Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Alex Lee, Chair
AB 2477 (Zbur) – As Introduced February 13, 2024

SUBJECT: Foster care: independent living

SUMMARY: Clarifies that a nonminor dependent (NMD) who re-enters foster care and is ineligible for federal financial participation, is eligible to receive aid in the form of state Aid to Families with Dependent Children – Foster Care (AFDC-FC) if all other specified criteria are met. Specifically, **this bill**:

1) Strikes reference to the $10,000 limit on the amount of cash savings foster youth over the age of 16 or NMDs are permitted to retain in order to be eligible for federal financial participation.

2) Specifies that an NMD who re-enters foster care and is ineligible for federal financial participation due to cash savings of $10,000 or more, is eligible to receive aid in the form of state AFDC-FC if all other specified criteria described in 5) below are met.

3) Prohibits, consistent with federal law, resources from being evaluated after the initial determination for the same foster care episode to determine continued eligibility for a foster care maintenance payment.

EXISTING LAW:

State law:

1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect, or have been abused or neglected, as specified. (Welfare and Institutions Code [WIC] § 202)

2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC § 300.2)

3) Provides for extended foster care funding for youth until 21 years of age, and adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC §§ 241.1; 303; 366.3; 388; 391; 11400;11402; 11403)

4) Defines a "nonminor dependent" as a current or former foster youth who is between 18 and not more than 20 years of age, in foster care under the responsibility of the county welfare department, county probation department, or Indian tribe, and participating in a Transitional Independent Living Plan (TILP). (WIC § 11400(v))

5) Requires aid in the form of AFDC-FC to be provided on behalf of any child under 18 years of age, and to any NMD who meets specified conditions, including relinquishment for adoption, removal from parental custody, adjudged a dependent, voluntarily placed, or re-entering foster care. (WIC § 11401)

6) Requires counties to review the child's or NMD's payment amount annually, to include an examination of any circumstances of a foster child or NMD that are subject to change and could affect the potential eligibility or payment amount, including, but not limited to, authority for placement, eligible facility, and age. (WIC § 11401.5)

7) Allows NMDs who meet general AFDC-FC requirements, as well as one or more of a set of specified requirements, to voluntarily continue placement or to re-enter foster care. (WIC § 11403(b))

8) Establishes relevant definitions for purposes of AFDC-FC. (WIC § 11400)

9) Enumerates specified eligibility requirements for AFDC-FC funding. (WIC § 11402)

10) Provides that an NMD who is 18 years of age while subject to an order for foster care placement and who has not attained 21 years of age for whom the court has dismissed dependency, delinquency, or transition jurisdiction, but has retained general jurisdiction, or the county child welfare services, probation department, or tribal placing agency on behalf of the NMD, may petition the court in the same action in which the youth was found to be a dependent or delinquent child of the juvenile court, for a hearing to resume the dependency jurisdiction over a former dependent or to assume or resume transition jurisdiction over a former delinquent ward. (WIC § 388(e))

11) Allows an NMD who is a former foster youth to petition the court for reentry into foster care if their guardian or adoptive parent is no longer providing them with support and no longer collecting benefits on behalf of the youth. (WIC § 388.1)

12) Allows, in addition to the personal property permitted by other provisions, a ward or dependent child of the juvenile court, who is 16 years of age or older, or, an NMD, who is participating in a TILP, to retain resources with a combined value of not more than $10,000, consistent with federal law and the child's TILP. (WIC § 11155.5(a))

13) Specifies the withdrawal of the savings by a foster youth requires the written approval of the youth's probation officer or social worker and shall be directly related to the goal of emancipation. This written approval is not required for withdrawals by an NMD. (WIC § 11155.5(b))

Federal law:

14) Outlines provisions related to foster care maintenance payments and eligibility, pursuant to the federal Social Security Act. Specifies that in determining whether a child would have received aid under a state plan (as in effect on July 16, 1996), a child whose resources have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000. (42 United States Code [U.S.C.] 672 § 472(a))

