
A BILL FOR AN ACT

RELATING TO NURSING FACILITIES.

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 the
4 State. In the eleven 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 in a public-private partnership
9 to ensure that patients in the State can access quality,
10 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 ongoing coronavirus disease 2019 (COVID-19)
15 pandemic. Medicaid is jointly financed by the federal and state
16 governments by a statutory formula whereby the federal
17 government pays between fifty per cent and seventy-four per



1 cent, with assistance levels determined by each state's per
2 capita income. States with the lowest per capita income
3 relative to the national average receive higher federal matching
4 rates. Under federal rules, the state share must be public
5 funds that are not federal funds. The legislature finds that
6 public funding to help financially sustain Hawaii's nursing
7 facilities should continue to be assessed through the nursing
8 facility sustainability program's provider fee, known as the
9 nursing facility sustainability fee, which is currently
10 scheduled for repeal on December 31, 2023.

11 The legislature further finds that provider fees exist in
12 forty-nine states and the District of Columbia as a means of
13 drawing down federal funds to sustain their medicaid programs,
14 increase the number of health care providers, and expand
15 medicaid enrollment. Provider fees, which are collected from
16 specific categories of health care providers, may be imposed on
17 different classes of health care services, including inpatient
18 and outpatient hospital and nursing facility services.

19 The legislature finds that a provider fee on nursing
20 facilities in the State has resulted in a substantial increase
21 in medicaid payments without putting additional constraints on



1 the State's budget. The additional federal funds obtained via
2 the nursing facility sustainability program has also maintained
3 access to care for medicaid recipients. This has allowed
4 nursing facilities in the State to continue to serve under- or
5 uninsured patients in a timely, effective manner, and helped to
6 ensure the overall sustainability of the health care system in
7 the State.

8 Therefore, the purpose of this Act is to preserve access to
9 health care for medicaid recipients by:

- 10 (1) Continuing and strengthening the nursing facility
11 sustainability program by:
- 12 (A) Making the program permanent;
 - 13 (B) Making the nursing facility sustainability
14 program special fund's exemptions from the
15 central service expenses assessment and the
16 administrative expenses assessment under
17 sections 36-27(a) and 36-30(a), Hawaii Revised
18 Statutes, permanent; and
 - 19 (C) Appropriating moneys out of the nursing facility
20 sustainability special fund for the purposes of
21 the program; and



1 (2) Repealing chapter 346E, Hawaii Revised Statutes,
2 relating to the nursing facility tax.

3 SECTION 2. Section 23-78, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) This section shall apply to the following:

6 (1) Section 237-24.7(1)--Amounts received by hotel
7 operators and hotel suboperators for employee wages
8 and fringe benefits;

9 (2) Section 237-24.7(2)--Amounts received by a county
10 transportation system operator under a contract with
11 the county;

12 (3) Section 237-24.7(4)--Amounts received by orchard
13 property operators for employee wages and fringe
14 benefits;

15 (4) Section [~~237-24.7(6)~~] 237-24.7(5)--Amounts received
16 from insurers for damage or loss of inventory of
17 businesses located in a natural disaster area;

18 (5) Section [~~237-24.7(7)~~] 237-24.7(6)--Amounts received by
19 community organizations, school booster clubs, and
20 nonprofit organizations for precinct and other
21 election-related activities;



1 (6) Section [~~237-24.7(8)~~] 237-24.7(7)--Interest received
 2 by persons domiciled outside the State from trust
 3 companies acting as payment agents or trustees on
 4 behalf of issuers or payees of interest-bearing
 5 instruments or obligations;

6 (7) Section [~~237-24.7(9)~~] 237-24.7(8)--Amounts received by
 7 management companies from related entities engaged in
 8 interstate or foreign common carrier
 9 telecommunications services for employee wages and
 10 fringe benefits; and

11 (8) Section [~~237-24.7(10)~~] 237-24.7(9)--Amounts received
 12 from technology research and development grants."

