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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 established in 2012 has served a critical  
3 role in strengthening Hawaii's health care system. In the  
4 eleven years since the program's inception, the hospital  
5 sustainability program has helped acute care facilities treat  
6 the State's most vulnerable patients, especially low-income  
7 individuals requiring hospital services. The program has been  
8 carried out in a public-private partnership to ensure patients  
9 in Hawaii have access to quality, affordable care.

10           The legislature further finds that, even with the program,  
11 hospitals in the State face major financial challenges. These  
12 challenges are due in part to the continuing health and  
13 financial pressures related to the coronavirus disease 2019  
14 pandemic and health care workforce shortage. The federal and  
15 state governments jointly finance medicaid by statutory formula.  
16 The federal government pays between fifty per cent and  
17 seventy-four per cent, with a state's per capita income



1 determining the percentage. States with lower per capita  
2 incomes relative to the national average receive higher federal  
3 matching rates. Federal rules mandate that a state must pay the  
4 state's share from public funds that are not federal funds.  
5 Public funding to help financially sustain Hawaii's hospitals  
6 should continue by assessing a provider fee through the hospital  
7 sustainability program, which is currently scheduled to be  
8 repealed in 2024.

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 medicaid programs amid  
12 rising state budget deficits, increasing health care costs, and  
13 expanding medicaid enrollment. Provider fees, which are  
14 collected from and agreed to by specific categories of  
15 providers, may be imposed on nineteen different classes of  
16 health care services, including inpatient and outpatient  
17 hospital and nursing facility services.

18 The legislature therefore finds that, in Hawaii, a provider  
19 fee for hospitals has resulted in a substantial increase in  
20 medicaid payments without placing additional constraints on the  
21 State's budget. The additional federal funds obtained via the



1 hospital sustainability program allow hospitals in the State to  
2 continue to serve uninsured or underinsured patients in a  
3 timely, effective manner, maintaining access to care for  
4 medicaid recipients, and helping to ensure the overall  
5 sustainability of the health care system in Hawaii.

6 The purpose of this Act is to strengthen and make permanent  
7 the hospital sustainability program to continue to preserve  
8 access to health care for medicaid recipients.

9 SECTION 2. Section 36-27, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Except as provided in this section, and  
12 notwithstanding any other law to the contrary, from time to  
13 time, the director of finance, for the purpose of defraying the  
14 prorated estimate of central service expenses of government in  
15 relation to all special funds, except the:

- 16 (1) Special out-of-school time instructional program fund  
17 under section 302A-1310;
- 18 (2) School cafeteria special funds of the department of  
19 education;
- 20 (3) Special funds of the university of Hawaii;



- 1 (4) Convention center enterprise special fund under
- 2 section 201B-8;
- 3 (5) Special funds established by section 206E-6;
- 4 (6) Aloha Tower fund created by section 206J-17;
- 5 (7) Funds of the employees' retirement system created by
- 6 section 88-109;
- 7 (8) Hawaii hurricane relief fund established under
- 8 chapter 431P;
- 9 (9) Hawaii health systems corporation special funds and
- 10 the subaccounts of its regional system boards;
- 11 (10) Universal service fund established under
- 12 section 269-42;
- 13 (11) Emergency and budget reserve fund under
- 14 section 328L-3;
- 15 (12) Public schools special fees and charges fund under
- 16 section 302A-1130;
- 17 (13) Sport fish special fund under section 187A-9.5;
- 18 (14) Neurotrauma special fund under section 321H-4;
- 19 (15) Glass advance disposal fee established by
- 20 section 342G-82;



- 1 (16) Center for nursing special fund under
- 2 section 304A-2163;
- 3 (17) Passenger facility charge special fund established by
- 4 section 261-5.5;
- 5 (18) Solicitation of funds for charitable purposes special
- 6 fund established by section 467B-15;
- 7 (19) Land conservation fund established by section 173A-5;
- 8 (20) Court interpreting services revolving fund under
- 9 section 607-1.5;
- 10 (21) Trauma system special fund under section 321-22.5;
- 11 (22) Hawaii cancer research special fund;
- 12 (23) Community health centers special fund;
- 13 (24) Emergency medical services special fund;
- 14 (25) Rental motor vehicle customer facility charge special
- 15 fund established under section 261-5.6;
- 16 (26) Shared services technology special fund under
- 17 section 27-43;
- 18 (27) Automated victim information and notification system
- 19 special fund established under section 353-136;
- 20 (28) Deposit beverage container deposit special fund under
- 21 section 342G-104;



