



GOV. MSG. NO. 1211

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 22, 2023

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

/ The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second 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 22, 2023, the following bill was signed into law:

SB404 SD2 HD2 CD1

RELATING TO THE HOSPITAL SUSTAINABILITY
PROGRAM.
ACT 110

Sincerely,



Josh Green, M.D.
Governor, State of Hawai'i

on JUN 22 2023

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 404
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 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
18 determining the percentage. States with lower per capita



1 incomes relative to the national average receive higher federal
2 matching rates. Federal rules mandate that a state must pay the
3 state's share from public funds that are not federal funds.

4 The legislature further finds that provider fees exist in
5 forty-nine states and the District of Columbia as a means of
6 drawing down federal funds to sustain medicaid programs amid
7 rising state budget deficits, increasing health care costs, and
8 expanding medicaid enrollment. Provider fees, which are
9 collected from and agreed to by specific categories of
10 providers, may be imposed on nineteen different classes of
11 health care services, including inpatient and outpatient
12 hospital and nursing facility services. Public funding to help
13 financially sustain Hawaii's hospitals should continue by
14 assessing a provider fee through the hospital sustainability
15 program, which is currently scheduled to be repealed in 2024.

16 The legislature therefore finds that, in Hawaii, a provider
17 fee for hospitals has resulted in a substantial increase in
18 medicaid payments without placing additional constraints on the
19 State's budget. The additional federal funds obtained via the
20 hospital sustainability program allow hospitals in the State to
21 continue to serve uninsured or underinsured patients in a timely



1 and effective manner, thereby maintaining access to care for
2 medicaid recipients, and helping to ensure the overall
3 sustainability of the health care system in Hawaii.

4 The purpose of this Act is to preserve access to health
5 care for medicaid recipients and strengthen the hospital
6 sustainability program by:

- 7 (1) Amending the definition of "private hospital";
- 8 (2) Clarifying the uses of the hospital sustainability
9 program special fund;
- 10 (3) Increasing the hospital sustainability fee cap for
11 various facilities;
- 12 (4) Requiring the department of human services to consult
13 and negotiate with the hospital trade association in
14 the State regarding hospital sustainability fee
15 participation and rates;
- 16 (5) Clarifying the circumstances under which the hospital
17 sustainability fee shall be discontinued and the
18 distribution of remaining funds;
- 19 (6) Repealing the sunset dates of Act 217, Session Laws of
20 Hawaii 2012, and Act 123, Session Laws of Hawaii 2014,
21 thereby making the hospital sustainability program



1 permanent and permanently exempting the hospital
2 sustainability program from the central service and
3 administrative expenses assessments; and
4 (7) Appropriating funds out of the hospital sustainability
5 program special fund.

6 SECTION 2. Section 346G-2, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~H~~]§346G-2[~~H~~] Findings and declaration of necessity. It
9 is the intent of the legislature to establish a special fund
10 within the state treasury to receive revenue from the imposition
11 of a hospital sustainability fee to be administered by the
12 department of human services, which shall use the revenue from
13 the fee and associated federal medicaid matching funds
14 exclusively to make [~~direct~~] payments to hospitals and for other
15 purposes as [~~set forth~~] described in this chapter."

16 SECTION 3. Section 346G-3, Hawaii Revised Statutes, is
17 amended by amending the definition of "private hospital" to read
18 as follows:

19 ""Private hospital" means all currently operating
20 hospitals, except for hospitals that are:



- 1 (1) Operated by or affiliated with the Hawaii health
2 systems corporation; or
- 3 (2) Charitable hospitals funded primarily through
4 donations or other non-insurance sources of funding,
5 and whose net patient revenue is less than [~~forty~~
6 fifty per cent of operating expenses, per the medicaid
7 cost report."

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

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

13 (1) All [~~revenue~~] revenues collected or received by the
14 department from the hospital sustainability fee[~~7~~] as
15 required by this chapter;

16 [~~2~~] ~~All federal medicaid funds received by the department~~
17 ~~as a result of matching expenditures made with the~~
18 ~~hospital sustainability fee;~~

19 [~~3~~] (2) Any interest or penalties levied in conjunction
20 with the administration of this chapter; and



1 [~~(4)~~] (3) Any designated appropriations, federal funds,
2 donations, gifts, or moneys from any other sources.