13 SECTION 3. Section 36-27, Hawaii Revised Statutes, is
 14 amended by amending subsection (a) to read as follows:

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

20 (1) Special out-of-school time instructional program fund
 21 under section 302A-1310;



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



- 1 (15) Glass advance disposal fee established by
2 section 342G-82;
- 3 (16) Center for nursing special fund under
4 section 304A-2163;
- 5 (17) Passenger facility charge special fund established by
6 section 261-5.5;
- 7 (18) Solicitation of funds for charitable purposes special
8 fund established by section 467B-15;
- 9 (19) Land conservation fund established by section 173A-5;
- 10 (20) Court interpreting services revolving fund under
11 section 607-1.5;
- 12 (21) Trauma system special fund under section 321-22.5;
- 13 (22) Hawaii cancer research special fund;
- 14 (23) Community health centers special fund;
- 15 (24) Emergency medical services special fund;
- 16 (25) Rental motor vehicle customer facility charge special
17 fund established under section 261-5.6;
- 18 (26) Shared services technology special fund under
19 section 27-43;
- 20 (27) Automated victim information and notification system
21 special fund established under section 353-136;



1 (28) Deposit beverage container deposit special fund under
2 section 342G-104;

3 (29) Hospital sustainability program special fund under
4 section 346G-4;

5 (30) Nursing facility sustainability program special fund
6 established under section 346F-4;

7 (31) Hawaii 3R's school improvement fund under
8 section 302A-1502.4;

9 (32) After-school plus program revolving fund under
10 section 302A-1149.5;

11 (33) Civil monetary penalty special fund under
12 section 321-30.2; and

13 [+](34)[+] Stadium development special fund under
14 section 109-3.5,

15 shall deduct five per cent of all receipts of all other special
16 funds, which deduction shall be transferred to the general fund
17 of the State and become general realizations of the State. All
18 officers of the State and other persons having power to allocate
19 or disburse any special funds shall cooperate with the director
20 in effecting these transfers. To determine the proper revenue
21 base upon which the central service assessment is to be



1 calculated, the director shall adopt rules pursuant to chapter
 2 91 for the purpose of suspending or limiting the application of
 3 the central service assessment of any fund. No later than
 4 twenty days prior to the convening of each regular session of
 5 the legislature, the director shall report all central service
 6 assessments made during the preceding fiscal year."

7 SECTION 4. Section 36-30, Hawaii Revised Statutes, is
 8 amended by amending subsection (a) to read as follows:

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

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



- 1 (8) Convention center enterprise special fund established
- 2 under section 201B-8;
- 3 (9) Hawaii health systems corporation special funds and
- 4 the subaccounts of its regional system boards;
- 5 (10) Universal service fund established under
- 6 section 269-42;
- 7 (11) Emergency and budget reserve fund under
- 8 section 328L-3;
- 9 (12) Public schools special fees and charges fund under
- 10 section 302A-1130;
- 11 (13) Sport fish special fund under section 187A-9.5;
- 12 (14) Neurotrauma special fund under section 321H-4;
- 13 (15) Center for nursing special fund under
- 14 section 304A-2163;
- 15 (16) Passenger facility charge special fund established by
- 16 section 261-5.5;
- 17 (17) Court interpreting services revolving fund under
- 18 section 607-1.5;
- 19 (18) Trauma system special fund under section 321-22.5;
- 20 (19) Hawaii cancer research special fund;
- 21 (20) Community health centers special fund;



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

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

19 SECTION 5. Section 237-24.7, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§237-24.7 Additional amounts not taxable.** In addition to
2 the amounts not taxable under section 237-24, this chapter shall
3 not apply to:

4 (1) Amounts received by the operator of a hotel from the
5 owner of the hotel or from a time share association,
6 and amounts received by the suboperator of a hotel
7 from the owner of the hotel, from a time share
8 association, or from the operator of the hotel, in
9 amounts equal to and which are disbursed by the
10 operator or suboperator for employee wages, salaries,
11 payroll taxes, insurance premiums, and benefits,
12 including retirement, vacation, sick pay, and health
13 benefits. As used in this paragraph:

14 "Employee" means employees directly engaged in
15 the day-to-day operation of the hotel and employed by
16 the operator or suboperator.

17 "Hotel" means an operation as defined in
18 section 445-90 or a time share plan as defined in
19 section 514E-1.

20 "Operator" means any person who, pursuant to a
21 written contract with the owner of a hotel or time



1 share association, operates or manages the hotel for
2 the owner or time share association.

3 "Owner" means the fee owner or lessee under a
4 recorded lease of a hotel.

5 "Suboperator" means any person who, pursuant to a
6 written contract with the operator, operates or
7 manages the hotel as a subcontractor of the operator.

8 "Time share association" means an "association"
9 as that term is defined in section 514E-1;

10 (2) Amounts received by the operator of a county
11 transportation system operated under an operating
12 contract with a political subdivision, where the
13 political subdivision is the owner of the county
14 transportation system. As used in this paragraph:

15 "County transportation system" means a mass
16 transit system of motorized buses providing regularly
17 scheduled transportation within a county.

