

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

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

SECTION 1. The legislature finds that hospitals in the State face major financial challenges in providing quality health care for Hawaii residents. These challenges are largely the result of inadequate payments from the medicaid program that do not cover the actual costs of care. Medicaid is jointly financed by the federal and state government but, by statutory formula, the federal government only 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 public funds that are not federal funds. The legislature finds that federal funding to help sustain Hawaii's hospitals financially may be accessed through a provider fee.

The legislature further finds that provider fees exist in forty-nine states and the District of Columbia as a means of drawing down federal funds to sustain their medicaid programs due to rising state budget deficits, increasing health care costs, and expanding medicaid enrollment. 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.

The legislature additionally finds that, in Hawaii, a provider fee on hospitals has resulted in an increase of medicaid payments at a time when there are constraints on the State's budget. The additional federal funds obtained via the fee program authorized by the hospital sustainability program has helped to reduce the amount of losses incurred by hospitals and slow the erosion of access to care for medicaid recipients. The purpose of this Act is to preserve access to health care for medicaid recipients by extending the hospital sustainability fee program.

SECTION 2. Act 217, Session Laws of Hawaii 2012, section 2, as amended by section 1 of Act 141, Session Laws of Hawaii 2013, as amended by section 1 of Act 123, Session Laws of Hawaii 2014, as amended by section 1 of Act 70, Session Laws of Hawaii 2015, is amended as follows:

1. By amending the definitions of "net patient service revenue" and "private hospital" in § -3, Hawaii Revised Statutes, to read:

"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 fiscal year [~~2012-2013.~~] 2013-2014. 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.

"Private hospital" means those non-public hospitals named in attachment A of the medicaid section 1115 demonstration waiver that were in operation in calendar year [~~2014~~] 2015 and are currently operating[~~;~~] or any hospitals

not named in attachment A of the medicaid section 1115 demonstration waiver that became private hospitals in calendar year 2016 and are currently operating.”

2. By amending subsection (c) of § -4, Hawaii Revised Statutes, to read:

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

- (1) ~~[To make direct supplemental uncompensated care and upper payment limit payments to private hospitals pursuant to the terms of the section 1115 waiver. At least 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 payments that exceed its allowable uncompensated care costs;]~~ No less than eighty-eight per cent of the revenue from the hospital sustainability fee shall be used for one or more of the following:
 - (A) Match federal medicaid funds, with the combined total to be used to enhance capitated rates to medicaid managed care health plans for the sole purpose of increasing medicaid payments to private hospitals;
 - (B) Match federal medicaid funds for Hawaii’s medicaid disproportionate share hospital allotment as authorized by current federal law for private hospitals;
 - (C) Match federal medicaid funds for a private hospital upper payment limit pool; or
 - (D) Match federal medicaid funds with the combined total to be used to enhance capitated rates to medicaid managed care health plans for the purpose of increasing medicaid payments to private hospitals through a quality incentive pool;
 - (2) Twelve per cent of the moneys in the hospital sustainability program special fund may be used by the department for other departmental purposes; and
 - (3) Any money remaining in the hospital sustainability program 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.”
3. By amending § -5, Hawaii Revised Statutes, to read:

“§ -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 hospital’s medicare cost report ending during state fiscal year ~~[2012-2013;]~~ 2013-2014. The inpatient hospital sustainability fee shall ~~[be 1.892]~~ not exceed three 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 private operation during any part of calendar year~~

2014] from the hospital sustainability fees on inpatient services. In addition, the department shall exempt ~~[hospitals with net outpatient revenue of less than \$50,000,000 per year (based on fiscal year 2012-2013 reports) and] children's hospitals, public hospitals, rehabilitation hospitals, psychiatric hospitals, and [any hospital that was not in private operation during any part of calendar year 2014] any hospitals with net outpatient revenues of less than \$57,000,000 per year based upon fiscal year 2013-2014 cost 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).

(f) Notwithstanding section -6, nothing shall require the department to exempt a facility from the hospital sustainability fee if it is not approved by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services."

4. By amending § -6, Hawaii Revised Statutes, to read:

"§ -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]~~ twelve equal installments on a ~~[quarterly]~~ monthly basis.

