

JAN 24 2019

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# A BILL FOR AN ACT

RELATING TO THE HOSPITAL SUSTAINABILITY PROGRAM.

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

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

10       The legislature further finds that even with this program,  
11 hospitals in the State face financial challenges. These  
12 challenges are due in part to inadequate payments from the  
13 medicaid program that do not cover the actual costs of  
14 care. Medicaid is jointly financed by the federal and state  
15 governments by statutory formula. The federal government pays  
16 between fifty per cent and seventy-four per cent, with  
17 assistance levels determined by each state's per capita  
18 income. States with the lowest per capita income receive higher

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1 federal matching rates. Under federal rules, the state share  
2 must be paid from public funds that are not federal funds. The  
3 legislature finds that public funding to help financially  
4 sustain Hawaii's hospitals may be accessed through a provider  
5 fee.

6 The legislature further finds that provider fees exist in  
7 forty-nine states and the District of Columbia as a means of  
8 drawing down federal funds to sustain medicaid programs due to  
9 rising state budget deficits, increasing health care costs, and  
10 expanding medicaid enrollment. Provider fees, which are  
11 collected from specific categories of health care providers that  
12 agree to the fee, may be imposed on nineteen different classes  
13 of health care services, including inpatient and outpatient  
14 hospital and nursing facility services.

15 The legislature additionally finds that, in Hawaii, a  
16 provider fee on hospitals has resulted in substantial increases  
17 in medicaid payments at a time when there are constraints on the  
18 State's budget. The additional federal funds obtained via the  
19 fee program authorized by the hospital sustainability program  
20 have helped to reduce the amount of losses incurred by hospitals  
21 and maintain access to care for medicaid recipients. This  
22 allows hospitals in the state to continue to serve uninsured or

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1 under-insured patients in a timely, effective manner, and helps  
2 to ensure the overall sustainability of the healthcare system in  
3 the State.

4 The purpose of this Act is to preserve access to health  
5 care for medicaid recipients by extending the hospital  
6 sustainability program.

7 SECTION 2. Section 346G-3, Hawaii Revised Statutes, is  
8 amended by amending the definition of "private hospital", adding  
9 a definition of medicaid cost report, and repealing the  
10 definition of "section 1115 waiver":

11 "Medicaid cost report" means the annual cost report that a  
12 hospital submits to the state's medicaid agency.

13 "Private hospital" means [~~those non-public hospitals named~~  
14 ~~in attachment A of the medicaid section 1115 demonstration~~  
15 ~~waiver that were in operation in calendar year 2016 and are~~  
16 ~~currently operating or any hospitals not named in attachment A~~  
17 ~~of the medicaid section 1115 demonstration waiver that became~~  
18 ~~private hospitals in calendar year 2017 or 2018 and are] all  
19 currently operating[-]hospitals except for hospitals that are:~~

- 20 (1) Operated by the Hawaii health systems corporation; or  
21 (2) Charitable hospitals funded primarily through  
22 donations or other non-insurance sources of funding,

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1           and whose net patient revenue is less than forty per  
2           cent of operating expenses, per the medicaid cost  
3           report.

4           ~~["Section 1115 waiver" means the medicaid section 1115~~  
5           ~~demonstration waiver under which the state medicaid program is~~  
6           ~~operating.] "~~

7           SECTION 3. Section 346G-5, Hawaii Revised Statutes, is  
8           amended by amending subsection (d) to read as follows:

9           "(d) The department shall exempt children's hospitals,  
10          federal hospitals, public hospitals, and psychiatric hospitals  
11          from the hospital sustainability fees on inpatient services. In  
12          addition, the department shall exempt from the hospital  
13          sustainability fee on outpatient care services children's  
14          hospitals, public hospitals, ~~[rehabilitation hospitals,~~  
15          ~~psychiatric hospitals, and any hospitals with net outpatient~~  
16          ~~revenues of less than \$57,000,000 per year based upon the~~  
17          ~~hospital's medicare cost report for the fiscal year ending three~~  
18          ~~years prior to the state fiscal year for which the hospital's~~  
19          ~~net patient service revenue is calculated]~~ and federal  
20          hospitals; provided that the department may exclude any facility  
21          from the hospital sustainability fee ~~[on outpatient care~~

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1 ~~services]~~ if it is determined that its exclusion is required to  
2 meet federal standards of approval."

