

S.B. NO. 1457

JAN 22 2007

A BILL FOR AN ACT

MAKING AN EMERGENCY APPROPRIATION FOR THE DEVELOPMENTAL
DISABILITIES DIVISION OF THE DEPARTMENT OF HEALTH.

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

1 SECTION 1. This Act is recommended by the governor for
2 immediate passage in accordance with section 9 of article VII of
3 the Constitution of the State of Hawaii.

4 SECTION 2. The purpose of this Act is to appropriate
5 additional funds to the department of health for the State's
6 medicaid title XIX programs, which include the developmental
7 disabilities or mentally retarded home and community-based
8 services and the medicaid state plan intermediate care
9 facilities for the mentally retarded in the community program,
10 to meet a critical funding emergency. The additional funds are
11 necessary to support current clients and to reasonably admit
12 individuals into the program to fulfill the developmental
13 disabilities division's obligations under the settlement
14 agreement in HDRC v. State, United States District Court, Civil
15 No. 03-00524 HG-KSC, and comply with the United States Supreme
16 Court's decision in Olmstead v. Zimring, 527 U.S. 581, 119 S.

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1 Ct. 2176 (1999), and the requirements of chapter 333F, Hawaii
2 Revised Statutes, to support people to live in the community.

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$4,980,523, or so
5 much thereof as may be necessary, for fiscal year 2006-2007, to
6 carry out the purposes of this Act.

7 SECTION 4. The sum appropriated shall be expended by the
8 department of health for the purposes of this Act.

9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

BY REQUEST

JUSTIFICATION SHEET

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DEPARTMENT: Health

TITLE: A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE DEVELOPMENTAL DISABILITIES DIVISION OF THE DEPARTMENT OF HEALTH.

PURPOSE: To appropriate \$4,980,523 in general fund revenues as an emergency appropriation to enable the Developmental Disabilities Division (DDD) to meet state-approved target numbers under the current Medicaid home and community based service (H&CBS) waiver program, to reasonably admit individuals with Developmental Disabilities/Mental Retardation (DD/MR) into the program to fulfill DDD's obligations under the settlement agreement in HDRC v. State, United States District Court, Civil No. 03-00524 HG-KSC (Makin II), and to comply with the United States Supreme Court's Olmstead decision and the requirements of chapter 333F, Hawaii Revised Statutes (HRS).

MEANS: Emergency appropriation of \$4,980,523 in general fund revenues.

JUSTIFICATION: A critical funding emergency exists for the DDD due to:
(1) a continued full year cost of supporting the Fiscal Year 2005-2006 admission of 329 individuals to the program - this one year spike increase of admissions was due to the Makin II settlement agreement of August 2005;
(2) an additional 200 new H&CBS Waiver admissions are anticipated during the current Fiscal Year 2006-2007; (3) the August 2005 settlement of Makin II required new offers of H&CBS Waiver

services to over 700 people from the original waitlist; approximately 60 are still in the process of admission, bringing the total anticipated admissions for Fiscal Year 2006-2007 to 260; (4) individuals previously receiving 100 percent state funded limited services are now redirected to the H&CBS Waiver program to comply with the Makin II settlement agreement and the HRS, section 333F, HRS, requirement to maximize state funds; (5) an unprecedented increase in new admissions into the H&CBS Waiver program for school aged children with autism and behavioral challenges; (6) many new requests for non-educational services previously met under the Felix Consent Decree for children already in the H&CBS Waiver program; (7) the H&CBS five-year renewal application approved by the Centers for Medicare and Medicaid Services (CMS) in June 2006 added new federally mandated quality outcome requirements including residential habilitation services with a revised rate structure; (8) an increase in the Federal Medical Assistance Percentage (FMAP) state share; and (9) additional H&CBS Waiver service requests from existing consumers to ensure health and safety in the setting of their choice per Act 303 of 2006.

The Fiscal Year 2006-2007 authorized budget request set the state match funds at \$35,579,892, which included \$5,000,000, added to DDD's Fiscal Year 2006-2007 operational expenditure plan. This requested emergency appropriation of \$4,980,523 will bring the H&CBS Waiver Program State match funding level to a total of \$40,560,415. This state funding is based upon DDD's Fiscal Year 2006-2007 State match requirement approved by the CMS based

on total Waiver services costs of \$96,233,662 serving 2384 individuals without any waitlist.

A large portion of the current \$4,980,523 shortfall resulted from the reduced Supplemental budget received by the DDD instead of the originally requested \$7,254,036 to meet its anticipated shortfall requirement (based on serving 200 individuals at an average per capita of \$37,837). The program was only allocated \$5,000,000 for Fiscal Year 2006-2007 leaving a deficit of \$2,254,036. This difference, combined with the cost of existing clients and new admissions expected this fiscal year, is estimated to be \$40,560,415 (only \$35,519,982 was allocated for these expenses which included the \$5,000,000). Services for an anticipated 260 new individuals (additional expected increase of 60 individuals to the original Supplemental Budget forecast due to higher current demand) will now be determined at an average per capita rate of \$37,242. The average per capita cost fluctuates because it is based on the number of participants over the total cost of the program, as cost control measures are implemented. Also the State's portion of the matching funds will increase due to the FMAP implemented on 10/1/2006 which changed the match ratio from 41.19 percent (State)/ 58.81 percent (Federal) to 42.45 percent (State)/ 57.55 percent (Federal).

The general fund recommendation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes. Including appropriations made up to and

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including the regular session of 2006, the Executive Branch appropriation ceiling for Fiscal Year 2006-2007 has already been exceeded by \$415,349,859 or 8.51 percent. Funding requested in this measure is needed to meet state approved target numbers under the current Medicaid H&CBS Waiver program in fulfilling DDD's obligations under the Makin II settlement agreement and to comply with the United States Supreme Court's Olmstead decision and the requirements of chapter 333F, Hawaii Revised Statutes, and will result in the appropriation ceiling for the Executive Branch to now be exceeded in Fiscal Year 2006-2007 by \$4,980,523 or 0.1 percent. This current declaration takes into account additional general fund appropriations authorized for Fiscal Year 2006-2007 in this measure only, and does not include other general fund appropriations for Fiscal Year 2006-2007 that may be authorized for the Executive Branch in other legislation submitted to the Legislature during the regular session of 2007.

Impact on the public: Rather than the previous years' practice of wait listing, more children will receive timely services from DDD that will assist them to achieve their potential for developmental growth. Also, individuals with DD/MR applying for services must receive services within the 90-day service provision requirement of the Makin II settlement.

Impact on the department and other agencies: Additional funding is needed in order to ensure compliance with the Makin II settlement, Olmstead decision, 333F HRS, and to prevent waitlists, service gaps, or unmet needs of families.

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GENERAL FUND: \$4,980,523 (FY 2006-2007).

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH-501.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.