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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 was established in 2012 and has served a  
3 critical role in strengthening the health care system in Hawaii.  
4 In the nine 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 major financial challenges. These  
12 challenges are due in part to the health and financial pressures  
13 related to the COVID-19 pandemic. Medicaid is jointly financed  
14 by the federal and state governments by statutory formula; the  
15 federal government pays between fifty per cent and seventy-four  
16 per cent, with assistance levels determined by each state's per  
17 capita income. States with the lowest per capita income receive



1 higher federal matching rates. Under federal rules, the state  
2 share must be paid from public funds that are not federal funds.  
3 The 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 therefore finds that, in Hawaii, a provider  
16 fee on hospitals can result in substantial increases in medicaid  
17 payments without putting additional constraints on the State's  
18 budget. The additional federal funds obtained via the fee  
19 program authorized by the hospital sustainability program can  
20 maintain access to care for medicaid recipients. This will  
21 allow hospitals in the State to continue to serve uninsured or



1 underinsured patients in a timely, effective manner. This helps  
2 to ensure the overall sustainability of the health care system  
3 in Hawaii during the challenging time of the COVID-19 pandemic.

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 adding a new definition to be appropriately inserted  
9 and to read as follows:

10 "Net benefit" means total payments using prevailing  
11 federal medical assistance percentage rates made to private  
12 hospitals, less the taxes paid under the hospital sustainability  
13 program."

14 SECTION 3. Section 346G-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[+]§346G-4[+] **Hospital sustainability program special**  
17 **fund.** (a) There is created in the state treasury the hospital  
18 sustainability program special fund to be administered by the  
19 department into which shall be deposited all moneys collected  
20 under this chapter.



1 (b) Moneys in the hospital sustainability program special  
2 fund shall consist of:

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

12 (c) Moneys in the hospital sustainability program special  
13 fund shall be used exclusively as follows:

- 14 (1) No less than [~~eighty-eight~~] ninety per cent of the  
15 revenue from the hospital sustainability fee shall be  
16 used for one or more of the following:
- 17 (A) Match federal medicaid funds, with the combined  
18 total to be used to enhance capitated rates to  
19 medicaid managed care health plans for the sole  
20 purpose of increasing medicaid payments to  
21 private hospitals;



- 1 (B) Match federal medicaid funds for Hawaii's
- 2 medicaid disproportionate share hospital
- 3 allotment as authorized by current federal law
- 4 for private hospitals;
- 5 (C) Match federal medicaid funds for a private
- 6 hospital upper payment limit pool; [~~or~~]
- 7 (D) Match federal medicaid funds with the combined
- 8 total to be used to enhance capitated rates to
- 9 medicaid managed care health plans for the
- 10 purpose of increasing medicaid payments to
- 11 private hospitals through [~~a~~] quality or access
- 12 incentive [~~pool~~] programs; or
- 13 (E) Match federal medicaid funds with the combined
- 14 total to fund medicaid services including but not
- 15 limited to supportive housing, behavioral health,
- 16 vaccinations, preventive health, primary care,
- 17 and home and community-based services;
- 18 (2) [~~Twelve~~] Ten per cent of the moneys in the hospital
- 19 sustainability program special fund may be used by the
- 20 department for other departmental purposes; and



1 (3) Any money remaining in the hospital sustainability  
2 program special fund six months after the repeal of  
3 this chapter, shall be distributed to hospitals within  
4 thirty days in the same proportions as received from  
5 the hospitals.

6 (d) The department shall utilize federal funds derived  
7 from state hospital certified expenditures to make supplemental  
8 payments to state hospitals and is authorized to receive  
9 intergovernmental transfers from the state hospitals to support  
10 direct supplemental payments and increased capitation rates to  
11 health plans for the benefit of the state hospitals. During any  
12 period in which the hospital sustainability fee is in effect,  
13 certified expenditures of state hospitals shall not be used to  
14 make or support direct payments to private hospitals.

