

ACT 217

H.B. NO. 2275

A Bill for an Act Relating to Hospitals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hospitals in the State face major financial challenges in providing quality health care for Hawaii residents. Some of these challenges are the result of payments for care of medicaid enrollees that do not cover the actual costs of care. The legislature finds that federal funding to help financially sustain Hawaii's hospitals may be accessed through a provider fee.

Provider fees are used in forty-seven states and the District of Columbia as a means of drawing down federal funds to sustain state medicaid programs due to rising state budget deficits, increasing health care costs, and expanding medicaid enrollment. Implementation of a provider fee in Hawaii would help stabilize medicaid payments to facilities and slow the erosion of access to care for beneficiaries served by the program.

Medicaid is jointly financed by the federal and state governments, but by statutory formula, the federal government pays between fifty per cent and seventy-four per cent of medicaid costs incurred by states for care delivered to their medicaid beneficiaries. Federal assistance percentages vary by state, with states that have lower per capita incomes receiving higher federal matching rates. Under federal rules, the state share must be paid through public funds that are not federal funds.

Provider fees, which are collected from specific categories of health care providers that agree to the fee, may be imposed on nineteen different classes of health care services, including inpatient and outpatient hospital and nursing facility services. However, there are limitations on the way provider fees may be structured. The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, P.L. 102-234, passed by Congress in 1991, imposes the following requirements:

- (1) Broad-based. To be considered broad-based, a provider fee must be imposed on all health care items or services furnished by all non-federal, non-public providers in the class in the State. Provider fee programs may exclude public facilities without violating federal law;
- (2) Uniformly imposed. In general, a provider fee is uniformly imposed if it is the same amount or rate for each provider in the class; and
- (3) Hold harmless prohibition. States may not hold providers harmless. A provider fee is considered to hold the provider harmless if the providers paying the fee receive, directly or indirectly, non-medicaid payments from the state that are positively correlated to the fee paid, or any offset or waiver that guarantees to hold the provider

harmless for all or a portion of the fee. A provider fee is also considered to hold the provider harmless if the medicaid payments to the providers vary based only on the amount of the total fees paid by the provider.

The maximum provider fee a state may impose is currently six per cent of net patient revenue. A number of proposals have been made, but not implemented, to eliminate or reduce the limits on medicaid provider fee programs. However, because provider fees are used by so many states, many of those who are knowledgeable about this subject view elimination of provider fees as unlikely due to their strong political support. A more realistic expectation is a reduction of the provider fee maximum, as proposed by President Barack Obama's fiscal year 2012 budget, which would reduce the maximum to three and one-half per cent in 2017. This proposal recognizes that provider fees are essential for most states to maintain a stable, functioning medicaid program.

In Hawaii, a provider fee would allow an increase in medicaid payments at a time when constraints on the State's budget have forced a reduction in payments and benefits. The additional federal funds for hospital payments obtained via the fee program would reduce the amount of losses incurred by hospitals. As such, the provider fee would help preserve access to health care for the medicaid population and sustain the State's entire health care system.

State hospitals will not be covered by the hospital sustainability fee. However, other provisions of this law are intended to assure that state hospitals will benefit from the use of their certified expenditures and intergovernmental transfers to generate federal funds to cover their operating expenses.

The purpose of this Act is to ensure access to health care for medicaid recipients by:

- (1) Establishing a hospital sustainability fee assessed on health care items or services provided by private hospitals;
- (2) Establishing a hospital sustainability program special fund to receive moneys from the hospital sustainability fee and federal medicaid matching funds; and
- (3) Providing for the use of the moneys in the hospital sustainability program special fund.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HOSPITAL SUSTAINABILITY PROGRAM**

§ -1 Title. This chapter shall be known and may be cited as the “Hospital Sustainability Program Act”.

§ -2 Findings and declaration of necessity. It is the intent of the legislature to establish a special fund within the state treasury to receive revenue from the imposition of a hospital sustainability fee to be administered by the department and to use the revenue from the fee and associated federal medicaid matching funds to make direct payments to hospitals and for other purposes as set forth in this chapter.

§ -3 Definitions. As used in this chapter:
 “Department” means the department of human services.
 “Fiscal year” means a twelve-month period from July 1 of a particular calendar year to June 30 of the following calendar year, inclusive.

“Hospital” means any facility licensed pursuant to chapter 11-93, Hawaii Administrative Rules.