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

5 (1) No less than ninety per cent of the revenue from the
6 hospital sustainability fee shall be used for one or
7 more of the following purposes:

8 (A) To match federal medicaid funds, with the
9 combined total to be used to enhance [~~capitated~~
10 rates] payments to medicaid managed care health
11 plans for the sole purpose of increasing medicaid
12 payments to private hospitals;

13 (B) To match federal medicaid funds for Hawaii's
14 medicaid disproportionate share hospital
15 allotment, as authorized by current federal law
16 for private hospitals;

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

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



1 for the purpose of increasing medicaid payments
2 to private hospitals through quality or access
3 incentive programs ~~[]~~; and

4 (2) Ten per cent of the moneys in the hospital
5 sustainability program special fund may be used by the
6 department for other departmental purposes ~~[] and~~

7 ~~(3) Any money remaining in the hospital sustainability~~
8 ~~program special fund six months after the repeal of~~
9 ~~this chapter, shall be distributed to hospitals within~~
10 ~~thirty days in the same proportions as received from~~
11 ~~the hospitals].~~

12 (d) The department shall use federal funds derived from
13 state hospital certified expenditures to make ~~[supplemental]~~
14 payments to state hospitals and may receive intergovernmental
15 transfers from the state hospitals to support ~~[direct~~
16 ~~supplemental]~~ payments and increased capitation rates to health
17 plans for the benefit of the state hospitals. During any period
18 in which the hospital sustainability fee is in effect, certified
19 expenditures of state hospitals shall not be used to make or
20 support ~~[direct]~~ payments to private hospitals."



1 SECTION 5. Section 346G-5, Hawaii Revised Statutes, is
2 amended by amending subsections (c) and (d) 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 [~~five and one-half~~] six per cent of the hospital's net
7 patient service revenue. The inpatient hospital sustainability
8 fee shall not exceed [~~five and one-half~~] six per cent of net
9 inpatient hospital service revenue. The outpatient hospital
10 sustainability fee shall not exceed [~~five and one-half~~] six 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 (d) The department shall exempt federal hospitals and
15 public hospitals from the hospital sustainability fees on
16 inpatient services and outpatient care services.

17 Children's hospitals, psychiatric hospitals, and
18 rehabilitation hospitals may be assessed hospital sustainability
19 fees on inpatient and outpatient services at a different rate
20 than other private hospitals. The department [~~may also exclude~~
21 ~~any facility from the hospital sustainability fee if it is~~



1 ~~determined that its exclusion is required to meet federal~~
2 ~~standards of approval.]~~, upon good faith consultation and
3 negotiations with the hospital trade association located in the
4 State, may modify, add to, or exclude facilities included in the
5 assessment if necessary to obtain or maintain approval of the
6 waiver by the Centers for Medicare and Medicaid Services, if the
7 modification, addition, or exclusion is consistent with the
8 purposes of this chapter."

9 SECTION 6. Section 346G-6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§346G-6 Hospital sustainability fee assessments. (a)
12 Hospitals shall pay the hospital sustainability fee to the
13 department in accordance with this chapter. ~~[The fee shall be~~
14 ~~divided and paid in twelve equal installments on a monthly~~
15 ~~basis.]~~

16 (b) The department shall determine, upon good faith
17 consultation and negotiations with the hospital trade
18 association located in the State, the prospective fee rate for
19 the applicable fiscal year.

20 ~~[(b)]~~ (c) The department shall ~~[collect, and each hospital~~
21 ~~shall pay, if so required,]~~ impose the hospital sustainability



1 fee on a monthly basis. The hospital shall pay the hospital
2 sustainability fee [no later than the sixtieth day] within sixty
3 days after the end of [each] the calendar month[-] that the
4 department imposed the fee; provided that if required federal
5 approvals have not been secured by the end of a calendar month,
6 the fees for that month shall be paid within ten days after
7 notification to the hospitals that the required approvals have
8 been received."

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

11 "[+]§346G-7[+] Federal approval. The department shall
12 seek waivers and any additional approvals from the Centers for
13 Medicare and Medicaid Services that may be necessary to
14 implement the hospital sustainability program[-], including
15 approval of the contracts between the State and medicaid managed
16 care health plans."

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

19 "(a) If a hospital fails to pay the full amount of any
20 hospital sustainability fee when due, there shall be added to
21 the fee, unless waived by the department for reasonable cause, a



1 penalty equal to [~~prime plus~~] two per cent of the fee that was
2 not paid when due. Any subsequent payments shall be credited
3 first to unpaid fee amounts beginning with the most delinquent
4 installment rather than to penalty or interest amounts."

