

S.B. NO. 1131

JAN 27 2021

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

11 The legislature further finds that, even with this program,
12 nursing facilities in the State face major challenges. These
13 challenges are due in part to the health and financial pressures
14 related to the COVID-19 pandemic.

15 The legislature finds that the State can leverage the
16 Medicaid program to help meet these challenges. Medicaid is
17 jointly financed by the federal and state governments by

1 statutory formula; the federal government pays between fifty per
2 cent and seventy-four per cent, with assistance levels
3 determined by each state's per capita income. States with the
4 lowest per capita income receive higher federal matching
5 rates. Under federal rules, the state share must be public
6 funds that are not federal funds. The legislature finds that
7 public funding to help sustain Hawaii's nursing facilities
8 financially may be accessed through a provider fee.

9 The legislature further finds that provider fees exist in
10 forty-nine states and the District of Columbia as a means of
11 drawing down federal funds to sustain their medicaid programs
12 due rising state budget deficits, increasing health care costs,
13 and expanding medicaid enrollment. These pressures have
14 accelerated under the COVID-19 pandemic. Provider fees, which
15 are collected from specific categories of health care providers,
16 may be imposed on different classes of health care services,
17 including inpatient and outpatient hospital and nursing facility
18 services.

19 The legislature therefore finds that, in Hawaii, a provider
20 fee on nursing facilities can result in a substantial increase
21 in medicaid payments, without putting additional constraints on
22 the State's budget. The additional federal funds obtained via
23 the fee program authorized by the nursing facility

1 sustainability program can maintain access to care for medicaid
2 recipients. This will allow nursing facilities in the State to
3 continue to serve under- or uninsured patients in a timely,
4 effective matter. This helps to ensure the overall
5 sustainability of the health care system in the State during the
6 challenging time of the COVID-19 pandemic.

7 The purpose of this Act is to preserve access to health
8 care for medicaid recipients by extending the nursing facility
9 sustainability fee program.

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

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

14 (1) No less than eighty-eight per cent of the revenue from
15 the nursing facility sustainability fee shall be used
16 for one or more of the following:

17 (A) To match federal medicaid funds, with the
18 combined total to be used to enhance capitated
19 rates to medicaid managed care health plans for
20 the purpose of increasing medicaid payments to
21 private nursing facilities to support the
22 availability of services and ensure access to

- 1 care for the medicaid managed care health plan
2 enrollees; or
- 3 (B) To match federal medicaid funds, with the
4 combined total to enhance capitated rates for the
5 purpose of paying quality incentives;
- 6 (2) Twelve per cent of the revenue from the nursing
7 facility sustainability fee may be used by the
8 department for other departmental purposes; and
- 9 (3) All moneys remaining in the special fund on [~~December~~
10 ~~30, 2021,~~] June 30, 2024, shall be distributed to
11 nursing facilities within thirty days in the same
12 proportions as received from the nursing facilities."

13 SECTION 3. Section 346F-10, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§346F-10 Enhanced rates to medicaid managed care health**
16 **plans.** In accordance with title 42 Code of Federal Regulations
17 part 438, the department shall use revenues from the nursing
18 facility 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
22 years 2022 and 2023, consistent with the following objectives:

S.B. NO. 1131

- 1 (1) The rate enhancement shall be used exclusively for
2 increasing reimbursements to private nursing
3 facilities to support the availability of services and
4 to ensure access to care to the medicaid managed care
5 health 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 nursing facility trade
10 association located in Hawaii certifying that the
11 revenues received under paragraph (1) are used in
12 accordance 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 department shall modify the fee-for-service
17 reimbursement rates of the nursing facilities to
18 recognize the medicaid portion of the nursing facility
19 sustainability fee as an additional cost of serving
20 medicaid patients, and to provide a uniform percentage
21 increase in preexisting facility-specific rates; and
- 22 (5) Payments made by the medicaid managed care health
23 plans shall be made within thirty calendar days upon

1 receipt of monthly capitation rates from the
2 department."