3 SECTION 4. Section 346G-10, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) In accordance with title 42 Code of Federal  
6 Regulations part 438, the department shall use revenues from the  
7 hospital sustainability fee and federal matching funds to  
8 enhance the capitated rates paid to medicaid managed care health  
9 plans for state fiscal years [~~2017-2018 and 2018-2019,~~] 2019-  
10 2020 and 2020-2021, consistent with the following objectives:

11 (1) The rate enhancement shall be used exclusively for  
12 increasing reimbursements to private hospitals to  
13 support the availability of services and to ensure  
14 access to care to the medicaid managed care health  
15 plan enrollees;

16 (2) The rate enhancement shall be made part of the monthly  
17 capitated rates by the department to medicaid managed  
18 care health plans, which shall provide documentation  
19 to the department and the hospital trade association  
20 located in Hawaii certifying that the revenues  
21 received under paragraph (1) are used in accordance  
22 with this section;

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

(4) The rate enhancements shall be retroactive to July 1, 2012, or the effective date approved by the federal government, whichever is later. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department of all necessary approvals; and

(5) Payments made by the medicaid managed care health plans shall be made within thirty business days upon receipt of monthly capitation rates from the department."

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

"(a) Collection of the hospital sustainability fee established by section 346G-5 shall be discontinued if:

(1) The required federal approvals specified in section 346G-7 are not granted or are revoked by the Centers for Medicare and Medicaid Services;

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(2) The department reduces funding for hospital services below the state appropriation in effect as of July 1, ~~[2012-]~~ 2020;

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

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

SECTION 6. Act 217, Session Laws of Hawaii 2012, as amended by section 2 of Act 141, Session Laws of Hawaii 2013, as amended by section 2 of Act 123, Session Laws of Hawaii 2014, as amended by section 2 of Act 70, Session Laws of Hawaii 2015, as amended by section 3 of Act 60, Session Laws of Hawaii 2016, and as amended by section 5 of Act 59, Sessions Laws of Hawaii 2017, is amended by amending section 5 to read as follows:

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1       "SECTION 5. This Act shall take effect on July 1, 2012,  
2 and shall be repealed on June 30, [~~2019,~~] 2021; provided that  
3 section -4, Hawaii Revised Statutes, in section 2 of this  
4 Act, and the amendment to section 36-30(a), Hawaii Revised  
5 [~~Statutes,~~] Statutes, in section 3 of this Act, shall be repealed  
6 on December 31, [~~2019,~~] 2021."

7       SECTION 7. Act 123, Session Laws of Hawaii 2014, as  
8 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as  
9 amended by section 4 of Act 60, Session Laws of Hawaii 2016, and  
10 as amended by section 6 of Act 59, Session Laws of Hawaii 2017,  
11 is amended by amending section 7 to read as follows:

12       "SECTION 7. This Act shall take effect on June 29, 2014;  
13 provided that:

14       (1) Section 5 shall take effect on July 1, 2014; and

15       (2) The amendments made to sections 36-27(a) and 36-30(a),  
16 Hawaii Revised [~~Statutes,~~] Statutes, in sections 3 and  
17 4 of this Act shall be repealed on December 31,  
18 [~~2019,~~] 2021."

19       SECTION 8. There is appropriated out of the hospital  
20 sustainability program special fund the sum of \$75,000,000 or so  
21 much thereof as may be necessary for fiscal year 2019-2020 and  
22 the same sum or so much thereof as may be necessary for fiscal



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1 year 2020-2021 for the purposes of the hospital sustainability  
2 program special fund.