18 "Operating contract" or "contract" means a
19 contract to operate and manage a political
20 subdivision's county transportation system, which
21 provides that:



1 (A) The political subdivision shall exercise
2 substantial control over all aspects of the
3 operator's operation;

4 (B) The political subdivision controls the
5 development of transit policy, service
6 planning, routes, and fares; and

7 (C) The operator develops in advance a draft
8 budget in the same format as prescribed for
9 agencies of the political subdivision. The
10 budget must be subject to the same
11 constraints and controls regarding the
12 lawful expenditure of public funds as any
13 public sector agency, and deviations from
14 the budget must be subject to approval by
15 the appropriate political subdivision
16 officials involved in the budgetary process.

17 "Operator" means any person who, pursuant to an
18 operating contract with a political subdivision,
19 operates or manages a county transportation system.

20 "Owner" means a political subdivision that owns
21 or is the lessee of all the properties and facilities



1 of the county transportation system (including buses,
2 real estate, parking garages, fuel pumps, maintenance
3 equipment, office supplies, etc.), and that owns all
4 revenues derived therefrom;

5 (3) Surcharge taxes on rental motor vehicles imposed by
6 chapter 251 and passed on and collected by persons
7 holding certificates of registration under that
8 chapter;

9 (4) Amounts received by the operator of orchard properties
10 from the owner of the orchard property in amounts
11 equal to and which are disbursed by the operator for
12 employee wages, salaries, payroll taxes, insurance
13 premiums, and benefits, including retirement,
14 vacation, sick pay, and health benefits. As used in
15 this paragraph:

16 "Employee" means an employee directly engaged in
17 the day-to-day operations of the orchard properties
18 and employed by the operator.

19 "Operator" means a producer who, pursuant to a
20 written contract with the owner of the orchard
21 property, operates or manages the orchard property for



1 the owner where the property contains an area
2 sufficient to make the undertaking economically
3 feasible.

4 "Orchard property" means any real property that
5 is used to raise trees with a production life cycle of
6 fifteen years or more producing fruits or nuts having
7 a normal period of development from the initial
8 planting to the first commercially saleable harvest of
9 not less than three years.

10 "Owner" means a fee owner or lessee under a
11 recorded lease of orchard property;

12 ~~+(5) Taxes on nursing facility income imposed by chapter~~
13 ~~346E and passed on and collected by operators of~~
14 ~~nursing facilities;~~

15 ~~+(6)]~~ (5) Amounts received under property and casualty
16 insurance policies for damage or loss of inventory
17 used in the conduct of a trade or business located
18 within the State or a portion thereof that is declared
19 a natural disaster area by the governor pursuant to
20 section 209-2;



1 ~~[(7)]~~ (6) Amounts received as compensation by community
2 organizations, school booster clubs, and nonprofit
3 organizations under a contract with the chief election
4 officer for the provision and compensation of precinct
5 officials and other election-related personnel,
6 services, and activities, pursuant to section 11-5;
7 ~~[(8)]~~ (7) Interest received by a person domiciled outside
8 the State from a trust company (as defined in
9 section 412:8-101) acting as payment agent or trustee
10 on behalf of the issuer or payees of an interest
11 bearing instrument or obligation, if the interest
12 would not have been subject to tax under this chapter
13 if paid directly to the person domiciled outside the
14 State without the use of a paying agent or trustee;
15 provided that if the interest would otherwise be
16 taxable under this chapter if paid directly to the
17 person domiciled outside the State, it shall not be
18 exempt solely because of the use of a Hawaii trust
19 company as a paying agent or trustee;
20 ~~[(9)]~~ (8) Amounts received by a management company from
21 related entities engaged in the business of selling



1 interstate or foreign common carrier
2 telecommunications services in amounts equal to and
3 which are disbursed by the management company for
4 employee wages, salaries, payroll taxes, insurance
5 premiums, and benefits, including retirement,
6 vacation, sick pay, and health benefits. As used in
7 this paragraph:

8 "Employee" means employees directly engaged in
9 the day-to-day operation of related entities engaged
10 in the business of selling interstate or foreign
11 common carrier telecommunications services and
12 employed by the management company.

13 "Management company" means any person who,
14 pursuant to a written contract with a related entity
15 engaged in the business of selling interstate or
16 foreign common carrier telecommunications services,
17 provides managerial or operational services to that
18 entity.

