

---

# 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*,



1 154 F. Supp. 3d 1043 (D. Haw. 2015), the plaintiffs sued the  
2 department of human services, claiming that the department  
3 violated the federal Child Welfare Act because the foster care  
4 maintenance payments paid by the department to resource  
5 caregivers were too low, the department did not conduct adequate  
6 periodic reviews of its foster care maintenance payments, and  
7 the department did not provide enough information to resource  
8 caregivers about the kinds of additional payments and benefits  
9 that were available to support foster children. In the state  
10 case, *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08  
11 VLC, the plaintiffs sued to recover the shortfall between the  
12 benefit amounts they claim they should have received from the  
13 department and the amounts 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 payments provided for under  
20 the federal and state settlement agreements, this matter cannot  
21 be finally settled without adequate funding from the State.



1 Additionally, the court orders in each case held that neither  
2 the federal nor state case can be finally settled unless both  
3 are. Failure to reach final settlement of either or both cases  
4 would result in the immediate resumption of litigation at a  
5 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 \$ 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, 3000.



**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. (HB2211 HD1)

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