15) Defines "foster care maintenance payments" to mean payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. Requires, in the case of institutional care, the term to include the reasonable costs of administration and operation of such institution as are

necessarily required to provide the items described in the preceding sentence. (42 U.S.C. 672 § 475(4))

16) Establishes the federal Foster Care Independence Act of 1999 which amended part E of title IV of the Social Security Act to provide states with increased funding and greater flexibility in implementing programs designed to assist youth as they transition out of foster care. (Public Law 106-169)

17) Establishes the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 which amends part E of title IV of the Social Security Act to give state plans the option of providing for the state to enter into agreements to provide kinship guardianship assistance payments to grandparents and other relatives who have assumed legal guardianship of children for whom they have cared as foster parents and committed to care on a permanent basis. (Public Law 110-351)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Child Welfare Services.* California's child welfare services programs are administered by the 58 individual counties with each county organizing and operating its own program of child protection based on local needs while adhering to state and federal regulations. When a child welfare case is open, counties are the primary governmental entity interacting with children and families when addressing issues of child abuse and neglect and are responsible, either directly or through providers, for obtaining or providing the interventions and relevant services to protect children and assist families with issues related to child abuse and neglect.

The California Department of Social Services (CDSS) secures federal funding to support CWS programs, provides statewide best practices training for social workers, conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements.

As of October 1, 2023, there were 45,044 youth from birth up to the age of 21 in foster care.

Extended Foster Care. As a result of the passage of AB 12 (Beall), Chapter 559, Statutes of 2009, foster youth between the ages of 18 and 20, also known as NMDs, are eligible for extended foster care. Extended foster care is a benefit available to eligible youth to assist them to achieve self-sufficiency and includes educational opportunities, employment trainings, and supervised independent living environments. For a foster youth to be eligible for extended foster care, they must continue to be under the responsibility of the county welfare department, county probation department, or Indian tribe, and participating in a TILP. When an NMD ages out of extended foster care at 21 years of age, state law provides for various exit requirements to ensure the youth are provided with all the necessary information to thrive in their transition to adulthood.

Limits Placed on Savings for Foster Youth. Currently, state law specifies that in addition to the personal property permitted by other provisions of law, a foster youth who is 16 years of age or older, or an NMD who is participating in a TILP, is only authorized to retain resources with a combined value of not more than $10,000, consistent with the federal Foster Care Independence Act of 1999 and the youth’s TILP.

Any cash savings are required to be the child's own money and must be deposited by the youth, or on behalf of the youth, in any bank or savings and loan institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. If a youth wishes to withdraw the savings, they are required to secure the written approval of the youth's probation officer or social worker and the reason for the withdrawal must be directly related to the goal of emancipation. This written approval is not required for withdrawals by an NMD. The cash savings are required to be for the youth's use for purposes directly related to the youth's TILP goals.

Transitional Independent Living Case Plan. A TILP is required for each youth in foster care in California when they are between the ages of 15 1⁄2 and 16 and serves as a roadmap to help foster youth transition into independent living and self-sufficiency. For a youth just entering care after turning 16, the TILP is required to be completed prior to the dispositional hearing.

Key components of the TILP typically include the identification of suitable housing options, education and career goals, financial literacy and budgeting, health and wellness, and transportation options. The goal is to empower foster youth to lead an independent and successful life as they transition to adulthood.

The Legislature has found and declared that former foster youth are a vulnerable population at risk of homelessness, unemployment, welfare dependency, incarceration, and other adverse outcomes if they exit the foster care system unprepared to become self-sufficient. Unlike many young individuals 18 years of age who can depend on family for ongoing support while they complete postsecondary education or develop career opportunities, emancipating foster youth have their primary source of support, AFDC-FC payments, terminated when they age out of care and are then dependent on their own resources for self-support. Some foster youth are not able to complete high school or other education or training programs due to ongoing trauma from parental abuse or neglect and gaps in their educational attainment stemming from the original removal and subsequent changes in placement.

