

JAN 19 2018

A BILL FOR AN ACT

RELATING TO HUMAN SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in Hawaii, the
2 foster care maintenance payment program and the adoption
3 assistance program are administered by the department of human
4 services' child welfare services programs. Foster care
5 maintenance payments means payments issued by the department to
6 compensate resource caregivers who provide care to foster
7 children. Foster care maintenance payments consist of a "basic
8 board rate," which covers the care and supervision of a child
9 whose needs, development, and behavior are within expected
10 norms, and if appropriate, additional "difficulty of care"
11 payments based on a child's need for a higher level of care and
12 supervision.

13 The legislature further finds that Hawaii Administrative
14 Rules section 17-1617-22 requires the department to "review at
15 five-year periods the established rate of foster care
16 maintenance payments to assure its continued appropriateness."
17 However, the monthly basic board rate has remained largely



1 unchanged since the legislature established it in 1990, despite
2 rising inflation rates and cost of living in Hawaii. Therefore
3 the basic board rate may no longer be sufficient to cover the
4 needs of the foster children it serves. Furthermore, the
5 monthly basic board rate determines the adoption assistance
6 payments for children adopted out of foster care. If the basic
7 board rate is too low to adequately provide for the child's
8 care, subsequent adoption assistance payments for that child
9 will be, too. This undermines the department's policy to
10 provide the maximum adoption assistance payments to adoptive
11 parents in order to avoid disincentivizing the adoption of
12 foster children with special needs.

13 Federal and state class action lawsuits, filed to address
14 the adequacy of foster care maintenance payments, have resulted
15 in court orders implementing settlement agreements that require
16 the department to increase basic board rate and clothing
17 allowance payments, periodically review and update the basic
18 board rate in the future, provide additional benefit and
19 assistance information to caregivers, and reimburse certain
20 caregivers and beneficiaries for past inadequacies in benefit
21 payments. In the federal case, *Ah Chong v. McManaman*, 154



1 F.Supp.3d 1043 (2015), the plaintiffs sued the department of
2 human services, claiming that the department violated the
3 federal Child Welfare Act because the foster care maintenance
4 payments paid by the department to resource caregivers were too
5 low, the department did not conduct adequate periodic reviews of
6 its foster care maintenance payments, and the department did not
7 provide enough information to resource caregivers about the
8 kinds of additional payments and benefits that were available to
9 support foster children. In the state case, *Sheehey, et al. v.*
10 *State of Hawaii*, Civ. No. 14-1-1709-08-VLC, the plaintiffs sued
11 to recover the shortfall between the benefit amounts they claim
12 they should have received from the department and the amounts
13 they actually received.

14 After lengthy negotiations, the plaintiffs' class counsel
15 and the department and its counsel reached a proposed
16 settlement. Because the State of Hawaii, through its designated
17 department official in the federal lawsuit and as party-
18 defendant in the state lawsuit, must seek appropriations from
19 the legislature to pay for certain of the payments provided for
20 under the federal and state settlement agreements, this matter
21 cannot be finally settled without adequate funding from the



1 State. Additionally, the court orders in each case held that
2 neither the federal nor state case can be finally settled unless
3 both are. Failure to reach final settlement of either or both
4 cases would result in the immediate resumption of litigation at
5 a continuing cost to the State.

6 The purpose of this measure is to appropriate funds to
7 satisfy a court order implementing a global settlement agreement
8 for federal and state lawsuits that requires the department of
9 human services to implement a foster care maintenance payment
10 system that complies with the federal Child Welfare Act, to
11 increase clothing allowance payments, to reimburse caregivers
12 and beneficiaries who received inadequate benefit amounts in the
13 past, and to comply with other terms of the federal lawsuit
14 class action settlement agreement in *Ah Chong v. McManaman*,
15 Civil No. 13-00663-LEK-KSC and the state lawsuit class action
16 settlement agreement in *Sheehey, et al. v. State of Hawaii*,
17 Civil No. 14-1-1709-08-VLC.

18 SECTION 2. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$4,634,292 or so much
20 thereof as may be necessary for fiscal year 2018-2019 to allow
21 the department of human services to implement a foster care


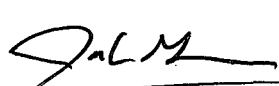
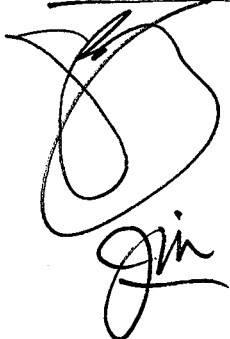


1 maintenance payment system that complies with the federal Child
2 Welfare Act, to increase clothing allowance payments, to
3 reimburse caregivers and beneficiaries who received inadequate
4 benefit amounts in the past, and to comply with the terms of the
5 federal lawsuit class action settlement agreement in *Ah Chong v.*
6 *McManaman*, Civil No. 13-00663-LEK-KSC and the state lawsuit
7 class action settlement agreement in *Sheehey, et al. v. State of*
8 *Hawaii*, Civil No. 14-1-1709-08-VLC.

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

11 SECTION 3. This Act shall take effect on July 1, 2018.

12 INTRODUCED BY:


Randy H. Baker

John M. Wills

Jim



S.B. NO. 2096

Report Title:

Department of Human Services; Foster Care Maintenance Payments; Appropriation

Description:

Appropriates funds to satisfy state and federal class action settlement agreements requiring the Department of Human Services to implement a foster care maintenance payment system that complies with the federal Child Welfare Act, to increase clothing allowance payments, to reimburse certain caregivers and beneficiaries for past inadequate benefit payments, and comply with additional settlement terms.

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