1           (29) Hospital sustainability program special fund  
2                 established under section 346G-4;  
3           (30) Nursing facility sustainability program special fund  
4                 under section 346F-4;  
5           (31) Hawaii 3R's school improvement fund under  
6                 section 302A-1502.4;  
7           (32) After-school plus program revolving fund under  
8                 section 302A-1149.5;  
9           (33) Civil monetary penalty special fund under  
10                section 321-30.2; and  
11    [+] (34) [+] Stadium development special fund under  
12                section 109-3.5,  
13 shall deduct five per cent of all receipts of all other special  
14 funds, which deduction shall be transferred to the general fund  
15 of the State and become general realizations of the State. All  
16 officers of the State and other persons having power to allocate  
17 or disburse any special funds shall cooperate with the director  
18 in effecting these transfers. To determine the proper revenue  
19 base upon which the central service assessment is to be  
20 calculated, the director shall adopt rules pursuant to  
21 chapter 91 for the purpose of suspending or limiting the



1 application of the central service assessment of any fund. No  
2 later than twenty days prior to the convening of each regular  
3 session of the legislature, the director shall report all  
4 central service assessments made during the preceding fiscal  
5 year."

6 SECTION 3. Section 36-30, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Each special fund, except the:

- 9 (1) Special out-of-school time instructional program fund  
10 under section 302A-1310;
- 11 (2) School cafeteria special funds of the department of  
12 education;
- 13 (3) Special funds of the University of Hawaii;
- 14 (4) Special funds established by section 206E-6;
- 15 (5) Aloha Tower fund created by section 206J-17;
- 16 (6) Funds of the employees' retirement system created by  
17 section 88-109;
- 18 (7) Hawaii hurricane relief fund established under  
19 chapter 431P;
- 20 (8) Convention center enterprise special fund established  
21 under section 201B-8;



- 1       (9) Hawaii health systems corporation special funds and
- 2             the subaccounts of its regional system boards;
- 3       (10) Universal service fund established under
- 4             section 69-42;
- 5       (11) Emergency and budget reserve fund under
- 6             section 328L-3;
- 7       (12) Public schools special fees and charges fund under
- 8             section 302A-1130;
- 9       (13) Sport fish special fund under section 187A-9.5;
- 10       (14) Neurotrauma special fund under section 321H-4;
- 11       (15) Center for nursing special fund under
- 12             section 304A-2163;
- 13       (16) Passenger facility charge special fund established by
- 14             section 261-5.5;
- 15       (17) Court interpreting services revolving fund under
- 16             section 607-1.5;
- 17       (18) Trauma system special fund under section 321-22.5;
- 18       (19) Hawaii cancer research special fund;
- 19       (20) Community health centers special fund;
- 20       (21) Emergency medical services special fund;



- 1 (22) Rental motor vehicle customer facility charge special  
2 fund established under section 261-5.6;
- 3 (23) Shared services technology special fund under  
4 section 27-43;
- 5 (24) Nursing facility sustainability program special fund  
6 established pursuant to section 346F-4;
- 7 (25) Automated victim information and notification system  
8 special fund established under section 353-136;
- 9 (26) Hospital sustainability program special fund  
10 established under section 346G-4;
- 11 (27) Civil monetary penalty special fund under  
12 section 321-30.2; and
- 13 [+(28)+] Stadium development special fund under  
14 section 109-3.5,

15 shall be responsible for its pro rata share of the  
16 administrative expenses incurred by the department responsible  
17 for the operations supported by the special fund concerned."

18 SECTION 4. Section 346G-2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 " [+(§346G-2)+] **Findings and declaration of necessity.** It  
21 is the intent of the legislature to establish a special fund



1 within the state treasury to receive revenue from the imposition  
2 of a hospital sustainability fee to be administered by the  
3 department of human services, which shall use the revenue from  
4 the fee and associated federal medicaid matching funds  
5 exclusively to make [~~direct~~] payments to hospitals and for other  
6 purposes as [~~set forth~~] described in this chapter."

7 SECTION 5. Section 346G-3, Hawaii Revised Statutes, is  
8 amended by amending the definition of "private hospital" to read  
9 as follows:

10 "Private hospital" means all currently operating  
11 hospitals, except for hospitals that are:

- 12 (1) Operated by or affiliated with the Hawaii health  
13 systems corporation; or  
14 (2) Charitable hospitals funded primarily through  
15 donations or other non-insurance sources of funding,  
16 and whose net patient revenue is less than [~~forty~~]  
17 fifty per cent of operating expenses, per the medicaid  
18 cost report."

19 SECTION 6. Section 346G-4, Hawaii Revised Statutes, is  
20 amended by amending subsections (b) through (d) to read as  
21 follows:



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

3           (1) All ~~[revenue]~~ revenues collected or received by the  
4 department from the hospital sustainability fee~~[+]~~ as  
5 required by this chapter;

6           ~~[(2) All federal medicaid funds received by the department~~  
7 ~~as a result of matching expenditures made with the~~  
8 ~~hospital sustainability fee;~~

9           ~~+(3)]~~ (2) Any interest or penalties levied in conjunction  
10 with the administration of this chapter; and

11           ~~[(4)]~~ (3) Any designated appropriations, federal funds,  
12 donations, gifts, or moneys from any other sources.

