



GOV. MSG. NO. 1138

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2021, the following bill was signed into law:

SB0819 SD2 HD2 CD1

RELATING TO THE HOSPITAL SUSTAINABILITY
PROGRAM.
ACT 038 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUN 07 2021

THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 038
S.B. NO. 819
S.D. 2
H.D. 2
C.D. 1

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, established by Act 217, Session Laws of
3 Hawaii 2012, has served a critical role in strengthening the
4 health care system in Hawaii. In the nine years since its
5 inception, the hospital sustainability program has helped acute
6 care facilities treat the most vulnerable patients in the State,
7 especially low-income individuals who require hospital services.
8 The program has been carried out in a public-private partnership
9 to ensure that patients in Hawaii can access quality, affordable
10 care.

11 The legislature further finds that, even with this program,
12 hospitals in the State face major financial challenges. These
13 challenges are due in part to the health and financial pressures
14 related to the coronavirus disease 2019 (COVID-19) pandemic.
15 Medicaid is jointly financed by the federal and state
16 governments by statutory formula. The federal government pays
17 between fifty per cent and seventy-four per cent, with
18 assistance levels determined by each state's per capita income.



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

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

16 The legislature therefore finds that, in Hawaii, a hospital
17 provider fee 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



1 allow hospitals in the State to continue to serve uninsured or
2 underinsured patients in a timely, effective manner. This helps
3 to ensure the overall sustainability of the health care system
4 in Hawaii during the challenging time of the COVID-19 pandemic.

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

8 SECTION 2. Section 346G-4, Hawaii Revised Statutes, is
9 amended by amending subsections (c) and (d) to read as follows:

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[+] purposes:

15 (A) [~~Match~~] To match federal medicaid funds, with the
16 combined total to be used to enhance capitated
17 rates to medicaid managed care health plans for
18 the sole purpose of increasing medicaid payments
19 to private hospitals;

20 (B) [~~Match~~] To match federal medicaid funds for
21 Hawaii's medicaid disproportionate share hospital



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

3 (C) [~~Match~~] To match federal medicaid funds for a
4 private hospital upper payment limit pool; or

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

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

14 (3) Any money remaining in the hospital sustainability
15 program special fund six months after the repeal of
16 this chapter, shall be distributed to hospitals within
17 thirty days in the same proportions as received from
18 the hospitals.

19 (d) The department shall [~~utilize~~] use federal funds
20 derived from state hospital certified expenditures to make
21 supplemental payments to state hospitals and [~~is authorized to~~]



1 may receive intergovernmental transfers from the state hospitals
2 to support direct supplemental payments and increased capitation
3 rates to health plans for the benefit of the state hospitals.

4 During any period in which the hospital sustainability fee is in
5 effect, certified expenditures of state hospitals shall not be
6 used to make or support direct payments to private hospitals."

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

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

20 (d) The department shall exempt [~~children's hospitals,~~]
21 federal hospitals[~~,~~] and public hospitals[~~, and psychiatric~~



1 ~~hospitals]~~ from the hospital sustainability fees on inpatient
2 services [~~. In addition, the department shall exempt from the~~
3 ~~hospital sustainability fee on]~~ and outpatient care services
4 [~~federal hospitals and public hospitals; provided that the]~~.

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

12 SECTION 4. Section 346G-6, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The department shall collect, and each hospital shall
15 pay, if so required, the hospital sustainability fee [~~not~~] no
16 later than the [~~thirtieth~~] sixtieth day after the end of each
17 calendar month; provided that if required federal approvals have
18 not been secured by the end of a calendar month, the fees for
19 that month shall be paid within ten days after notification to
20 the hospitals that the required approvals have been received."



1 SECTION 5. Section 346G-10, Hawaii Revised Statutes, is
2 amended as follows:

3 1. Amending subsection (b) to read:

4 "(b) In accordance with title 42 Code of Federal
5 Regulations part 438, the department shall use revenues from the
6 hospital sustainability fee and federal matching funds to
7 enhance the capitated rates paid to medicaid managed care health
8 plans for [~~state fiscal years 2019-2020 and 2020-2021,~~] the
9 period of July 1 through December 31, 2021, and calendar years
10 2022 and 2023, 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



1 received under paragraph (1) are used in accordance
2 with this section;

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

6 (4) The rate enhancements shall be retroactive to July 1,
7 2012, or the effective date approved by the federal
8 government, whichever is later. Retroactive rate
9 enhancements shall be paid within thirty days of
10 notification by the Centers for Medicare and Medicaid
11 Services to the department of all necessary approvals;
12 and

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

17 2. Amending subsection (d) to read:

18 "(d) To the extent the hospital sustainability program is
19 not effective for the entire year, the hospital sustainability
20 fee, the state medicaid expenses and administrative fee, and the
21 corresponding [~~medicaid managed care health plan~~] payments to



1 fulfill the requirements of section 346G-4(c) shall be based on
2 the proportion of the fiscal year the program is in effect."

3 SECTION 6. Section 346G-12, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

11 (2) The department reduces funding for hospital services
12 below the state appropriation in effect as of July 1,
13 [~~2020~~] 2021;

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

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



1 hospital sustainability fee beginning on the date the
2 federal statutory, regulatory, or interpretive change
3 takes effect.

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

11 SECTION 7. Act 217, Session Laws of Hawaii 2012, as
12 amended by section 2 of Act 141, Session Laws of Hawaii 2013, as
13 amended by section 2 of Act 123, Session Laws of Hawaii 2014, as
14 amended by Section 2 of Act 70, Session Laws of Hawaii 2015, as
15 amended by section 3 of Act 60, Session Laws of Hawaii 2016, as
16 amended by section 5 of Act 59, Session Laws of Hawaii 2017, as
17 amended by section 6 of Act 173, Session Laws of Hawaii 2019, is
18 amended by amending section 5 to read as follows:

19 "SECTION 5. This Act shall take effect on July 1, 2012,
20 and shall be repealed on [~~June 30, 2021;~~] December 31, 2023;
21 provided that section -4, Hawaii Revised Statutes, in



1 section 2 of this Act, and the amendment to section 36-30(a),
2 Hawaii Revised Statutes, in section 3 of this Act, shall be
3 repealed on [~~December 31, 2021.~~] June 30, 2024."

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

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

- 12 (1) Section 5 shall take effect on July 1, 2014; and
- 13 (2) The amendments made to sections 36-27(a) and 36-30(a),
14 Hawaii Revised Statutes, in sections 3 and 4 of this
15 Act shall be repealed on [~~December 31, 2021.~~] June 30,
16 2024."

17 SECTION 9. There is appropriated out of the hospital
18 sustainability program special fund the sum of \$100,000,000 or
19 so much thereof as may be necessary for fiscal year 2021-2022
20 and the same sum or so much thereof as may be necessary for



1 fiscal year 2022-2023 for the purposes of the hospital
2 sustainability 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 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect on June 29, 2021;
8 provided that sections 8 and 9 of this Act shall take effect on
9 July 1, 2021.

APPROVED this 07 day of JUN , 2021

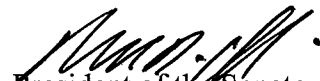



GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

SB No. 819, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives