

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 806, RELATING TO THE HOSPITAL SUSTAINABILITY PROGRAM.

BEFORE THE:

SENATE COMMITTEES ON HUMAN SERVICES AND HOUSING AND ON HEALTH

DATE: Tuesday, February 3, 2015

TIME: 1:20 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
LEE-ANN N.M. BREWER, Deputy Attorney General

Chairs Chun Oakland and Green and Members of the Committee:

The Attorney General provides the following comments on this measure.

This measure extends the sunset date of the hospital sustainability program, updates referral dates in the statute, and makes other changes to the hospital sustainability program. This measure also amends sections 36-27 and 36-30, Hawaii Revised Statutes (HRS), which impose certain assessments on state special funds. There are some technical problems with this measure as drafted, which have been addressed in two administration measures, House Bill No. 933 and Senate Bill No. 1102, HMS-04(15), both relating to the hospital sustainability program.

Act 217, Session Laws of Hawaii 2012, exempted the hospital sustainability program special fund (the special fund) from the administrative expenses assessment imposed by section 36-30, HRS. In 2014, the special fund was also exempted from the central service expenses assessment imposed by section 36-27, HRS. See Act 123, Session Laws of Hawaii 2014. Both sections 36-27 and 36-30 are subject to repeal and reenactment on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009. The effect of repeal and reenactment of sections 36-27 and 36-30 will be that the special fund loses its exemptions from the central service expenses and administrative expenses assessments, and will then be subject to paying those assessments beginning July 1, 2015. Under section 2 of this measure, the special fund is extended to December 31, 2016; therefore, the special fund would be subject to the assessments between July 1, 2015 and December 31, 2016.

Because this measure extends the sunset date of the hospital sustainability program and makes some small amendments to the exemptions in sections 36-27 and 36-30, HRS, it appears

that the intent of the bill is to preserve those exemptions. In order to do so, it is important that the creation of, and any subsequent amendments to, each exemption under sections 36-27 and 36-30 be protected from repeal and reenactment under section 34 of Act 79, Session Laws of Hawaii 2009. This will require amending Act 217, Session Laws of Hawaii 2012, which first exempted the special fund from the administrative expenses assessment, as well as Act 123, Session Laws of Hawaii 2014, which exempted the special fund from the central service expenses assessment. Because the effective date of this measure is June 29, 2015, the amendments made in sections 3 and 4 of this measure will also need to be preserved.

The Legislative Reference Bureau (LRB) staff had concerns regarding clarity of the repeal and reenactment provisions, and we therefore consulted with LRB staff during the drafting and review of the administration measures, House Bill No. 933 and Senate Bill No. 1102. We make the following recommendations that are consistent with the recommendations contained in the administration measures, to ensure that the exemptions from the central service expenses and administrative expenses assessments are preserved beyond June 30, 2015:

1. That section 2 of this measure amending Act 217, Session Laws of Hawaii 2012, as amended, be amended to read as follows to preserve the exemption from the administrative expenses assessment under section 36-30, Hawaii Revised Statutes through December 31, 2016:

SECTION 2. Act 217, Session Laws of Hawaii 2012, as amended by Act 141, Session Laws of Hawaii 2013, section 2, as amended by Act 123, Session Laws of Hawaii 2014, section 2, 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, in 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."

2. That the following section be added to amend Act 123, Session Laws of Hawaii 2014, to preserve the exemption from the central services expenses assessment under section 36-27, Hawaii Revised Statutes, and the amendment to section 36-30, Hawaii Revised Statutes, through December 31, 2016:

SECTION __. Act 123, Session 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 ~~[section]~~;

(1) Section 5 shall take effect on July 1, 2014~~[-]~~;

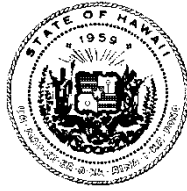
(2) The amendments made to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009; and

(3) Sections 3 and 4 shall be repealed on December 31, 2016."

3. That section 7 of this bill be amended to read as follows:

SECTION 7. This Act, upon its approval, shall take effect on June 29, 2015; provided that section 5 shall take effect on July 1, 2015, and provided that the amendments to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, by 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.

We respectfully request that this Committee amend the bill as suggested above.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 3, 2015

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services and Housing

The Honorable Josh Green, Chair
Senate Committee on Health

FROM: Rachael Wong, DrPH, Director

SUBJECT: **S.B. 806 - RELATING TO THE HOSPITAL
SUSTAINABILITY PROGRAM**

Hearing: Tuesday, February 3, 2015; 1:20 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of the bill is to continue the Hospital Sustainability Program, established by Act 217, Session Laws of Hawaii 2012, as amended by Act 141, Session Laws of Hawaii 2013 and Act 123, Session Laws of Hawaii 2014, by extending the sunset date of the Act to June 30, 2016, updating the referral dates in the statute, and revising the funding amount of the Hospital Sustainability Program Special Fund for fiscal year 2015-2016.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments on this measure to extend the Hospital Sustainability Program for another year. Continuing the Hospital Sustainability Program will benefit Hawaii residents by having more sustainable hospitals and increased access to necessary medical care. DHS informs the committee that the DHS continues to discuss further amendments with the Healthcare Association of Hawaii.