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

15           (1) ~~[No less than]~~ At least ninety per cent of the revenue  
16 from the hospital sustainability fee shall be used for  
17 one or more of the following purposes:

18           (A) To match federal medicaid funds, with the  
19 combined total to be used to enhance ~~[capitated~~  
20 ~~rates]~~ payments to medicaid managed care health



1 plans for the sole purpose of increasing medicaid  
2 payments to private hospitals;

3 (B) To match federal medicaid funds for Hawaii's  
4 medicaid disproportionate share hospital  
5 allotment, as authorized by current federal law  
6 for private hospitals;

7 (C) To match federal medicaid funds for a private  
8 hospital upper payment limit pool; or

9 (D) To match federal medicaid funds with the combined  
10 total to be used to enhance [~~capitated rates~~]  
11 payments to medicaid managed care health plans  
12 for the purpose of increasing medicaid payments  
13 to private hospitals through quality or access  
14 incentive programs[~~-~~]; and

15 (2) Ten per cent of the moneys in the hospital  
16 sustainability program special fund may be used by the  
17 department for other departmental purposes[~~-~~ and

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



1           ~~thirty days in the same proportions as received from~~  
2           ~~the hospitals].~~

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

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

14           "(c) The hospital sustainability fee for inpatient care  
15 services may differ from the fee for outpatient care services  
16 but the fees charged to the hospital shall not in the aggregate  
17 exceed [~~five and one half~~] six per cent of the hospital's net  
18 patient service revenue. The inpatient hospital sustainability  
19 fee shall not exceed [~~five and one half~~] six per cent of net  
20 inpatient hospital service revenue. The outpatient hospital  
21 sustainability fee shall not exceed [~~five and one half~~] six per



1 cent of net outpatient hospital service revenue. Each fee shall  
2 be the same percentage for all affected hospitals, subject to  
3 subsection (d).

4 (d) The department shall exempt federal hospitals and  
5 public hospitals from the hospital sustainability fees on  
6 inpatient services and outpatient care services.

7 Children's hospitals, psychiatric hospitals, and  
8 rehabilitation hospitals may be assessed hospital sustainability  
9 fees on inpatient and outpatient services at a different rate  
10 than other private hospitals. The department [~~may also exclude~~  
11 ~~any facility from the hospital sustainability fee if it is~~  
12 ~~determined that its exclusion is required to meet federal~~  
13 ~~standards of approval.~~], upon good faith consultation and  
14 negotiations with the hospital trade association located in  
15 Hawaii, may modify, add to, or exclude facilities included in  
16 the assessment if necessary to obtain or maintain approval of  
17 the waiver by the Centers for Medicare and Medicaid Services, if  
18 the modification, addition, or exclusion is consistent with the  
19 purposes of this chapter."

20 SECTION 8. Section 346G-6, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§346G-6 Hospital sustainability fee assessments.** (a)

2 Hospitals shall pay the hospital sustainability fee to the  
3 department in accordance with this chapter. [~~The fee shall be~~  
4 ~~divided and paid in twelve equal installments on a monthly~~  
5 ~~basis.~~]

6           (b) The department shall determine, upon good faith  
7 consultation and negotiations with the hospital trade  
8 association located in Hawaii, the prospective fee rate for the  
9 applicable fiscal year.

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

20           SECTION 9. Section 346G-7, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "~~§~~**§346G-7**~~§~~ **Federal approval.** The department shall  
2 seek waivers and any additional approvals from the Centers for  
3 Medicare and Medicaid Services that may be necessary to  
4 implement the hospital sustainability program~~(-)~~, including  
5 approval of the contracts between the State and medicaid managed  
6 care health plans."

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

9           "(a) If a hospital fails to pay the full amount of any  
10 hospital sustainability fee when due, there shall be added to  
11 the fee, unless waived by the department for reasonable cause, a  
12 penalty equal to ~~[prime-plus]~~ two per cent of the fee that was  
13 not paid when due. Any subsequent payments shall be credited  
14 first to unpaid fee amounts beginning with the most delinquent  
15 installment rather than to penalty or interest amounts."

16           SECTION 11. Section 346G-10, Hawaii Revised Statutes, is  
17 amended by amending its title and subsections (a) and (b) to  
18 read as follows:

19           "**§346G-10 Private hospital payments through enhanced**  
20 **~~[rates]~~ payments to medicaid managed care health plans.** (a)

21 The department shall use moneys ~~[solely]~~ from the hospital



1 sustainability program special fund solely to fulfill the  
2 requirements of section 346G-4(c).

