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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  
4 Hawaii. 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.

14           The legislature finds that the State can leverage the  
15 Medicaid program to help meet these challenges. Medicaid is  
16 jointly financed by the federal and state governments by  
17 statutory formula; the federal government pays between fifty per  
18 cent and seventy-four per cent, with assistance levels

1 determined by each state's per capita income. States with the  
2 lowest per capita income receive higher federal matching  
3 rates. Under federal rules, the state share must be paid from  
4 public funds that are not federal funds. The legislature finds  
5 that public funding to help financially sustain Hawaii's  
6 hospitals may be accessed through a provider fee.

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

16 The legislature therefore finds that, in Hawaii, a provider  
17 fee on hospitals can result in substantial increases in medicaid  
18 payments without putting additional constraints on the State's  
19 budget. The additional federal funds obtained via the fee  
20 program authorized by the hospital sustainability program can  
21 maintain access to care for medicaid recipients. This will  
22 allow hospitals in the State to continue to serve uninsured or  
23 underinsured patients in a timely, effective manner. This helps

1 to ensure the overall sustainability of the health care system  
2 in Hawaii during the challenging time of the COVID-19 pandemic.

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

6 SECTION 2. Section 346G-3, Hawaii Revised Statutes, is  
7 amended by adding a new definition to be appropriately inserted  
8 and to read as follows:

9 "Net benefit" means total payments, as described in  
10 section 346G-4(c) using prevailing federal medicaid assistance  
11 percentage rates made to private hospitals, less the taxes paid  
12 under this program."

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

15 "[~~f~~]**§346G-4**[~~}]~~ **Hospital sustainability program special**  
16 **fund.** (a) There is created in the state treasury the hospital  
17 sustainability program special fund to be administered by the  
18 department into which shall be deposited all moneys collected  
19 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 expenditures made with the  
5 hospital sustainability fee;
- 6 (3) Any interest or penalties levied in conjunction with  
7 the administration of this chapter; and
- 8 (4) Any designated appropriations, federal funds,  
9 donations, gifts, or moneys from any other sources.
- 10 (c) Moneys in the hospital sustainability program special  
11 fund shall be used exclusively as follows:
- 12 (1) No less than [~~eighty-eight~~] ninety per cent of the  
13 revenue from the hospital sustainability fee shall be  
14 used for one or more of the following:
- 15 (A) Match federal medicaid funds, with the combined  
16 total to be used to enhance capitated rates to  
17 medicaid managed care health plans for the sole  
18 purpose of increasing medicaid payments to  
19 private hospitals;
- 20 (B) Match federal medicaid funds for Hawaii's  
21 medicaid disproportionate share hospital

1 allotment as authorized by current federal law  
2 for private hospitals;

3 (C) Match federal medicaid funds for a private  
4 hospital upper payment limit pool; or

5 (D) Match federal medicaid funds with the combined  
6 total to be used to enhance capitated rates to  
7 medicaid managed care health plans for the  
8 purpose of increasing medicaid payments to  
9 private hospitals through [a] quality or access  
10 incentive [pool:] programs;

11 (E) Match federal medicaid funds, with the combined  
12 total to fund medicaid services that include, but  
13 are not limited to, supportive housing,  
14 behavioral health, vaccinations, preventive  
15 health, primary care, and home- and community-  
16 based services;

17 (2) [~~Twelve~~] Ten per cent of the moneys in the hospital  
18 sustainability program special fund may be used by the  
19 department for other departmental purposes; and

20 (3) Any money remaining in the hospital sustainability  
21 program special fund six months after the repeal of  
22 this chapter, shall be distributed [~~to hospitals~~]

1           within thirty days in the same proportions [~~as~~  
2           ~~received from the hospitals.~~] as described in this  
3           section.