19 "Related entities" means:

20 (A) An affiliated group of corporations within
21 the meaning of section 1504 (with respect to



1 affiliated group defined) of the federal
2 Internal Revenue Code of 1986, as amended;

3 (B) A controlled group of corporations within
4 the meaning of section 1563 (with respect to
5 definitions and special rules) of the
6 federal Internal Revenue Code of 1986, as
7 amended;

8 (C) Those entities connected through ownership
9 of at least eighty per cent of the total
10 value and at least eighty per cent of the
11 total voting power of each such entity (or
12 combination thereof), including
13 partnerships, associations, trusts, S
14 corporations, nonprofit corporations,
15 limited liability partnerships, or limited
16 liability companies; and

17 (D) Any group or combination of the entities
18 described in paragraph (C) constituting a
19 unitary business for income tax purposes;
20 whether or not the entity is located within or without
21 the State or licensed under this chapter; and



1 [~~10~~] (9) Amounts received as grants under section
2 206M-15."

3 SECTION 6. Section 346D-4.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) There may be established a monthly needs allowance
6 for individuals living in:

- 7 (1) Adult residential care home type I and type II
8 facilities;
- 9 (2) Licensed developmental disabilities domiciliary homes
10 as defined in section 321-15.9;
- 11 (3) Community care foster family homes as defined in
12 section 321-481;
- 13 (4) Certified adult foster homes as defined in
14 section 321-11.2;
- 15 (5) Domiciliary care as defined in section 346-1;
- 16 (6) A nursing facility [~~as defined in section 346E-1~~]; or
17 (7) A community-based residence as part of the residential
18 alternatives community care program."

19 SECTION 7. Section 346F-2, Hawaii Revised Statutes, is
20 amended to read as follows:



1 " ~~[+]§346F-2[+]~~ **Findings and declaration of necessity.** It
2 is the intent of the legislature to establish a special fund
3 within the state treasury to receive revenue from the imposition
4 of a nursing facility sustainability fee to be administered by
5 the department, which shall use the revenue from the fee and
6 associated federal medicaid matching funds exclusively to make
7 payments to nursing facilities and for other purposes as set
8 forth in this chapter."

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

12 "(b) Moneys in the special fund shall consist of:

13 (1) All revenues collected or received by the department
14 from the nursing facility sustainability fee 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 ~~nursing facility sustainability fees;~~

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) Revenue from the nursing facility sustainability fee
4 shall be used exclusively as follows:

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

8 (A) To match federal medicaid funds, with the
9 combined total to be used to enhance capitated
10 rates to medicaid managed care health plans for
11 the purpose of increasing medicaid payments to
12 private nursing facilities to support the
13 availability of services and ensure access to
14 care for the medicaid managed care health plan
15 enrollees; or

16 (B) To match federal medicaid funds, with the
17 combined total to enhance capitated rates for the
18 purpose of paying quality incentives; and

19 (2) Twelve per cent of the revenue from the nursing
20 facility sustainability fee may be used by the
21 department for other departmental purposes~~[, and~~



1 ~~(3) All moneys remaining in the special fund on June 30,~~
2 ~~2024, shall be distributed to nursing facilities~~
3 ~~within thirty days in the same proportions as received~~
4 ~~from the nursing facilities].~~

5 (d) The department shall utilize federal funds derived
6 from state long-term care facility certified expenditures to
7 make ~~[supplemental]~~ payments to state long-term care facilities
8 to the extent permitted by federal law. The department may
9 receive intergovernmental transfers from the state long-term
10 care facilities to support ~~[direct supplemental]~~ payments and
11 increased capitation rates to health plans for the benefit of
12 the state long-term care facilities. During any period in which
13 the nursing facility sustainability fee is in effect, certified
14 expenditures of state long-term care facilities shall not be
15 used to make or support ~~[direct]~~ payments to private nursing
16 facilities."

17 SECTION 9. Section 346F-5, Hawaii Revised Statutes, is
18 amended by amending subsections (b) through (d) to read as
19 follows:

20 "(b) The nursing ~~[+]~~facility~~[+]~~ sustainability fee shall
21 be based on the ~~[net patient service revenue]~~ total resident



1 days of all nursing facilities that are subject to the
2 sustainability fee, as determined by the department.

3 (c) The nursing facility sustainability fee shall not
4 exceed [~~5.5~~] six per cent of overall net patient service revenue
5 and shall be calculated and paid on a per resident day basis,
6 unless the facility qualifies for an exemption identified in
7 subsection (d)(1). The facilities described in subsection
8 (d)(2) shall pay a reduced daily fee compared to other
9 facilities participating in the program.