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

5. By amending § -10, Hawaii Revised Statutes, to read:

"§ -10 Private hospital payments~~[-]~~ through enhanced rates to medicaid managed care health plans. ~~[(a) The department shall use moneys solely from the hospital sustainability program special fund to make direct payments to private hospitals, pursuant to the terms of the section 1115 waiver, in an amount equal to \$88,000,000 to cover the uncompensated care costs incurred by private hospitals for serving medicaid and uninsured individuals during state fiscal year 2015-2016.~~

~~(b) The department shall use moneys solely from the hospital sustainability program special fund to make direct upper payment limit payments in an amount equal to \$3,975,442, pursuant to the terms of the section 1115 waiver, to level II trauma centers verified by the American College of Surgeons and designated by the department of health, including recognized specialty children's hospitals that do not pay both the inpatient and outpatient assessments.~~

~~(c) 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.~~

~~(d) Each eligible hospital's quarterly payment shall be equal to one-quarter of its prorated share of 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 2012-2013; provided that:~~

- (1) ~~Outpatient uncompensated care costs shall be reimbursed at one hundred per cent of reported uncompensated care costs; and~~
- (2) ~~Inpatient uncompensated care costs shall be reimbursed on a pro-rated share based on the remaining uncompensated care amounts available through the section 1115 waiver.~~

~~(e) Each eligible hospital's quarterly payment from the hospital sustainability program special fund shall be equal to one quarter of its share of upper payment limit payments for the fiscal year in which payment is made. Eligible hospitals shall receive their payments based on their medicaid utilization to ensure access to care for that beneficiary population.] (a) The department shall use moneys solely from the hospital sustainability program special fund to fulfill the requirements of section ~~-4(c).~~~~

(b) In accordance with title 42 Code of Federal Regulations section 438, the department shall use revenues from the hospital sustainability fee and federal matching funds to enhance the capitated rates paid to medicaid managed care health plans for the state fiscal year 2016-2017, consistent with the following objectives:

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private hospitals to support the availability of services and to ensure access to care to the medicaid managed care health plan enrollees;
- (2) The rate enhancement shall be made part of the monthly capitated rates by the department to medicaid managed care health plans, which shall provide documentation to the department and the hospital trade association located in Hawaii certifying that the revenues received under paragraph (1) are used in accordance with this section;
- (3) The rate enhancement shall be actuarially sound and approved by the federal government for federal fund participation;
- (4) The rate enhancements shall be retroactive to the effective date of this Act, or the effective date approved by the federal government, whichever is later. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department for all necessary approvals; and
- (5) Payments made by the medicaid managed care health plans shall be made within thirty business days upon receipt of monthly capitation rates from the department.

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

~~[(g)] (d) 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] medicaid managed care health plan payments shall be based on the proportion of the fiscal year the program is in effect."~~

SECTION 3. Act 217, Session Laws of Hawaii 2012, section 5, as amended by section 2 of Act 141, Session Laws of Hawaii 2013, as amended by section 2 of Act 123, Session Laws of Hawaii 2014, as amended by section 2 of Act 70, Session Laws of Hawaii 2015, is amended to read as follows:

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“SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, ~~[2016;]~~ 2017; provided that section 4, Hawaii Revised Statutes, in section 2 of this Act, and the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall be repealed on December 31, ~~[2016; provided further that the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall not be repealed when section 36-30, Hawaii Revised Statutes, is reenacted on June 30, 2015, pursuant to section 34(3) of Act 79, Session Laws of Hawaii 2009.]~~ 2017.”

SECTION 4. Act 123, Session Laws of Hawaii 2014, as amended by section 3 of Act 70, Session Laws of Hawaii 2015, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on June 29, 2014; provided that:

(1) Section 5 shall take effect on July 1, 2014; and

~~(2) The amendments made to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009; and~~

~~(3)~~ (2) The amendments made to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall be repealed on December 31, ~~[2016;]~~ 2017.”

SECTION 5. There is appropriated out of the hospital sustainability program special fund the sum of \$65,000,000 or so much thereof as may be necessary for fiscal year 2016-2017 for the purposes of the hospital sustainability program special fund.

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

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

SECTION 7. This Act shall take effect on June 29, 2016; provided that section 5 of this Act shall take effect on July 1, 2016.

(Approved June 6, 2016.)