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

13          (e) The aggregate net benefit for private hospitals shall  
14          not be less than the aggregate net benefit provided by this  
15          program for fiscal year 2020-2021. If factors affecting the  
16          calculation of the aggregate net benefit, such as medicaid  
17          membership, differ materially from the assumptions used to  
18          determine aggregate net benefit in a given fiscal year, the  
19          department shall consult with the hospital trade association on  
20          changes to the aggregate net benefit and changes must be agreed  
21          to in writing by the department and the hospital trade  
22          association."

1 SECTION 4. Section 346G-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

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

14 SECTION 5. Section 346G-10, Hawaii Revised Statutes, is  
15 amended by amending subsections (b) to (d) to read as follows:

16 "(b) In accordance with title 42 Code of Federal  
17 Regulations part 438, the department shall use revenues from the  
18 hospital sustainability fee and federal matching funds to  
19 enhance the capitated rates paid to medicaid managed care health  
20 plans for [~~state fiscal years 2019-2020 and 2020-2021,~~] the  
21 period of July 1 through December 31, 2021, and calendar years  
22 2022 and 2023, consistent with the following objectives:

- 1           (1) The rate enhancement shall be used exclusively for  
2           increasing reimbursements to private hospitals, to  
3           support the availability of services and to ensure  
4           access to care to the medicaid managed care health  
5           plan enrollees;
- 6           (2) The rate enhancement shall be made part of the monthly  
7           capitated rates by the department to medicaid managed  
8           care health plans, which shall provide documentation  
9           to the department and the hospital trade association  
10          located in Hawaii certifying that the revenues  
11          received under paragraph (1) are used in accordance  
12          with this section;
- 13          (3) The rate enhancement shall be actuarially sound and  
14          approved by the federal government for federal fund  
15          participation;
- 16          (4) The rate enhancements shall be retroactive to July 1,  
17          2012, or the effective date approved by the federal  
18          government, whichever is later. Retroactive rate  
19          enhancements shall be paid within thirty days of  
20          notification by the Centers for Medicare and Medicaid  
21          Services to the department of all necessary approvals;  
22          and

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

5           (c) If federal approval pursuant to section 346G-7 is not  
6           received until after the end of any month for which the hospital  
7           sustainability fee is applicable, the department shall make the  
8           initial monthly payments within five days after receipt of the  
9           hospital sustainability fee for the respective month.

10          (d) To the extent the hospital sustainability program is  
11          not effective for the entire year, the hospital sustainability  
12          fee, the state medicaid expenses and administrative fee, and the  
13          corresponding [~~medicaid managed care health plan~~] payments to  
14          fulfill the requirements of section 346G-4(c) shall be based on  
15          the proportion of the fiscal year the program is in effect."

16          SECTION 6. Section 346G-12, Hawaii Revised Statutes, is  
17          amended by amending subsections (a) and (b) to read as follows:

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

20               (1) The required federal approvals specified in section  
21               346G-7 are not granted or are revoked by the Centers  
22               for Medicare and Medicaid Services;

1 (2) The department reduces funding for hospital services  
2 below the state appropriation in effect as of July 1,  
3 ~~[2020,]~~ 2021;

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

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

15 (b) Notwithstanding section 346G-4(c), if collection of  
16 the hospital sustainability fee is discontinued as provided in  
17 this section, any remaining moneys in the hospital  
18 sustainability program special fund shall be distributed ~~[within~~  
19 ~~thirty days to the private hospitals on the same basis as the~~  
20 ~~hospital sustainability fee was collected.]~~ following the  
21 requirements of section 346G-4(c)."

1 SECTION 7. Act 217, Session Laws of Hawaii 2012, as  
2 amended by section 2 of Act 141, Session Laws of Hawaii 2013, as  
3 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as  
4 amended by section 2 of Act 70, Session Laws of Hawaii 2015, as  
5 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as  
6 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as  
7 amended by section 6 of Act 173, Session Laws of Hawaii 2019, is  
8 amended by amending section 5 to read as follows:

9 "SECTION 5. This Act shall take effect on July 1, 2012,  
10 and shall be repealed on [~~June 30, 2021;~~] December 31,  
11 2023; provided that section -4, Hawaii Revised Statutes, in  
12 section 2 of this Act, and the amendment to section 36-30(a),  
13 Hawaii Revised Statutes, in section 3 of this Act, shall be  
14 repealed on [~~December 31, 2021.~~] June 30, 2024."