15 (e) The aggregate net benefit for private hospitals shall  
16 not be less than the aggregate net benefit provided by the  
17 hospital sustainability program for fiscal year 2021. If  
18 factors affecting the calculation of the aggregate net benefit,  
19 such as medicaid membership, differ materially from the  
20 assumptions used to determine aggregate net benefit in a given  
21 fiscal year, the department shall consult with the hospital



1 trade association on changes to the aggregate net benefit and  
2 changes shall be agreed to in writing by both parties."

3 SECTION 4. Section 346G-5, Hawaii Revised Statutes, is  
4 amended by amending subsections (c) and (d) to read as follows:

5 "(c) The hospital sustainability fee for inpatient care  
6 services may differ from the fee for outpatient care services  
7 but the fees charged to the hospital shall not in the aggregate  
8 exceed [~~four~~] five and one-half per cent of the hospital's net  
9 patient service revenue. The inpatient hospital sustainability  
10 fee shall not exceed [~~four~~] five and one-half per cent of net  
11 inpatient hospital service revenue. The outpatient hospital  
12 sustainability fee shall not exceed [~~four~~] five and one-half per  
13 cent of net outpatient hospital service revenue. Each fee shall  
14 be the same percentage for all affected hospitals, subject to  
15 subsection (d).

16 (d) The department shall exempt [~~children's hospitals,~~]  
17 federal hospitals[~~,~~] and public hospitals[~~, and psychiatric~~  
18 ~~hospitals~~] from the hospital sustainability fees on inpatient  
19 services. In addition, the department shall exempt from the  
20 hospital sustainability fee on outpatient care services federal  
21 hospitals and public hospitals; provided that [~~the~~]:



- 1       (1) Children's hospitals, psychiatric hospitals, and  
2       rehabilitation hospitals may be assessed on inpatient  
3       and outpatient services at a different rate than other  
4       private hospitals; and
- 5       (2) The department may exclude any facility from the  
6       hospital sustainability fee if it is determined that  
7       its exclusion is required to meet federal standards of  
8       approval."

9       SECTION 5. Section 346G-6, Hawaii Revised Statutes, is  
10   amended by amending subsection (b) to read as follows:

11       "(b) The department shall collect, and each hospital shall  
12   pay, the hospital sustainability fee not later than the  
13   ~~[thirtieth]~~ sixtieth day after the end of each calendar month;  
14   provided that if required federal approvals have not been  
15   secured by the end of a calendar month the fees for that month  
16   shall be paid within ten days after notification to the  
17   hospitals that the required approvals have been received."

18       SECTION 6. Section 346G-10, Hawaii Revised Statutes, is  
19   amended as follows:



1           1. Amending subsection (b) to read:  
2           "(b) In accordance with title 42 Code of Federal  
3 Regulations part 438, the department shall use revenues from the  
4 hospital sustainability fee and federal matching funds to  
5 enhance the capitated rates paid to medicaid managed care health  
6 plans for [~~state fiscal years 2019-2020 and 2020-2021,~~] the  
7 period of July 1 through December 31, 2021, and calendar years  
8 2022 and 2023, consistent with the following objectives:  
9           (1) The rate enhancement shall be used exclusively for  
10           increasing reimbursements to private hospitals, to  
11           support the availability of services and to ensure  
12           access to care to the medicaid managed care health  
13           plan enrollees;  
14           (2) The rate enhancement shall be made part of the monthly  
15           capitated rates by the department to medicaid managed  
16           care health plans, which shall provide documentation  
17           to the department and the hospital trade association  
18           located in Hawaii certifying that the revenues  
19           received under paragraph (1) are used in accordance  
20           with this section;



- 1 (3) The rate enhancement shall be actuarially sound and  
2 approved by the federal government for federal fund  
3 participation;
- 4 (4) The rate enhancements shall be retroactive to July 1,  
5 2012, or the effective date approved by the federal  
6 government, whichever is later. Retroactive rate  
7 enhancements shall be paid within thirty days of  
8 notification by the Centers for Medicare and Medicaid  
9 Services to the department of all necessary approvals;  
10 and
- 11 (5) Payments made by the medicaid managed care health  
12 plans shall be made within thirty business days upon  
13 receipt of monthly capitation rates from the  
14 department."
- 15 2. Amending subsection (d) to read:
- 16 "(d) To the extent the hospital sustainability program is  
17 not effective for the entire year, the hospital sustainability  
18 fee, the state medicaid expenses and administrative fee, and the  
19 corresponding [~~medicaid managed care health plan~~] payments to  
20 fulfill the requirements of section 346G-4(c) shall be based on  
21 the proportion of the fiscal year the program is in effect."