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

5 SECTION 9. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act, upon its approval, shall take effect  
8 on June 29, 2019; provided that section 7 of this Act shall take  
9 effect on July 1, 2019.

10  
11 INTRODUCED BY:



12 BY REQUEST  
13

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**Report Title:**

Hospital Sustainability Program; Appropriation

**Description:**

Continues the Hospital Sustainability Program for two years. Appropriates funds out of the Hospital Sustainability Program Special Fund for fiscal years 2019-2020 and 2020-2021.

*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 HOSPITAL SUSTAINABILITY PROGRAM.

PURPOSE: To continue the Hospital Sustainability Program, established by Act 217, Session Laws of Hawaii 2012, now part of chapter 346G, Hawaii Revised Statutes, by extending the sunset date to June 30, 2021, updating the referral dates in the statute, appropriating \$75,000,000 out of the Hospital Sustainability Program Special Fund for fiscal years 2019-2020 and 2020-2021, updating definitions, and making technical amendments to ensure that the Special Fund is, through December 31, 2021, 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 346G-3, 346G-5(d), 346G-10(b), and 346G-12(a), Hawaii Revised Statutes, section 5 of Act 217, Session Laws of Hawaii 2012, as last amended by Act 59, Session Laws of Hawaii 2017, and section 7 of Act 123, Session Laws of Hawaii 2014, as last amended by Act 59, Session Laws of Hawaii 2017. Appropriates funds from the Hospital Sustainability Program Special Fund.

JUSTIFICATION: Act 217, Session Laws of Hawaii 2012, as last amended by Act 59, Session Laws of 2017, established a Hospital Sustainability Program and the Hospital Sustainability Program Special Fund (the Special Fund). The Special Fund receives moneys from the hospital sustainability fee, which is used to receive federal Medicaid matching funds that is used to increase reimbursements to the private hospitals and payments for performance to the hospitals, with a greater

benefit to those providing proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of hospitals in Hawaii to continue as a critical part of the 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. In fiscal year 2013-2014, the providers were assessed \$44,490,855 in sustainability fees and received additional reimbursements of \$81,309,367. In fiscal year 2014-2015 the providers were assessed \$46,621,994 in sustainability fees and received \$84,687,653 in additional reimbursements. In fiscal year 2017-2018, the providers were assessed \$68,765,751 in sustainability fees and received \$71,870,533 in additional reimbursements.

Twelve percent of the revenues from the fees collected is used by the Department to increase and improve services for Medicaid program recipients.

Without this Act, the Hospital Sustainability Program will be repealed on June 29, 2019, with funding provisions to be repealed on December 31, 2019.

This bill proposes to extend the Hospital Sustainability Program and the Special Fund for another two years. It also updates definitions of impacted hospitals due to outdated definitions.

Technical Amendments: Act 217, Session Laws of Hawaii 2012, as amended, 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 \$3,000,000 each year to support increased reimbursement to private hospitals. Sections 36-27(a)(31) and 36-

30(a)(28) will be repealed on December 31, 2019. This will eliminate the Special Fund's exemptions from the assessments and reduce the funds available for hospital reimbursement.

This bill extends the Hospital Sustainability Program for two years past the repeal date of June 30, 2019, 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)(31) and 36-30(a)(28), Hawaii Revised Statutes, are repealed on December 31, 2019, and the Special Fund will then be subject to those assessments. The DHS estimates that the Special Fund would be subject to the central service expenses assessment for the period January 1, 2019 through December 31, 2020, in the amount of \$5,000,000, and the administrative expenses assessment for the same period in the amount of \$1,000,000.

Impact on the public: Hawaii residents benefit by having more sustainable hospitals and, thereby, have increased access to necessary medical care. Health 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: \$75,000,000 Hospital Sustainability Program Special Fund for fiscal years 2019-2020 and 2020-2021.

PPBS PROGRAM  
DESIGNATION: HMS 401.

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OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

June 29, 2019.