

A Bill for an Act Relating to the Nursing Facility Sustainability Program.

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

SECTION 1. Nursing facilities in the State face major financial challenges in providing quality long-term 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 governments by statutory formula. The federal government pays between fifty per cent and seventy-four per cent, with assistance levels determined by each state's per capita income. States with the lowest per capita income receive higher federal matching rates. Under federal rules, the state share must be public funds that are not federal funds. The legislature finds that public funding to help sustain Hawaii's nursing facilities 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 nursing facilities has resulted in an increase in medicaid payments to private nursing facilities at a time when there are constraints on the State's budget. The additional federal funds obtained via the fee program authorized by the nursing facility sustainability program have helped to reduce the amount of losses incurred by long-term care facilities and maintain access to care for medicaid recipients.

The purpose of this Act is to preserve access to health care for medicaid recipients by extending the nursing facility sustainability fee program.

SECTION 2. Section 346F-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Revenue from the nursing facility sustainability fee shall be used exclusively as follows:

- (1) No less than eighty-eight per cent of the revenue from the nursing facility sustainability fee shall be used to 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 nursing facilities;
- (2) Twelve per cent of the revenue from the nursing facility sustainability fee may be used by the department for other departmental purposes; and
- (3) All moneys remaining in the special fund on December 30, ~~[2017,]~~ 2019, shall be distributed to nursing facilities within thirty days in the same proportions as received from the nursing facilities.”

SECTION 3. Section 346F-10, Hawaii Revised Statutes, is amended to read as follows:

~~“[§346F-10]~~ **Enhanced rates to medicaid managed care health plans.** In accordance with title 42 Code of Federal Regulations [section] part 438, the department shall use revenues from the nursing facility 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] years 2017-2018 and 2018-2019, consistent with the following objectives:

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private nursing facilities 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 nursing facility 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; and
- (4) The department shall modify the fee-for-service reimbursement rates of the nursing facilities to recognize the medicaid portion of the nursing facility sustainability fee as an additional cost of serving medicaid patients, and to provide a uniform percentage increase in preexisting facility-specific rates.”

SECTION 4. Section 346F-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Collection of the nursing facility sustainability fee under section 346F-5 shall be discontinued if:

- (1) The waiver in section 346F-7 or the enhanced capitation rates in section 346F-10 have not been approved by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for nursing facility services below the state appropriation in effect on June 30, ~~[2016;]~~ 2018;
- (3) The department or any other state agency uses the money in the special fund for any use other than the uses permitted pursuant to this chapter; or
- (4) Federal financial participation to match the nursing facility sustainability fee becomes unavailable under federal law. In such case, the department shall terminate the collection of the fee beginning on the effective date of the federal statutory, regulatory, or interpretive change.”

SECTION 5. Act 156, Session Laws of Hawaii 2012, section 5, as amended by section 3 of Act 142, Session Laws of Hawaii 2013, as amended by section 2 of Act 124, Session Laws of Hawaii 2014, as amended by section 2 of Act 69, Session Laws of Hawaii 2015, and as amended by section 2 of Act 59, Session Laws of Hawaii 2016, is amended to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, ~~[2017;]~~ 2019; provided that section -4, Hawaii Revised Statutes, established by section 2 of this Act, and the amendment made to section

ACT 60

36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall be repealed on December 31, [2017; and provided further that the amendment made 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 of Act 79, Session Laws of Hawaii 2009.] 2019.”

SECTION 6. Act 124, Session Laws of Hawaii 2014, section 7, as amended by Act 69, Session Laws of Hawaii 2015, and as amended by Act 59, Session Laws of Hawaii 2016, is amended 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;

~~[(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, [2017;] 2019.”~~

SECTION 7. There is appropriated out of the nursing facility sustainability program special fund the sum of \$14,000,000 or so much thereof as may be necessary for fiscal year 2017-2018 and the same sum or so much thereof as may be necessary for fiscal year 2018-2019 for uses consistent with the nursing facility sustainability program special fund.

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

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on June 29, 2017; provided that section 7 shall take effect on July 1, 2017.

(Approved June 22, 2017.)