10 (d) In accordance with the redistribution method set forth
11 in title 42 Code of Federal Regulations section 433.68(e)(1) and
12 (2), the department shall seek a waiver of the broad-based and
13 uniformity provider fee requirements under federal law from
14 which to exclude certain nursing facilities and to permit
15 certain high volume medicaid nursing facilities or facilities
16 with a high number of total annual patient days to pay the
17 sustainability fee at a lesser amount per resident day, as
18 follows:

19 (1) The department shall exempt the following nursing
20 facility providers from the nursing facility
21 sustainability fee subject to federal approval under



1 title 42 Code of Federal Regulations

2 section 433.68(e)(2):

3 (A) Nursing facilities with twenty-eight or fewer
4 licensed beds;

5 (B) Nursing facilities owned, operated by, or
6 affiliated with the Hawaii health systems
7 corporation; and

8 (C) Continuing care retirement communities.

9 (2) The department shall reduce the fee for [~~high volume~~
10 ~~medicaid nursing facilities or facilities with high~~
11 ~~patient volumes~~] facilities with high medicaid
12 resident days in order to meet the redistributive
13 tests of title 42 Code of Federal Regulations
14 section 433.68(e)(2).

15 (3) The department, [~~with agreement by~~] upon good faith
16 consultation and negotiations with the nursing
17 facility trade [associations] association located in
18 Hawaii, may modify, add to, or [~~reduce the categories~~
19 ~~of~~] exclude facilities [~~exempt~~] from the assessment if
20 necessary to obtain and maintain approval of the
21 waiver by the Centers for Medicare and Medicaid



1 Services, if the modification, addition, or exclusion
2 is consistent with the purposes of this chapter."

3 SECTION 10. Section 346F-6, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The department shall [~~collect and each nursing~~
6 ~~facility shall pay in twelve equal installments the~~] impose a
7 nursing facility sustainability fee [in section 346F-5 on a
8 monthly basis, subject to the terms of this section. The fee
9 shall be due within sixty days after the end of each month, with
10 the initial payment due on the later of July 31, 2012, or forty-
11 five days after the required federal approvals for the
12 assessment and any increase in health plan capitation payments
13 have been secured from the Centers for Medicare and Medicaid
14 Services.] on a monthly basis, which a nursing facility shall
15 pay no later than the sixtieth day after the end of the calendar
16 month that the department imposed the fee; provided that, if
17 required federal approvals have not been secured by the end of a
18 calendar month, the fees for that month shall be paid within ten
19 days after the notification to all nursing facilities that the
20 required approvals have been secured."



1 SECTION 11. Section 346F-9, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) If a nursing facility fails to pay the full amount of
4 the nursing facility sustainability fee when due, there shall be
5 added to the fee, unless waived by the department for reasonable
6 cause, a penalty equal to two per cent of the fee that was not
7 paid when due. Any subsequent payments shall be credited first
8 to unpaid fee amounts [~~rather than to penalty or interest~~
9 ~~amounts,~~] beginning with the most delinquent installment[~~-~~
10 rather than to penalty or interest amounts."]

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

13 "**§346F-10 Enhanced rates to medicaid managed care health**
14 **plans.** (a) In accordance with title 42 Code of Federal
15 Regulations part 438, the department shall use revenues from the
16 nursing facility sustainability fee and federal matching funds
17 to enhance the capitated rates paid to medicaid managed care
18 health plans [~~for the period of July 1 through December 31,~~
19 ~~2021, and calendar years 2022 and 2023,~~] consistent with the
20 following objectives:



- 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 (1) The department shall use moneys from the nursing
7 facility sustainability program solely to fulfill the
8 requirements of section 346F-4(c);
- 9 (2) The rate enhancement shall be ~~[made part of the~~
10 ~~monthly capitated rates]~~ paid by the department to
11 medicaid managed care health plans, which shall
12 provide documentation to the department and the
13 nursing facility trade association located in Hawaii
14 certifying that the revenues received under paragraph
15 ~~[(1)]~~ (3) are used in accordance with this section;
- 16 (3) The rate enhancement shall be used exclusively to
17 increase reimbursements to private nursing facilities
18 to support the availability of services and to ensure
19 access to care for medicaid managed care health plan
20 enrollees;