Federal and State AFDC-FC. Funding to provide for the needs of youth in California's foster care system is provided by either the state or federal government. Federal AFDC-FC, also referred to as Title IV-E funding, is the aid provided on behalf of needy children in foster care who meet the eligibility requirements, as specified in department regulations and in applicable federal laws. In order to be eligible for federal AFDC-FC, the home from which a foster youth was removed must meet AFDC-FC eligibility criteria from 1996. Specifically, during the month of removal or one of the six months prior to removal, the youth must have been eligible for or receiving federal public assistance as of July 16, 1996, in that home. In 1996, the monthly income limit for a family of three to qualify for AFDC-FC was $7,231.

Because the criteria to receive federal AFDC-FC funding is rarely met due to the limit being so low, California created state AFDC-FC, which blends state and county funds to provide for youth who are otherwise ineligible for federal AFDC-FC. Under state AFDC-FC, counties provide payments to foster care providers on behalf of qualified children in foster care according to a schedule of basic rates, administered by CDSS, to pay for the care and supervision of each foster child. In summary, state AFDC-FC primarily relies on state-specific rules and funding, while federal AFDC-FC combines federal, state, and county resources.

Current law requires CDSS to administer a state system for establishing rates in the state AFDC-FC program and to implement a rate structure that is effective through December 31, 2022, for specified rates paid to certified family homes of a foster family agency, short-term residential therapeutic programs, and foster family agencies that provide treatment, intensive treatment, and therapeutic foster care programs.

In 2022, a two-year extension was provided for the payments of interim rates in the state AFDC-FC program. CDSS is currently finalizing a new and permanent rate structure to take effect in 2026 that will be based on the child's assessed level of needs and strengths, and not based on the placement type. The Governor's January Budget Proposal includes $12 million from the General Fund in 2024-25 to make automation changes for a reformed foster care payment structure, with full implementation anticipated as early as Fiscal Year 2026-27.

Federal Limit on Resources and Re-Entry into Foster Care. Current law states that $10,000 is the resources threshold for federal AFDC-FC eligibility, but advocates claim that counties have been interpreting this to mean that youth in foster care lose eligibility for all foster care payments if their savings exceed $10,000.

To clarify this provision of law, CDSS issued All County Letter (ACL) 22-16 that said, "If a child in an authorized foster care placement is determined ineligible for a federal IV-E foster care payment for any reason (e.g. income/resources/deprivation standards), they are otherwise eligible to receive aid in the form of AFDC-FC, but without federal financial participation in the payment. Any provisions of the Manual of Policies and Procedures conflicting with this guidance will be amended in an upcoming regulations package."

The guidance clarifies that a youth in foster care can save more than $10,000 without jeopardizing their determination of benefits eligibility for continued support in extended foster care. Stakeholders report that caseworkers who are unaware of the policy change still cite the $10,000 savings cap as a trigger for re-determination of eligibility and that regularly used forms and documents also refer to the $10,000 savings cap without the nuance of the updated interpretation.

In an effort to avoid confusion and address this reported problem this bill strikes the reference to $10,000 altogether.

The ACL further states that, "Consistent with ACL 11-10, an eligibility redetermination is not required when a minor child or nonminor dependent (NMD) in foster care receives income or property after the initial linkage determination has been completed. In other words, if a youth in foster care receives income (e.g. through an inheritance or receipt of tribal trust fund), that income is not to be evaluated and has no impact on the youth's continued eligibility for AFDC-FC benefits."

According to the guidance, youth who are continuously in foster care through their 18th birthday maintain eligibility without needing to reevaluate the youth's incomes and resources. Youth who were eligible for federal funds before their 18th birthday will remain eligible until formally released from foster care via court order.

As described by CDSS in ACL 22-16, due to a 2010 change in federal law, annual re-determinations are no longer required by the federal Administration of Child and Families (ACF) and, effective February 15, 2022, income and resources are not to be evaluated after the initial determination for the same foster care episode in order to determine continued eligibility for an AFDC-FC payment. ACF describes a foster care episode as a removal with one or more placement settings. A previous episode is one that has been completed by a discharge. A current episode is a removal and one or more placement settings without a discharge. This means if a foster youth exits care upon reunification or permanent placement is discharged, and then reenters foster care at a later date, that will be considered another episode of foster care.