“Inpatient care” means the care of patients whose conditions require admission to a hospital.

“Net patient service revenue” means gross revenue from inpatient and outpatient care provided to hospital patients converted to net patient revenue utilizing data from Worksheets G-2 and G-3 of each hospital’s medicare cost report for the period ending between July 1, 2009, and June 30, 2010. If the hospital is new or did not file a fiscal year medicare cost report, the department shall obtain the hospital’s net patient service revenue from the most recent period available.

“Outpatient care” means all services furnished by hospitals to patients who are registered as hospital outpatients.

“Private hospital” means those hospitals named in attachment A of the QUEST expanded medicaid section 1115 demonstration waiver that are currently operating.

“Section 1115 waiver” means the QUEST expanded medicaid section 1115 demonstration waiver (Number 11-W-00001/9).

§ -4 Hospital sustainability program special fund. (a) There is created in the state treasury the hospital sustainability program special fund to be administered by the department into which shall be deposited all moneys collected under this chapter.

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

- (1) All revenue received by the department from the hospital sustainability fee;
- (2) All federal medicaid funds received by the department as a result of matching expenditures made with the hospital sustainability fee;
- (3) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (4) Any designated appropriations, federal funds, donations, gifts, or moneys from any other sources.

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

- (1) To make direct payments to private hospitals pursuant to the terms of the section 1115 waiver. At least ninety-three per cent of the moneys in the special fund shall be used for this purpose, provided that in no instance shall a hospital receive supplemental payments that exceed its allowable uncompensated care costs;
- (2) Two per cent of the moneys in the special fund shall be used for medicaid covered services for the benefit of hospitals;
- (3) Five per cent of the moneys in the special fund may be used by the department for other departmental purposes; and
- (4) Any money remaining in the special fund six months after the repeal of this chapter, shall be distributed to hospitals within thirty days in the same proportions as received from the hospitals.

(d) The department shall utilize federal funds derived from state hospital certified expenditures to make supplemental payments to state hospitals and is authorized to receive intergovernmental transfers from the state hospitals to support increased capitation rates to health plans for the benefit of the state hospitals. During any period in which the hospital sustainability fee is in effect, certified expenditures of state hospitals shall not be used to make or support direct payments to private hospitals.

(e) The hospital sustainability program special fund appropriation ceiling shall be \$42,000,000 for fiscal year 2012-2013 and \$37,000,000 in federal funds for HMS 401 for fiscal year 2012-2013.

§ -5 Hospital sustainability fee. (a) Effective July 1, 2012, or, if later, the effective date of any necessary federal approvals, the department shall charge and collect provider fees, to be known as the hospital sustainability fee, on inpatient and outpatient care services provided by private hospitals.

(b) The hospital sustainability fee shall be based on the net patient service revenue for inpatient services and outpatient services, respectively, of all hospitals that are subject to the hospital sustainability fee.

(c) The hospital sustainability fee for inpatient care services may differ from the fee for outpatient care services but the fees shall not in the aggregate exceed three per cent of net patient service revenue as derived from the hospitals' medicare cost report ending during state fiscal year 2010. The inpatient hospital sustainability fee shall be 2.471 per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall be three per cent of net outpatient hospital service revenue. Each fee shall be the same percentage for all affected hospitals, subject to subsection (d).

(d) The department shall exempt children's hospitals, federal hospitals, public hospitals, rehabilitation hospitals, and psychiatric hospitals from the hospital sustainability fees on inpatient and outpatient care services. In addition, the department shall exempt hospitals with net outpatient revenue of less than \$45,000,000 per year (based on fiscal year 2010 reports) from the hospital sustainability fee on outpatient care services.

(e) The department, with agreement by the hospital trade association located in Hawaii, may modify the structure of the hospital sustainability program if such modification is necessary to obtain federal waiver approval consistent with the requirements of 42 Code of Federal Regulations section 433.68(e)(2).

§ -6 Hospital sustainability fee assessments. (a) Hospitals shall pay the hospital sustainability fee to the department in accordance with this chapter. The fee shall be divided and paid in four equal installments on a quarterly basis.

(b) The department shall collect, and each hospital shall pay, the hospital sustainability fee not later than the fifteenth day after the end of each calendar quarter, provided that if required federal approvals have not been secured by the end of a calendar quarter the fees for that quarter shall be paid within ten days after notification to the hospitals that the required approvals have been received.

§ -7 Federal approval. The department shall seek waivers and any additional approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the hospital sustainability program.

§ -8 Multifacility locations. If an entity conducts, operates, or maintains more than one hospital licensed by the department of health, the entity shall pay the hospital sustainability fee for each hospital separately.

§ -9 Penalties for failure to pay the hospital sustainability fee. (a) If a hospital fails to pay the full amount of any hospital sustainability fee when due, there shall be added to the fee, unless waived by the department for reasonable cause, a penalty equal to prime plus two per cent of the fee that was not paid when due. Any subsequent payments shall be credited first to unpaid fee

amounts beginning with the most delinquent installment rather than to penalty or interest amounts.

(b) In addition to the penalty imposed by subsection (a), the department may seek any of the following remedies for the failure of any hospital to pay its fee when due:

- (1) Withholding any medical assistance reimbursement payments until such time as the fee amount is paid in full;
- (2) Suspension or revocation of the hospital license; or
- (3) Development of a plan that requires the hospital to pay any delinquent fee in installments.

§ -10 Private hospital payments. (a) The department shall use moneys from the hospital sustainability program special fund to make direct payments to private hospitals in an amount equal to \$77,468,401 to cover the uncompensated care costs incurred by private hospitals for serving medicaid and uninsured individuals during state fiscal year 2013.

(b) The department shall make quarterly payments to private hospitals to reimburse their uncompensated care costs within twenty days after the end of each calendar quarter; provided that payments shall not be due until at least fifteen days after receipt of the fees required by section -6. If the department fails to pay the full amount when due, there shall be added to the payment a penalty equal to prime plus two per cent of the payment that was not paid when due.

(c) Each eligible hospital's quarterly payment shall be equal to one-quarter of its uncompensated care costs for the fiscal year in which payment is made, as derived from the uncompensated care costs reported by all private hospitals for fiscal year 2010.

(d) If federal approval pursuant to section -7 is not received until after the end of any quarter for which the hospital sustainability fee is applicable, the department shall make the initial quarterly payments within five days after receipt of the hospital sustainability fee for the respective quarter.

(e) To the extent the hospital sustainability program is not effective for the entire year, the hospital sustainability fee, the state medicaid expenses and administrative fee, and the corresponding uncompensated care payments shall be based on the proportion of the fiscal year the program is in effect.

§ -11 Special designation of hospital sustainability program special fund. Notwithstanding section 37-53, and any law or any administrative rule to the contrary, the specific purposes set out in section -4(c) are established as being exclusive uses of the hospital sustainability program special fund. The hospital sustainability program special fund shall not and may not be used for any other purposes, notwithstanding any authority granted to the governor or any other state official by any other statutory provisions relating to the allocation or reallocation of funds.

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

- (1) The required federal approvals specified in section -7 are not granted or are revoked by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for hospital services below the state appropriation in effect as of the effective date of this chapter;
- (3) The department or any other state agency uses the money in the hospital sustainability program special fund for any use other than the uses permitted by this chapter; or

- (4) Federal financial participation to match the revenue from the hospital sustainability fee becomes unavailable under federal law; provided that the department shall terminate the imposition of the hospital sustainability fee beginning on the date the federal statutory, regulatory, or interpretive change takes effect.
- (b) Notwithstanding section -4(c), if collection of the hospital sustainability fee is discontinued as provided in this section, any remaining moneys in the hospital sustainability program special fund shall be distributed within thirty days to the private hospitals on the same basis as the hospital sustainability fee was collected.

§ -13 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

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

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special out-of-school time instructional program fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Funds of the employees’ retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under section 431P-2;
 - (11) Convention center enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under section 269-42;
 - (15) Emergency and budget reserve fund under section 328L-3;
 - (16) Public schools special fees and charges fund under section 302A-1130;
 - (17) Sport fish special fund under section 187A-9.5;
 - (18) Center for nursing special fund under section 304A-2163;
 - (19) Passenger facility charge special fund established by section 261-5.5;
 - (20) Court interpreting services revolving fund under section 607-1.5;
 - (21) Hawaii cancer research special fund;
 - (22) Community health centers special fund;
 - (23) Emergency medical services special fund;
 - (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6; ~~and~~
 - (25) Shared services technology special fund under section 27-43[.]; and
 - (26) Hospital sustainability program special fund under section -4.

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, 2013; provided that section -4(c), Hawaii Revised Statutes, in section 2 of this Act shall be repealed on December 31, 2013.

(Approved July 3, 2012.)