

ACT 141

H.B. NO. 879

A Bill for an Act Relating to the Hospital Sustainability Program.

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

SECTION 1. Act 217, Session Laws of Hawaii 2012, is amended by amending section 2 to read as follows:

“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~~ of human services, which shall 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 ~~hospitals~~ hospital’s medicare cost report for ~~the period ending between July 1, 2009, and June 30, 2010.~~ fiscal year 2010-2011. 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 non-public hospitals named in attachment A of the ~~QUEST expanded~~ medicaid section 1115 demonstration waiver that were in operation in calendar year 2012 and are currently operating.

“Section 1115 waiver” means the ~~QUEST expanded~~ medicaid section 1115 demonstration waiver ~~[(Number 11-W-00001/9).]~~ under which the state medicaid program is operating.

§ -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~~ eighty-eight 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~~ uncompensated care costs 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]~~ (2) Twelve per cent of the moneys in the special fund may be used by the department for other departmental purposes; and
 [(4)] (3) 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 direct supplemental payments and 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 ~~[hospitals²]~~ hospital's medicare cost report ending during state fiscal year ~~[2010-]~~ 2010-2011. The inpatient hospital sustainability fee shall be ~~[2.474]~~ 2.365 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, and any hospital that was not in operation during any part of calendar year 2012 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]~~ \$42,500,000 per year (based on fiscal year ~~[2010]~~ 2010-2011 reports), public hospitals, and any hospital that was not in operation during any part of calendar year 2012 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~~] \$81,309,367 to cover the uncompensated care costs incurred by private hospitals for serving medicaid and uninsured individuals during state fiscal year [~~2013-~~] 2013-2014.

(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-~~] 2010-2011.

(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 2. Act 217, Session Laws of Hawaii 2012, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, [~~2013;~~ 2014; provided that section -4(c), Hawaii Revised Statutes, in section 2 of this Act shall be repealed on December 31, [~~2013;~~ 2014.”

SECTION 3. There is appropriated out of the hospital sustainability program special fund the sum of \$46,000,000 or so much thereof as may be necessary for fiscal year 2013-2014, with such moneys to be used consistent with the hospital sustainability program special fund.

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 2013.

(Approved June 21, 2013.)