

JAN 22 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 services.
8 The program has been carried out via 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. Medicaid is jointly financed
15 by the federal and state governments by statutory formula; the
16 federal government pays between fifty per cent and seventy-four
17 per cent, with assistance levels determined by each state's per



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

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

16 The legislature therefore finds that, in Hawaii, a provider
17 fee on nursing facilities can result in a substantial increase
18 in medicaid payments, without putting additional constraints on
19 the State's budget. The additional federal funds obtained via
20 the fee program authorized by the nursing facility
21 sustainability program can maintain access to care for medicaid



1 recipients, which will allow nursing facilities in the State to
2 continue to serve under-insured or uninsured patients in a
3 timely, effective matter and help ensure the overall
4 sustainability of the health care system in the State during the
5 challenging time of the COVID-19 pandemic.

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

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

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

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

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



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- 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-5, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) The nursing facility sustainability fee shall not
16 exceed 5.5 per cent of overall net patient service revenue and
17 shall be calculated and paid on a per resident day basis, unless
18 the facility qualifies for an exemption identified in subsection
19 (d) (1). The [~~per resident daily fee shall not exceed \$20.00 for~~
20 ~~each affected facility, except for~~] facilities described in
21 subsection (d) (2) [~~, which instead~~] shall pay a [~~per resident~~]



1 reduced daily fee [~~not to exceed \$9.00.~~] compared to other
2 facilities participating in the program."

3 SECTION 4. Section 346F-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§346F-10 Enhanced rates to medicaid managed care health**
6 **plans.** In accordance with title 42 Code of Federal Regulations
7 part 438, the department shall use revenues from the nursing
8 facility sustainability fee and federal matching funds to
9 enhance the capitated rates paid to medicaid managed care health
10 plans for [~~state fiscal years 2019-2020 and 2020-2021,~~] the
11 period of July 1 through December 31, 2021, and calendar years
12 2022 and 2023, consistent with the following objectives:

- 13 (1) The rate enhancement shall be used exclusively for
14 increasing reimbursements to private nursing
15 facilities to support the availability of services and
16 to ensure access to care to the medicaid managed care
17 health plan enrollees;
- 18 (2) The rate enhancement shall be made part of the monthly
19 capitated rates by the department to medicaid managed
20 care health plans, which shall provide documentation
21 to the department and the nursing facility trade



1 association located in Hawaii certifying that the
2 revenues received under paragraph (1) are used in
3 accordance with this section;

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

7 (4) The department shall modify the fee-for-service
8 reimbursement rates of the nursing facilities to
9 recognize the medicaid portion of the nursing facility
10 sustainability fee as an additional cost of serving
11 medicaid patients, and to provide a uniform percentage
12 increase in preexisting facility-specific rates; and

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

17 SECTION 5. Section 346F-13, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

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



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- 1 (1) The waiver in section 346F-7 or the enhanced
2 capitation rates in section 346F-10 have not been
3 approved by the Centers for Medicare and Medicaid
4 Services;
- 5 (2) The department reduces funding for nursing facility
6 services below the state appropriation in effect on
7 June 30, [~~2020;~~] 2021;
- 8 (3) The department or any other state agency uses the
9 money in the special fund for any use other than the
10 uses permitted pursuant to this chapter; or
- 11 (4) Federal financial participation to match the nursing
12 facility sustainability fee becomes unavailable under
13 federal law. In such case, the department shall
14 terminate the collection of the fee beginning on the
15 effective date of the federal statutory, regulatory,
16 or interpretive change."

17 SECTION 6. Act 156, Session Laws of Hawaii 2012, as
18 amended by section 3 of Act 142, Session Laws of Hawaii 2013, as
19 amended by section 2 of Act 124, Session Laws of Hawaii 2014, as
20 amended by section 2 of Act 69, Session Laws of Hawaii 2015, as
21 amended by section 2 of Act 59, Session Laws of Hawaii 2016, as



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1 amended by section 5 of Act 60, Session Laws of Hawaii 2017, as
2 amended by section 6 of Act 163, Session Laws of Hawaii 2019, is
3 amended by amending section 5 to read as follows:

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

10 SECTION 7. Act 124, Session Laws of Hawaii 2014, as
11 amended by Act 69, Session Laws of Hawaii 2015, as amended by
12 Act 59, Session Laws of Hawaii 2016, as amended by section 6 of
13 Act 60, Session Laws of Hawaii 2017, as amended by section 7 of
14 Act 163, Session Laws of Hawaii 2019, is amended by amending
15 section 7 to read as follows:

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

- 18 (1) Section 5 shall take effect on July 1, 2014; and
19 (2) The amendments made to [~~section~~] sections 36-27(a) and
20 36-30(a), Hawaii Revised Statutes, in section 3 and 4



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1 of this Act shall be repealed on [~~December 31, 2021.~~]
2 June 30, 2024."

3 SECTION 8. There is appropriated out of the nursing
4 facility sustainability program special fund the sum of
5 \$33,000,000 or so much thereof as may be necessary for fiscal
6 year 2021-2022 and the same sum or so much thereof as may be
7 necessary for fiscal year 2022-2023 for uses consistent with
8 section 346F-4, Hawaii Revised Statutes.

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

11 SECTION 9. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on June 29, 2021;
14 provided that section 7 and 8 shall take effect on July 1, 2021.

15

INTRODUCED BY:



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Report Title:

Nursing Facility Sustainability Program; Special Fund;
Department of Human Services; Appropriation

Description:

Extends the nursing facility sustainability program to 2024. Allows the nursing facility sustainability fee to be used to enhance capitated rates for the purpose of paying quality incentives. Specifies that the nursing facility sustainability fee limit is 5.5 per cent of overall net patient service revenue. Removes the per resident daily maximum fee of \$20 for each facility. Specifies facilities that meet certain exceptions shall pay a reduced daily fee in comparison to other participating facilities. Appropriates funds.

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