5 SECTION 9. Section 346G-10, Hawaii Revised Statutes, is
6 amended by amending its title and subsections (a) and (b) to
7 read as follows:

8 "§346G-10 Private hospital payments through enhanced
9 [~~rates~~] payments to medicaid managed care health plans. (a)
10 The department shall use moneys [~~solely~~] from the hospital
11 sustainability program special fund solely to fulfill the
12 requirements of section 346G-4(c).

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

20 (1) The [~~rate enhancement~~] enhanced payments shall be used
21 exclusively [~~for increasing~~] to increase



1 reimbursements to private hospitals, [~~to~~] support the
2 availability of services, and [~~to~~] ensure access to
3 care [~~to the~~] for medicaid managed care health plan
4 enrollees;

5 (2) The [~~rate enhancement~~] enhanced payments shall be
6 [~~made part of the monthly capitated rates~~] paid by the
7 department to medicaid managed care health plans,
8 which shall provide documentation to the department
9 and the hospital trade association located in [~~Hawaii~~]
10 the State certifying that the revenues received under
11 paragraph (1) are used in accordance with this
12 section;

13 (3) The [~~rate enhancement~~] enhanced payment rates shall be
14 actuarially sound and approved by the federal
15 government for federal fund participation;

16 (4) The [~~rate enhancements~~] enhanced payment rates shall
17 be retroactive to July 1, 2012, or the effective date
18 approved by the federal government, whichever is
19 later. Retroactive [~~rate enhancements~~] enhanced
20 payment rates shall be paid within thirty days of
21 notification by the Centers for Medicare and Medicaid



- 1 Services to the department of all necessary approvals;
2 [and]
- 3 (5) Payments made by the medicaid managed care health
4 plans shall be made within thirty business days upon
5 receipt of [~~monthly capitation rates~~] payment from the
6 department [-]; and
- 7 (6) Each managed care health plan shall expend one hundred
8 per cent of any increased payments received under this
9 section to carry out the goals of the hospital
10 sustainability program."

11 SECTION 10. Section 346G-12, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§346G-12 Termination. (a) Collection of the hospital
14 sustainability fee established by section 346G-5 shall be
15 discontinued if:

- 16 (1) The required federal approvals specified in section
17 346G-7 are not granted or are revoked by the Centers
18 for Medicare and Medicaid Services;
- 19 (2) The department reduces [~~funding for hospital services~~
20 ~~below the state appropriation in effect as of July 1,~~
21 ~~2021;~~] reimbursement rates for private hospital



1 services provided to medicaid patients, with the
2 intent to use the sustainability funds to supplant the
3 planned or permanent reduction in reimbursement rates;

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) If [~~collection of~~] the hospital sustainability fee is
16 discontinued [~~as provided in this section~~], any remaining moneys
17 in the hospital sustainability program special fund shall be
18 distributed [~~pursuant to section 346C-4(e)~~] to hospitals within
19 six months of the date of discontinuation in the same
20 proportions as received from the hospitals."



1 SECTION 11. 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, as
8 amended by section 7 of Act 38, Session Laws of Hawaii 2021, is
9 amended by amending section 5 to read as follows:

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

16 SECTION 12. Act 123, Session Laws of Hawaii 2014, as
17 amended by section 3 of Act 70, Session Laws of Hawaii 2015, as
18 amended by section 4 of Act 60, Session Laws of Hawaii 2016, as
19 amended by section 6 of Act 59, Session Laws of Hawaii 2017, as
20 amended by section 7 of Act 173, Session Laws of Hawaii 2019, as



1 amended by section 8 of Act 38, Session Laws of Hawaii 2021, is
2 amended by amending section 7 to read as follows:

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

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

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

10 SECTION 13. There is appropriated out of the hospital
11 sustainability program special fund the sum of \$173,000,000 or
12 so much thereof as may be necessary for fiscal year 2023-2024
13 and the same sum or so much thereof as may be necessary for
14 fiscal year 2024-2025 for the purposes of the hospital
15 sustainability program.

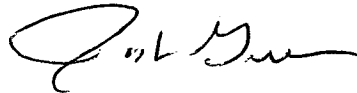
16 The sums appropriated shall be expended by the department
17 of human services for the purposes of this Act.

18 SECTION 14. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 15. This Act shall take effect upon its approval;
2 provided that section 13 of this Act shall take effect on
3 July 1, 2023.

APPROVED this 22nd day of June , 2023



GOVERNOR OF THE STATE OF HAWAII




THE SENATE OF THE STATE OF HAWAI'I

Date: May 4, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate

SB No. 404, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 4, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives