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. The legislature finds that the nursing facility sustainability program was established in 2012 and has served a critical role in strengthening the long-term care system in Hawaii. In the nine years since its inception, the nursing facility sustainability program has helped long-term care facilities treat the most vulnerable patients in the State, especially low-income individuals who require these 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, nursing facilities in the State face major challenges. These challenges are due in part to the health and financial pressures related to the COVID-19 pandemic.

The legislature finds that the State can leverage the Medicaid program to help meet these challenges. 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 rising state budget deficits, increasing health care costs,
and expanding medicaid enrollment. These pressures have
accelerated under the COVID-19 pandemic. Provider fees, which
are collected from specific categories of health care providers,
may be imposed on different classes of health care services,
including inpatient and outpatient hospital and nursing facility
services.

The legislature therefore finds that, in Hawaii, a provider
fee on nursing facilities can result in a substantial increase
in medicaid payments, without putting additional constraints on
the State's budget. The additional federal funds obtained via
the fee program authorized by the nursing facility
sustainability program can maintain access to care for medicaid recipients. This will allow nursing facilities in the State to continue to serve under- or uninsured patients in a timely, effective matter. This helps to ensure the overall sustainability of the health care system in the State 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 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 for one or more of the following:

(A) 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 to support the availability of services and ensure access to..."
care for the medicaid managed care health plan enrollees; or

(B) To match federal medicaid funds, with the combined total to enhance capitated rates for the purpose of paying quality incentives;

(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, 2021] June 30, 2024, 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 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 [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 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;

(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; and

(5) Payments made by the medicaid managed care health plans shall be made within thirty calendar days upon
receipt of monthly capitation rates from the
department."

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, 2020;
(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. 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, established by section 2 of this Act, and the amendment made 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 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 section 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 7. There is appropriated out of the nursing
facility sustainability program special fund the sum of
$15,000,000 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 uses consistent with
section 346F-4, Hawaii Revised Statutes.

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, upon its approval, shall take effect
on June 29, 2021; provided that sections 6 and 7 shall take
effect on July 1, 2021.

INTRODUCED BY: [Signature]

BY REQUEST
Report Title:
Nursing Facility Sustainability Program; Appropriation

Description:
Continues the nursing facility sustainability program for two additional years. Appropriates funds out of the nursing facility sustainability program special fund for fiscal years 2021-2022 and 2022-2023.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

PURPOSE: To continue the Nursing Facility Sustainability Program, established by Act 156, Session Laws of Hawaii 2012, last amended by Act 163 Session Laws of Hawaii 2019, by extending the sunset date of the Act to December 31, 2023, updating the referral dates in the statute, appropriating funding out of the Nursing Facility Sustainability Program Special Fund for fiscal years 2021-2022 and 2022-2023, and making technical amendments to ensure that the Special Fund is, through June 30, 2024, exempted from the central service expenses assessment and the administrative expenses assessment under sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, respectively.


receives moneys from the nursing facility sustainability fee, which is used to receive federal Medicaid matching funds, and is used to increase reimbursements to the nursing facilities through capitation payments with a greater benefit to those providing proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the safety net as well as to incentivize quality using a pay for performance.

Twelve percent of the revenues from the fees collected is used by the Department to increase and improve services for Medicaid program recipients.

The Nursing Facility Sustainability Program currently will be repealed on December 31, 2023, with funding provisions to be repealed on June 30, 2024.

This bill proposes to extend the Nursing Facility Sustainability Program and the Special Fund for an additional two years and six months.

Technical Amendments:

This bill extends the Nursing Facility Sustainability Program for two years and six months past the repeal date of June 30, 2021 and extends the Special Fund for an additional six months thereafter. Therefore, unless the proposed technical amendments are adopted, the exemptions from the central service expenses and administrative expenses assessments will be lost when sections 36-27(a)(32) and 36-30(a)(26), Hawaii Revised Statutes, are repealed on December 31, 2021, and the Special Fund will then be subject to those assessments. DHS estimates that the Special Fund would be subject to the central service expenses assessment for the period January

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1, 2021, through December 31, 2021, in the amount of at least $2,500,000, and the administrative expenses assessment for the same period in the amount of $500,000.

**Impact on the public:** Hawaii residents benefit by having more sustainable nursing facilities and, thereby, having increased access to necessary long-term care services. Health care services for low-income, vulnerable residents will be increased and improved.

**Impact on the department and other agencies:** The Department of Human Services will benefit by receiving some additional funds to support its programs.

**GENERAL FUND:** None.

**OTHER FUNDS:** $15,000,000 Nursing Facility Sustainability Program Special Fund for fiscal year 2021-2022 and $15,000,000 for fiscal year 2022-2023.

**PPBS PROGRAM DESIGNATION:** HMS 401 and HMS 902.

**OTHER AFFECTED AGENCIES:** None.

**EFFECTIVE DATE:** June 29, 2021.