more sustainable nursing facilities and thereby have increased access to necessary long-term care. Long-term care services for low-income, vulnerable residents will be increased and improved.



Impact on the department and other agencies:  
The Department of Human Services will benefit by receiving some additional funds to support its programs.

GENERAL FUND: None.

OTHER FUNDS: \$12,000,000 Nursing Facility Sustainability Program Special Fund.

PPBS PROGRAM  
DESIGNATION: HMS 401.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: June 29, 2015.