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

10 (1) The [~~rate enhancement~~] enhanced payments shall be used  
11 exclusively [~~for increasing~~] to increase  
12 reimbursements to private hospitals, [~~to~~] support the  
13 availability of services, and [~~to~~] ensure access to  
14 care [~~to the~~] for medicaid managed care health plan  
15 enrollees;

16 (2) The [~~rate enhancement~~] enhanced payments shall be  
17 [~~made part of the monthly capitated rates~~] paid by the  
18 department to medicaid managed care health plans,  
19 which shall provide documentation to the department  
20 and the hospital trade association located in Hawaii



- 1 certifying that the revenues received under paragraph  
2 (1) are used in accordance with this section;
- 3 (3) The [~~rate enhancement~~] enhanced payment rates shall be  
4 actuarially sound and approved by the federal  
5 government for federal fund 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~~] payment from the  
16 department[-]; and
- 17 (6) Each managed care health plan shall expend one hundred  
18 per cent of any increased payments received under this  
19 section to carry out the goals of the hospital  
20 sustainability program."



1 SECTION 12. 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 ~~2021,]~~ reimbursement rates for private hospital  
12 services to medicaid patients, with the intention of  
13 using the sustainability funds to supplant the planned  
14 or permanent reduction in reimbursement rates;
- 15 (3) The department or any other state agency uses the  
16 money in the hospital sustainability program special  
17 fund for any use other than the uses permitted by this  
18 chapter; or
- 19 (4) Federal financial participation to match the revenue  
20 from the hospital sustainability fee becomes  
21 unavailable under federal law; provided that the



1 department shall terminate the imposition of the  
2 hospital sustainability fee beginning on the date the  
3 federal statutory, regulatory, or interpretive change  
4 takes effect.

5 (b) If [~~collection of~~] the hospital sustainability fee is  
6 discontinued [~~as provided in this section~~], any remaining moneys  
7 in the hospital sustainability program special fund shall be  
8 distributed [~~pursuant to section 346G-4(e).~~] to hospitals within  
9 six months of the date of discontinuation in the same  
10 proportions as received from the hospitals."

11 SECTION 13. 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, as  
18 amended by section 7 of Act 38, Session Laws of Hawaii 2021, is  
19 amended by amending section 5 to read as follows:

20 "SECTION 5. This Act shall take effect on July 1, 2012[~~7~~  
21 ~~and shall be repealed on December 31, 2023; provided that~~



1 ~~section 4, Hawaii Revised Statutes, in section 2 of this~~  
2 ~~Act, and the amendment to section 36 30(a), Hawaii Revised~~  
3 ~~Statutes, in section 3 of this Act, shall be repealed on~~  
4 ~~June 30, 2024]."~~

5 SECTION 14. Act 123, Session Laws of Hawaii 2014, as  
6 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as  
7 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as  
8 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as  
9 amended by section 7 of Act 173, Session Laws of Hawaii 2019, as  
10 amended by section 8 of Act 38, Session Laws of Hawaii 2021, is  
11 amended by amending section 7 to read as follows:

12 "SECTION 7. This Act shall take effect on June 29, 2014;  
13 provided that[+

14 ~~(1) Section]~~ section 5 shall take effect on July 1, 2014[+

15 ~~and~~

16 ~~(2) The amendments made to sections 36 27(a) and 36 30(a),~~

17 ~~Hawaii Revised Statutes, in sections 3 and 4 of this~~

18 ~~Act shall be repealed on June 30, 2024]."~~

19 SECTION 15. There is appropriated out of the hospital  
20 sustainability program special fund the sum of \$ or so  
21 much thereof as may be necessary for fiscal year 2023-2024 and



1 the same sum or so much thereof as may be necessary for fiscal  
2 year 2024-2025 for the purposes of the hospital sustainability  
3 program.

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

6 SECTION 16. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 17. This Act shall take effect on December 31,  
9 2050.



**Report Title:**

Hospital Sustainability Program; Hospital Sustainability Fee; Hospital Trade Association; DHS; Hospital Sustainability Program Special Fund; Appropriation

**Description:**

Modifies the Hospital Sustainability Program, including: expanding the definition of "private hospitals" subject to the program; increasing the fee cap on various hospital sustainability fees; requiring the Department of Human Services to consult and negotiate with the hospital trade association located in Hawaii regarding fee participation and rates; requiring the hospital sustainability fee to be discontinued under certain circumstances and providing guidelines for the distribution of remaining funds. Makes the Hospital Sustainability Program permanent. Makes exemptions of the Hospital Sustainability Program Special Fund from the central service expenses assessment and administrative expenses assessment permanent. Appropriates funds out of the Hospital Sustainability Program Special Fund. Effective 12/31/2050.  
(SD2)

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