This bill aligns with the guidance issued by CDSS by clarifying that consistent with federal law, resources are prohibited from being evaluated after the initial determination for the same foster care episode to determine continued eligibility for a foster care maintenance payment.

Author's Statement: According to the Author, "[This bill] permits youth transitioning to adulthood from foster care the chance to grow the best financial safety net possible. Specifically, this bill updates state law to clarify that young adults have the ability to accumulate cash savings while in foster care. It is critically important that the State sets up our youth in foster care for long-term success and a financial safety net is one resource that supports future-ready transitions."

Equity Implications: The provisions of this bill seek to clarify provisions in law that create barriers to foster youth building up savings. Existing law states that youth in foster care can only save up to $10,000 when they could be subject to a redetermination evaluation and lose their benefits due to income or resource ineligibility. Inconsistencies in the information youth are being told about the amount they can keep in their savings could potentially deter youth from accumulating savings and hamper their successful transition to independence.

Youth in foster care are disproportionately people of color and LGBTQ. Children of color, specifically Black and Native American children, continue to experience disparities at every stage of the child welfare system: maltreatment reports, investigations, case substantiations, service referrals, out-of-home placements, family reunification, termination of parental rights, and time spent in foster care. Recent research suggests that LGBTQ foster youth are overrepresented in those reporting unstable housing and face poorer treatment while in the system and lower rates of achieving permanency, as well as bleaker outcomes after they age out, including lower educational attainment and higher odds of homelessness and financial instability.

By clarifying that foster youth are not limited to saving a specific dollar amount, those who have already experienced the trauma of being removed from their homes would be able to focus on achieving self-sufficiency and money management while receiving all of the benefits to which they are entitled. While this consistent application of the law can potentially help all foster youth, it can have a particularly deep impact on the marginalized population within foster care as they seek stability and independence.

Proposed Committee Amendments:

The Committee proposes technical amendments to clarify a cross-reference:

On page 3, on line 17, strike "the amounts"

On page 3, on line 18, strike "referenced in" and insert "those allowed pursuant to"

RELATED AND PRIOR LEGISLATION:

AB 369 (Zbur) of 2023, would have expanded the upper age eligibility of the Independent Living Program from up to 21 years of age, to include youth up to 23 years of age. Would have removed the reference to a $10,000 limit on the amount of cash savings a foster youth is permitted to accrue in order to receive aid in the form of federal AFDC-FC. *AB 369 was held on the Assembly Appropriations Committee suspense file.*

AB 640 (Cooley), Chapter 622, Statutes of 2021, authorized counties to petition the juvenile court on behalf of certain NMDs to terminate dependency or transition jurisdiction over the youth and immediately re-establish jurisdiction in order to establish the NMD's eligibility for federal financial participation; expanded the definition of a voluntary re-entry agreement to include an agreement between an NMD who has not signed a voluntary re-entry agreement after attaining 18 years of age and for whom a petition to terminate jurisdiction will be filed.

AB 12 (Beall), Chapter 559, Statutes of 2010, established California's extended foster care program to allow foster youth to remain in foster care until reaching 21 years of age.

AB 1261 (Migden), Chapter 686, Statutes of 2001, increased the amount of cash savings that foster youth who are 16 years of age or older may retain from $5,000 to $10,000.

AB 2773 (Committee on Human Services) Chapter 1056, Statutes of 1998, among other provisions, permits a child declared a ward or dependent child of the juvenile court to retain any cash savings accumulated pursuant to the TILP, to $5,000.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights (Co-Sponsor)
California Coalition for Youth (Co-Sponsor)
Aspiranet
California Academy of Child and Adolescent Psychiatry
California Alliance of Caregivers
California Youth Connection (CYC)
Equality California
First Place for Youth
John Burton Advocates for Youth
Larkin Street Youth Services
Los Angeles Lgbt Center
Safe Place for Youth
Western Center on Law & Poverty

Opposition

None on file.

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