3 SECTION 4. Section 346F-13, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Collection of the nursing facility sustainability fee
6 under section 346F-5 shall be discontinued if:

7 (1) The waiver in section 346F-7 or the enhanced
8 capitation rates in section 346F-10 have not been
9 approved by the Centers for Medicare and Medicaid
10 Services;

11 ~~[(2) The department reduces funding for nursing facility
12 services below the state appropriation in effect on
13 June 30, 2020;~~

14 ~~+(3)]~~ (2) The department or any other state agency uses the
15 money in the special fund for any use other than the
16 uses permitted pursuant to this chapter; or

17 ~~[(4)]~~ (3) Federal financial participation to match the
18 nursing facility sustainability fee becomes
19 unavailable under federal law. In such case, the
20 department shall terminate the collection of the fee
21 beginning on the effective date of the federal
22 statutory, regulatory, or interpretive change."

S.B. NO. 1131

1 SECTION 5. Act 156, Session Laws of Hawaii 2012, as
2 amended by section 3 of Act 142, Session Laws of Hawaii 2013, as
3 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as
4 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as
5 amended by section 2 of Act 59, Session Laws of Hawaii 2016, as
6 amended by section 5 of Act 60, Session Laws of Hawaii 2017, as
7 amended by section 6 of Act 163, 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,
12 established by section 2 of this Act, and the amendment made to
13 section 36-30(a), Hawaii Revised Statutes, in section 3 of this
14 Act, shall be repealed on [~~December 31, 2021.~~] June 30, 2024."

15 SECTION 6. Act 124, Session Laws of Hawaii 2014, as
16 amended by Act 69, Session Laws of Hawaii 2015, as amended by
17 Act 59, Session Laws of Hawaii 2016, as amended by section 6 of
18 Act 60 Session Laws of Hawaii 2017, as amended by section 7 of
19 Act 163, Session Laws of Hawaii 2019, is amended by amending
20 section 7 to read as follows:

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

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

S.B. NO. 1131

1 **Report Title:**

2 Nursing Facility Sustainability Program; Appropriation

3

4 **Description:**

5 Continues the nursing facility sustainability program for two
6 additional years. Appropriates funds out of the nursing facility
7 sustainability program special fund for fiscal years 2021-2022
8 and 2022-2023.

9

10

11

12

13

14

15

16

17

18

19 *The summary description of legislation appearing on this page is for informational purposes only*
20 *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, last amended by Act 163 Session Laws of Hawaii 2019, by extending the sunset date of the Act to December 31, 2023, updating the referral dates in the statute, appropriating funding out of the Nursing Facility 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 346F-4(c), 346F-5(c), 346F-10, and 346F-13(a), Hawaii Revised Statutes, section 5 of Act 156, Session Laws of Hawaii 2012, as amended by Act 142, Session Laws of Hawaii 2013, Act 124, Session Laws of Hawaii 2014, Act 69, Session Laws of Hawaii 2015, Act 59, Session Laws of Hawaii 2016, Act 60, Session Laws of Hawaii 2017, and section 7 of Act 124, Session Laws of Hawaii 2014, as amended by Act 69, Session Laws of Hawaii 2015, Act 59, Session Laws of Hawaii 2016, Act 60, Session Laws of Hawaii 2017, and Act 163, Session Laws of Hawaii 2019. Appropriates funds from the Nursing Facility sustainability Program Special Fund.

JUSTIFICATION: Act 156, Session Laws of Hawaii 2012, last amended by Act 163, Session Laws of Hawaii 2019, established a 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, and is used to increase reimbursements to the nursing facilities through capitation payments 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 safety net as well as to incentivize quality using a pay for performance.

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

The Nursing Facility Sustainability Program currently will be repealed on December 31, 2023, with funding provisions to be repealed on June 30, 2024.

This bill proposes to extend the Nursing Facility Sustainability Program and the Special Fund for an additional two years and six months.

Technical Amendments:

This bill extends the Nursing Facility 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. 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)(32) and 36-30(a)(26), Hawaii Revised Statutes, are repealed on December 31, 2021, and the Special Fund will then be subject to those assessments. DHS 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 at least \$2,500,000, and the administrative expenses assessment for the same period in the amount of \$500,000.

Impact on the public: Hawaii residents benefit by having more sustainable nursing facilities and, thereby, having increased access to necessary long-term care services. 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: \$15,000,000 Nursing Facility Sustainability Program Special Fund for fiscal year 2021-2022 and \$15,000,000 for fiscal year 2022-2023.

PPBS PROGRAM DESIGNATION: HMS 401 and HMS 902.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: June 29, 2021.