The Administration's bills addressing the extension of the Hospital Sustainability Program is S.B. 1102.

The appropriation of \$50 million in Section 5 of the bill, which does not require any appropriation from general funds, will ensure that Hawaii is able to match the maximum amount allowed under federal regulations, with federal funds, to benefit Hawaii's hospitals statewide.

The DHS is in active discussion with the Healthcare Association of Hawaii on proposed amendments related to supplemental uncompensated care and upper payment limit payments language and optimistic that agreement on language to include in the bill will be reached shortly.

The hospital sustainability program fees levied on non-governmental hospitals are used to leverage federal funds and increase reimbursement to hospitals, with a greater benefit to those providing proportionately more services to Medicaid recipients and the uninsured. These additional moneys will increase the sustainability of hospitals in Hawaii to continue as a critical part of the health care safety net.

In fiscal year 2012-2013, the hospitals were assessed \$40,103,774 in sustainability fees and received \$77,468,401 in additional reimbursements, and in fiscal year 2013-2014 hospitals were assessed \$44,490,855 in sustainability fees and received additional reimbursements of \$81,309,367. In fiscal year 2014-2015 it is anticipated that the hospitals will be assessed \$46,621,994 in sustainability fees and it is estimated hospitals will receive additional reimbursements of \$84,687,653.

Additionally, twelve percent of the revenues from the fees collected are to be used by the DHS for administrative expenses and to increase and improve services for Medicaid program recipients.

This bill proposes to also continue exempting the Hospital Sustainability Program Special Fund from the central service expenses assessed under section 36-27, HRS, and the administrative expenses assessed under section 36-30, HRS. This exemption will ensure that all moneys received in fees will only be used to increase the sustainability of hospitals in Hawaii and to benefit Medicaid program recipients.

Without these two exemptions from the departmental administrative expenses and central services expenses assessments, the Hospital Sustainability program would have to pay \$2.5 million in central services and \$500,000 in department administrative services assessments. This is a total of \$3 million which the Department would not be able to use to sustain hospitals and improve services to Medicaid recipients. If required to pay these expenses, \$3 million in matching federal funds that otherwise would have been paid to the hospitals would not be received and enter our economy. Without the exemption, a \$3 million payment to the State would result in a \$6 million loss for the hospitals that provide care to residents of Hawaii.

Thank you for the opportunity to testify on this bill



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the Senate Committee on Human Services and Housing and
Committee on Health
Tuesday, February 03, 2015 at 1:20 P.M.
Conference Room 016, State Capitol**

**RE: SENATE BILL 806 RELATING TO THE HOSPITAL SUSTAINABILITY
PROGRAM**

Chairs Chun Oakland and Green, Vice Chairs Green and Wakai, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** SB 806, which continues the Hospital Sustainability Program by extending its sunset date to June 30, 2016, updating the referral dates in the statute, and revising the funding amount for the hospital sustainability program for fiscal year 2015-2016.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This bill helps the state and Hawaii hospitals utilize this program to leverage much needed federal dollars. A sustainable hospital network and health care industry is vital to the health of our employees, business, and our overall quality of life.

Thank you for the opportunity to testify.



Senate Committee on Human Services and Housing

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

Senate Committee on Health

The Hon. Josh Green, Chair

The Hon. Glenn Wakai, Vice Chair

Testimony on Senate Bill 806

Relating to the Hospital Sustainability Program

Submitted by Robert Hirokawa, Chief Executive Officer

February 3, 2015, 1:20 pm, Room 016

The Hawaii Primary Care Association supports Senate Bill 806, which makes adjustments to the Hospital Sustainability Program and extends its sunset date to June 30, 2016.

Recognizing that Medicaid payments to hospitals were far below the actual costs of care, the Legislature created the Hospital Sustainability Program by enacting Act 217, SLH 2012, which increases Medicaid payments to hospitals. The program achieves this by assessing a fee on hospitals, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to hospitals. Payment is based on the amount of a hospital's uncompensated care, which consists of nonpayment by uninsured patients and underpayment by Medicaid.

Thank you for the opportunity to testify.