1 ~~[(3)]~~ (4) The rate enhancement shall be actuarially sound
2 and approved by the federal government for federal
3 fund participation;

4 ~~[(4)]~~ (5) The department shall modify the fee-for-service
5 reimbursement rates of the nursing facilities to
6 recognize the medicaid portion of the nursing facility
7 sustainability fee as an additional cost of serving
8 medicaid patients, and to provide a uniform percentage
9 increase in preexisting facility-specific rates; ~~and~~

10 ~~[(5)]~~ (6) Payments made by the medicaid managed care health
11 plans shall be made within thirty calendar days upon
12 receipt of ~~[monthly capitation rates]~~ payment from the
13 department~~[-]~~; and

14 (7) Each managed health care plan shall expend one hundred
15 per cent of any increased payments it receives under
16 this section to carry out the goals of the nursing
17 facility sustainability program.

18 (b) If federal approval pursuant to section 346F-7 is not
19 received until after the end of any month for which the nursing
20 facility sustainability fee is applicable, the department shall
21 make the initial monthly payments within five days after receipt



1 of the nursing facility sustainability fee for the respective
2 month.

3 (c) To the extent the nursing facility sustainability
4 program is not effective for the entire year, the nursing
5 facility sustainability fee, the state medicaid expenses and
6 administrative fee, and the corresponding payments to fulfill
7 the requirements of section 346F-4(c) shall be based on the
8 proportion of the fiscal year the program is in effect."

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

11 "**§346F-13 Termination.** (a) Collection of the nursing
12 facility sustainability fee under section 346F-5 shall be
13 discontinued if:

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

18 (2) The department reduces [~~funding for nursing facility~~
19 ~~services below the state appropriation in effect on~~
20 ~~June 30, 2021;~~] reimbursement rates for private
21 nursing facility services to medicaid patients with



1 the intention of using the sustainability funds to
2 supplant the planned or permanent reduction in rates;

3 (3) The department or any other state agency uses the
4 money in the special fund for any use other than the
5 uses permitted pursuant to this chapter; or

6 (4) Federal financial participation to match the nursing
7 facility sustainability fee becomes unavailable under
8 federal law. In such case, the department shall
9 terminate the collection of the fee beginning on the
10 effective date of the federal statutory, regulatory,
11 or interpretive change.

12 (b) If [~~collection of~~] the nursing facility sustainability
13 fee is discontinued [~~as provided in this section~~], any
14 [~~remaining~~] money remaining in the nursing facility
15 sustainability program special fund shall be [~~returned~~]
16 distributed to the nursing facilities [~~from which the fee was~~
17 ~~collected~~] within [~~thirty days~~] six months of the date of
18 discontinuation in the same proportions as received from the
19 nursing facilities."

20 SECTION 14. Chapter 346E, Hawaii Revised Statutes, is
21 repealed.



1 SECTION 15. 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, as
8 amended by section 7 of Act 24, 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[~~7~~
11 ~~and shall be repealed on December 31, 2023; provided that~~
12 ~~section 4, Hawaii Revised Statutes, established by section 2~~
13 ~~of this Act, and the amendment made to section 36-30(a), Hawaii~~
14 ~~Revised Statutes, in section 3 of this Act, shall be repealed on~~
15 ~~June 30, 2024]."~~

16 SECTION 16. Act 124, Session Laws of Hawaii 2014, as
17 amended by section 3 of Act 69, Session Laws of Hawaii 2015, as
18 amended by section 3 of Act 59, Session Laws of Hawaii 2016, as
19 amended by section 6 of Act 60, Session Laws of Hawaii 2017, as
20 amended by section 7 of Act 163, Session Laws of Hawaii 2019, as



1 amended by section 8 of Act 24, 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 5 shall take effect on July 1, 2014, and~~

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

9 SECTION 17. There is appropriated out of the nursing
10 facility sustainability program special fund the sum of
11 \$ or so much thereof as may be necessary for fiscal
12 year 2023-2024 and the same sum or so much thereof as may be
13 necessary for fiscal year 2024-2025 for purposes consistent with
14 section 346F-4, Hawaii Revised Statutes.

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

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

19 SECTION 19. This Act shall take effect on December 31,
20 2050.



Report Title:

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

Description:

Makes permanent and amends the Nursing Facility Sustainability Program. Makes certain assessment exemptions permanent as to the Nursing Facility Sustainability Program Special Fund. Repeals chapter 346E, HRS, relating to the Nursing Facility Tax. Appropriates funds from the Nursing Facility 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.

