

ACT 38

S.B. NO. 819

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 the hospital sustainability program, established by Act 217, Session Laws of Hawaii 2012, has served a critical role in strengthening the health care system in Hawaii. In the nine years since its inception, the hospital sustainability program has helped acute care facilities treat the most vulnerable patients in the State, especially low-income individuals who require hospital services. The program has been carried out in a public-private partnership to ensure that patients in Hawaii can access quality, affordable care.

The legislature further finds that, even with this program, hospitals in the State face major financial challenges. These challenges are due in part to the health and financial pressures related to the coronavirus disease 2019 (COVID-19) pandemic. 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 paid from public funds that are not federal funds. The legislature finds that provider fees may be established to provide public funding to help financially sustain Hawaii's hospitals.

The legislature further finds that provider fees are used in forty-nine states and the District of Columbia to draw down federal funds to sustain medicaid programs. The fees have been employed 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 therefore finds that, in Hawaii, a hospital provider fee can result in substantial increases in medicaid payments without putting additional constraints on the State's budget. The additional federal funds obtained via the fee program authorized by the hospital sustainability program can maintain access to care for medicaid recipients. This will allow hospitals in the State to continue to serve uninsured or underinsured patients in a timely, effective manner. This helps to ensure the overall sustainability of the health care system in Hawaii during the challenging time of the COVID-19 pandemic.

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

SECTION 2. Section 346G-4, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

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

- (1) No less than ~~[eighty-eight]~~ ninety per cent of the revenue from the hospital sustainability fee shall be used for one or more of the following~~[:]~~ purposes:
 - (A) ~~[Match]~~ To 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]~~ To match federal medicaid funds for Hawaii’s medicaid disproportionate share hospital allotment, as authorized by current federal law for private hospitals;
 - (C) ~~[Match]~~ To match federal medicaid funds for a private hospital upper payment limit pool; or
 - (D) ~~[Match]~~ 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 hospitals through [a] quality or access incentive ~~[pool;]~~ programs.
- (2) ~~[Twelve]~~ Ten 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.

(d) The department shall ~~[utilize]~~ use federal funds derived from state hospital certified expenditures to make supplemental payments to state hospitals and ~~[is authorized to]~~ may 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.”

SECTION 3. Section 346G-5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The hospital sustainability fee for inpatient care services may differ from the fee for outpatient care services but the fees charged to the hospital shall not in the aggregate exceed ~~[four]~~ five and one-half per cent of the hospital’s net patient service revenue. The inpatient hospital sustainability fee shall not exceed ~~[four]~~ five and one-half per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall not exceed ~~[four]~~ five and one-half 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~~[-]~~ and public hospitals~~[- and psychiatric hospitals]~~ from the hospital sustainability fees on inpatient services~~[- In addition, the department shall exempt from the hospital sustainability fee on]~~ and outpatient care services ~~[federal hospitals and public hospitals; provided that the].~~

Children’s hospitals, psychiatric hospitals, and rehabilitation hospitals may be assessed hospital sustainability fees on inpatient and outpatient services at a different rate than other private hospitals. The department may also exclude any facility from the hospital sustainability fee if it is determined that its exclusion is required to meet federal standards of approval.”

SECTION 4. Section 346G-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall collect, and each hospital shall pay, if so required, the hospital sustainability fee ~~[not]~~ no later than the ~~[thirtieth]~~ sixtieth day after the end of each calendar month; provided that if required federal approvals have not been secured by the end of a calendar month, the fees for that month shall be paid within ten days after notification to the hospitals that the required approvals have been received.”

SECTION 5. Section 346G-10, Hawaii Revised Statutes, is amended as follows:

1. Amending subsection (b) to read:

“(b) In accordance with title 42 Code of Federal Regulations part 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 [~~state fiscal years 2019-2020 and 2020-2021,~~] the period of July 1 through December 31, 2021, and calendar years 2022 and 2023, 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 July 1, 2012, 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 of 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.”

2. Amending subsection (d) to read:

“(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 [~~medicaid managed care health plan~~] payments to fulfill the requirements of section 346G-4(c) shall be based on the proportion of the fiscal year the program is in effect.”

SECTION 6. Section 346G-12, Hawaii Revised Statutes, is amended to read as follows:

“**§346G-12 Termination.** (a) Collection of the hospital sustainability fee established by section 346G-5 shall be discontinued if:

- (1) The required federal approvals specified in section 346G-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 July 1, [~~2020;~~] 2021;
- (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.

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(b) ~~[Notwithstanding section 346G-4(e), if]~~ 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.]~~ pursuant to section 346G-4(c).”

SECTION 7. Act 217, Session Laws of Hawaii 2012, 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, as amended by section 3 of Act 60, Session Laws of Hawaii 2016, as amended by section 5 of Act 59, Session Laws of Hawaii 2017, as amended by section 6 of Act 173, Session Laws of Hawaii 2019, 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, 2021;]~~ December 31, 2023; 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, 2021;]~~ June 30, 2024.”

SECTION 8. Act 123, Session Laws of Hawaii 2014, as amended by section 3 of Act 70, Session Laws of Hawaii 2015, as amended by section 4 of Act 60, Session Laws of Hawaii 2016, as amended by section 6 of Act 59, Session Laws of Hawaii 2017, as amended by section 7 of Act 173, Session Laws of Hawaii 2019, 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 be repealed on ~~[December 31, 2021;]~~ June 30, 2024.”

SECTION 9. There is appropriated out of the hospital sustainability program special fund the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 for the purposes of the hospital sustainability program special fund.

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

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on June 29, 2021; provided that sections 8 and 9 of this Act shall take effect on July 1, 2021.

(Approved June 7, 2021.)