15 SECTION 8. Act 123, Session Laws of Hawaii 2014, as  
16 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as  
17 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as  
18 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as  
19 amended by section 7 of Act 173, Session Laws of Hawaii 2019, is  
20 amended by amending section 7 to read as follows:

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

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

2 (2) The amendments made to sections 36-27(a) and 36-30(a),  
3 Hawaii Revised Statutes, in sections 3 and 4 of this Act shall  
4 be repealed on [~~December 31, 2021.~~] June 30, 2024."

5 SECTION 9. There is appropriated out of the hospital  
6 sustainability program special fund the sum of \$100,000,000  
7 or so much thereof as may be necessary for fiscal year 2021-2022  
8 and the same sum or so much thereof as may be necessary for  
9 fiscal year 2022-2023 for the purposes of the hospital  
10 sustainability program special fund.

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

13 SECTION 10. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act, upon its approval, shall take effect  
16 on June 29, 2021; provided that sections 8 and 9 of this Act  
17 shall take effect on July 1, 2021.

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19 INTRODUCED BY: 

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BY REQUEST  
JAN 25 2021

# H.B. NO. 976

1 **Report Title:**

2 Hospital Sustainability Program; Appropriation

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4 **Description:**

5 Continues the Hospital Sustainability Program for two years.

6 Appropriates funds out of the Hospital Sustainability Program

7 Special Fund for fiscal years 2021-2022 and 2022-2023.

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

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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 December 31, 2023, updating the referral dates in the statute, appropriating \$100,000,000 out of the Hospital Sustainability Program Special Fund for fiscal years 2021-2022 and 2022-2023, and making technical amendments to ensure that the Special Fund is, through June 30, 2024, 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-4, 346G-5(c), 346G-10(b)-(d), and 346G-12(a)-(b), Hawaii Revised Statutes, and section 5 of Act 217, Session Laws of Hawaii 2012, and section 7 of Act 123, Session Laws of Hawaii 2014, as last amended by Act 173, Session Laws of Hawaii 2019; and appropriate funds from the Hospital Sustainability Program Special Fund.

JUSTIFICATION: Act 217, Session Laws of Hawaii 2012, as last amended by Act 173, Session Laws of Hawaii 2019, 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 are used to increase reimbursements to the hospitals and payments for performance to the hospitals, with a greater benefit to those providing proportionately more services to Medicaid

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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. In fiscal year 2018-2019, the providers were assessed \$62,935,303 in sustainability fees and received \$92,051,866 in additional net reimbursements. In fiscal year 2019-2020, the providers were assessed \$70,200,000 and received \$103,000,000 in net additional reimbursements.

Ninety percent of the revenues from the fees collected is to be used by the Department to fund Medicaid services, and ten percent to administer the Medicaid program.

Without this Act, the Hospital Sustainability Program will be repealed on June 30, 2021, with funding provisions to be repealed on December 31, 2021. Ending the Hospital Sustainability Program will terminate the State's ability to receive available federal sustainability matching funds.

This bill proposes to extend the Hospital Sustainability Program and the Special Fund for another two years and six months.

Technical amendments: Act 217, Session Laws of Hawaii 2012, as amended, exempts the

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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 \$5,000,000 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, 2021. Repeal 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 and six months past the repeal date of June 30, 2021 and extends the Special Fund for an additional six months thereafter. 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, 2021, and the Special Fund will then be subject to those assessments. The Department estimates that the Special Fund would be subject to the central service expenses assessment for the period January 1, 2021, through December 31, 2021, 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, having 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.

**H.B. No. 976**

OTHER FUNDS: \$100,000,000 Hospital Sustainability Program  
Special Fund for fiscal years 2021-2022 and  
2022-2023.

PPBS PROGRAM  
DESIGNATION: HMS 401.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: June 29, 2021.