1 SECTION 7. Section 346G-12, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§346G-12 Termination.** (a) Collection of the hospital  
4 sustainability fee established by section 346G-5 shall be  
5 discontinued if:

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

9 (2) The department reduces funding for hospital services  
10 below the state appropriation in effect as of July 1,  
11 [~~2020~~] 2021;

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

16 (4) Federal financial participation to match the revenue  
17 from the hospital sustainability fee becomes  
18 unavailable under federal law; provided that the  
19 department shall terminate the imposition of the  
20 hospital sustainability fee beginning on the date the



1 federal statutory, regulatory, or interpretive change  
2 takes effect.

3 (b) [~~Notwithstanding section 346G-4(e), if~~] If collection  
4 of the hospital sustainability fee is discontinued as provided  
5 in this section, any remaining moneys in the hospital  
6 sustainability program special fund shall be distributed [~~within~~  
7 ~~thirty days to the private hospitals on the same basis as the~~  
8 ~~hospital sustainability fee was collected.~~] following the  
9 requirements of 346G-4(c)."

10 SECTION 8. Act 217, Session Laws of Hawaii 2012, section  
11 5, as amended by section 2 of Act 141, Session Laws of Hawaii  
12 2013, as amended by section 2 of Act 123, Session Laws of Hawaii  
13 2014, as amended by Section 2 of Act 70, Session Laws of Hawaii  
14 2015, as amended by section 3 of Act 60, Session Laws of Hawaii  
15 2016, as amended by section 5 of Act 59, Session Laws of Hawaii  
16 2017, as amended by section 6 of Act 173, Session Laws of Hawaii  
17 2019, is amended to read as follows:

18 "SECTION 5. This Act shall take effect on July 1, 2012,  
19 and shall be repealed on [~~June 30, 2021;~~] December 31, 2023;  
20 provided that section -4, Hawaii Revised Statutes, in  
21 section 2 of this Act, and the amendment to section 36-30(a),



1 Hawaii Revised Statutes, in section 3 of this Act, shall be  
2 repealed on [~~December 31, 2021.~~] June 30, 2024."

3 SECTION 9. Act 123, Session Laws of Hawaii 2014, section  
4 7, as amended by section 3 of Act 70, Session Laws of Hawaii  
5 2015, as amended by section 4 of Act 60, Session Laws of Hawaii  
6 2016, as amended by section 6 of Act 59, Session Laws of Hawaii  
7 2017, as amended by section 7 of Act 173, Session Laws of Hawaii  
8 2019, is amended to read as follows:

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

- 11 (1) Section 5 shall take effect on July 1, 2014; and
- 12 (2) The amendments made to section 36-27(a) and 36-30(a),  
13 Hawaii Revised Statutes, in sections 3 and 4 of this  
14 act shall be repealed on [~~December 31, 2021.~~] June 30,  
15 2024."

16 SECTION 10. There is appropriated out of the hospital  
17 sustainability program special fund the sum of \$325,000,000 or  
18 so much thereof as may be necessary for fiscal year 2021-2022  
19 and the same sum or so much thereof as may be necessary for  
20 fiscal year 2022-2023 for the purposes of the hospital  
21 sustainability program special fund.



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

3           SECTION 11. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 12. This Act shall take effect on July 1, 2060;  
6 provided that sections 9 and 10 of this Act shall take effect on  
7 July 1, 2021.



# H.B. NO. 474 H.D. 1

**Report Title:**

Hospital Sustainability Program; Extension; Appropriation

**Description:**

Extends the hospital sustainability program through June 30, 2024. Increases the maximum fee for inpatient care services to five and one-half per cent. Increases the amount of time hospitals have to pay the hospital sustainability fee from thirty days to sixty days. Increases the pool of medicaid services that can be used matching purposes. Appropriates funds. Effective 7/1/2060. (HD1)

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