Tuesday, February 3, 2015 – 1:20 p.m.
Conference Room #016

The Joint Senate Committees on Health and Human Services and Housing

To: Senator Josh Green, Chair, HTH Committee
Senator Glenn Wakai, Vice Chair, HTH Committee

Senator Suzanne Chun Oakland, Chair, HSH Committee
Senator Josh Green, Vice Chair, HSH Committee

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: Testimony in Strong Support
SB806 — Relating to the Hospital Sustainability Program

The Healthcare Association of Hawaii's 160 member organizations include all of the acute care hospitals in Hawaii, all public and private skilled nursing facilities, all the Medicare-certified home health agencies, all hospices, all assisted living facilities, durable medical equipment suppliers and home infusion/pharmacies. Members also represent other healthcare providers from throughout the continuum including case management, air and ground ambulance, blood bank, dialysis, and more. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to testify in **strong support** of SB806, which makes adjustments to the Hospital Sustainability Program and extends its sunset date to June 30, 2016.

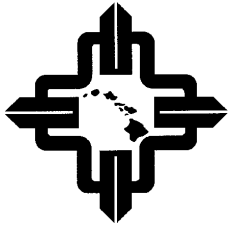
Recognizing that Medicaid payments to hospitals were far below the actual costs of care, the Legislature created the Hospital Sustainability Program by enacting Act 217, SLH 2012, which increases Medicaid payments to hospitals. The program achieves this by assessing a fee on hospitals, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to hospitals.

Specifically, non-government hospitals are assessed an annual fee based on their patient revenues. Payment is based on the amount of a hospital's uncompensated care, which consists of nonpayment by uninsured patients and underpayment by Medicaid. Although the fees and payments are different for every hospital, the overall goal of the program is being achieved.

Medicaid payments to many facilities are now closer to the actual costs of care, thereby reducing their losses and improving their financial stability. As such, the Hospital Sustainability Program ensures that Medicaid patients will continue to have access to the hospital care that they need. It is important to note that the program requires no state or taxpayer funding. The program actually generates revenue for the state and its healthcare facilities.

The companion bill to this measure (HB581) was heard by the House Committee on Health last week, at which time the Department of the Attorney General provided suggested amendments to mirror the language found in SB1102, an administration bill. Since then, HAH discussed the amendments with the Department of Human Services, and is in support of these changes.

Thank you for the opportunity to testify in strong support of SB806.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

Quality Health Care For All"

Senate Committee on Human Services and Housing
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

Senate Committee on Health
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

February 3, 2015
Conference Room 016
1:20 p.m.
Hawaii State Capitol

Testimony Supporting Senate Bill 806 Relating to the Hospital Sustainability Program

Continues the Hospital Sustainability Program by extending its sunset date to June 30, 2016, updating the referral dates in the statute, and revising the funding amount for the Hospital Sustainability Program for fiscal year 2015-2016.

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in strong support of SB 806 that continues the Hospital Sustainability Program.

Given that health care provider reimbursements are declining at both the federal and state level, it is imperative that health care providers find innovative ways to generate revenues to offset the decline in reimbursements. We believe that the concept of a provider fee on health care items or services provided by nursing facilities is a good financing mechanism that leverages federal funds to increase the reimbursements to hospitals from the MedQUEST programs.

As is common in other states that have implemented sustainability fee programs, the public hospitals of the Hawaii Health Systems Corporation are being exempted from the hospital sustainability program. This is being done to maximize both the amount of federal funds that the private hospitals will receive through the hospital sustainability fee program and the amount of federal matching funds the public hospitals can receive under the State of Hawaii's Section 1115 waiver. As a matter of public policy, the public

hospitals should be allowed to utilize their certified public expenditures to the maximum extent possible for their exclusive benefit as a means of continuing financing for their operating deficits. In this way, the greatest amount of federal funds may be realized and the private hospitals and the public hospitals as a whole will receive greater reimbursements than they are currently receiving.

Thank you for the opportunity to testify before this committee. We would respectively recommend the Committee's support of this measure.



THE QUEEN'S HEALTH SYSTEMS

SB 806, Relating to the Hospital Sustainability Program
Senate Committee on Human Services and Housing
Senate Committee on Health
Hearing—February 03, 2015 at 1:20 PM

My name is Paula Yoshioka, and I am a Senior Vice President at The Queen's Health Systems (QHS). I would like to express my support for testimony provided by the Healthcare Association of Hawaii regarding SB 806, a bill relating to the Hospital Sustainability Program. I would also like to express my support for the Hospital Sustainability Program, which this bill would extend for one more year.

The Hospital Sustainability Program issues a fee on hospital providers in the state of Hawaii, including QHS. The revenue generated by this fee is used by the state to draw down matching federal funds. For the last several years, as hospitals have faced declining federal payments for providing care to the un- or underinsured patients, the Hospital Sustainability Program has allowed the state to support the provision of uncompensated care. In 2012, QHS provided approximately \$91 million in uncompensated and charity care. The Hospital Sustainability Program helped QHS offset a portion of those costs. We are looking forward to joining our hospital partners at HAH in supporting the fair distribution of funds generated through this program.

I ask that you support the continuation of this the Hospital Sustainability Program. Thank you for your time and consideration of this matter.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.