

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2906 (Bryan) – As Introduced February 15, 2024

SUBJECT: Foster care payments

SUMMARY: Requires, when a county serves as the representative payee for a foster youth receiving federal Social Security Administration (SSA) survivors' benefits, to ensure that their benefits are not used to pay for, or to reimburse the county for, any costs of the child's care and supervision. Requires counties to notify the child, their attorney, and parents or guardians, if an application for survivors' benefits has been made on the child's behalf. Specifically, **this bill:**

- 1) Requires the placing agency, when serving as the representative payee or in any other fiduciary capacity for a child or youth receiving federal SSA survivors' benefits, to act in accordance with the Guide for Organizational Representative Payees, as published by the federal SSA, and to do all of the following:
 - a) Ensure that the child's survivors' benefits are not used to pay for, or to reimburse the placing agency for, any costs of the child's care and supervision, as defined, and are conserved in accordance with b) below;
 - b) Monitor any applicable federal asset, resource, or income limits for the child's benefits and ensure that the child's best interests are served by conserving the benefits in a way that avoids termination of those benefits as a result of exceeding the federal asset, resource, or income limits, including establishing and maintaining a dedicated account, a Plan Achieve Self-Support (PASS) account, a 529A plan, including a CalABLE account, an individual development account, an individual or pooled special needs trust on behalf of the child, or other viable account type, and preserves eligibility for other benefits to which the child may be entitled; and,
 - c) Provide, upon request, an accounting to the child if the child is 12 years of age or older and the child's attorney of how, and in what amount, the child's resources, including any benefits administered by the federal SSA, have been conserved, consistent with specified accounting report requirements, and the county's consideration of the child's best interests, consistent with federal guidance.
- 2) Specifies that any references to "federal survivors' benefits" or "Social Security Administration survivors' benefits" have the same meaning as benefits to which a child is entitled pursuant to federal law.
- 3) Requires the placing agency to notify the child, the child's attorney, and the child's parents or guardians, before, or concurrent with, all of the following:
 - a) Any application for benefits administered by the federal SSA made by the agency on the child's behalf;
 - b) Any application by the placing agency to become a representative payee for benefits administered by the federal SSA on the child's behalf;

- c) Any decisions or communications from the federal SSA regarding an application for benefits, as described in a) above; and,
 - d) Any action taken by the agency regarding an application for benefits, as described.
- 4) Requires, in addition to prompt notification, as required under 3) above, the placing agency to also provide the information in a)-d) above to the child, the child's attorney, and the child's parents or guardians upon request.
 - 5) Requires, at least 30 days before the child's exit from foster care to permanency, if the placing agency is the representative payee, the placing agency to collaborate with the child, the child's attorney, and the child's parents or guardians if the child is exiting to reunification or the child's guardian or adoptive parent if the child is exiting to guardianship or adoption, to begin transfer or control and responsibility for any funds conserved under these provisions to the child's parent, guardian, adoptive parent, or the child if the child has exited after 18 years of age, unless the child chooses to select another representative payee.
 - 6) Specifies every youth over 16 years of age, who is in foster care under the supervision of the county child welfare department, juvenile probation department, or tribal organization, if the tribal organization requests the screening from the county, must be screened by the county for potential eligibility for federal SSA benefits, instead of just eligibility for the federal Supplemental Security Income (SSI) program.
 - 7) Revises the screening in 6) above to require an application to be submitted to the federal SSA on behalf of any youth who is screened as being likely to be eligible for any benefits administered by the federal SSA, and requires, to the extent possible, for a foster youth approaching 18 years of age, the application be timed to allow for a determination of eligibility by the federal SSA before the youth's 18th birthday.
 - 8) Strikes references to "SSI payments" to instead include references to federal SSA benefits related to requirements counties must adhere to when a foster youth is at least six months away from their 18th birthday.
 - 9) Requires the county, before applying to be appointed representative payee, to send a written notice of the intent to be appointed to the child's counsel and parents or legal guardians.
 - 10) Adds the following requirements for counties, when identifying an appropriate representative payee for a nonminor dependent (NMD) who is receiving federal SSA benefits:
 - a) Assist the NMD or their representative payee in understanding any restrictions on the use of federal SSA funds and communicating any changes in the NMD's foster care case to the federal SSA if those changes would affect the NMD's eligibility for, or the amount of, benefits from the federal SSA;
 - b) Provide the NMD with any information maintained in their case file that may assist them in establishing and maintaining federal SSA benefits upon request of the NMD, and, if the NMD requests to obtain a federal SSA benefits advocate, to assist in communicating and coordinating with that advocate; and,

- c) Ensure the child or NMD's benefits are used for the child or NMD, consistent with the intent of these provisions to ensure that the youth's benefits are not used to pay for any costs of the child's care.
- 11) Makes findings and declarations that the State of California has utilized federal benefits administered by the federal SSA to offset the cost of foster care placement, and that the utilization of these funds to support youth and young adults with their transition to adulthood would meet an urgent need for a population that is at high-risk of homelessness.
- 12) States legislative intent that federal SSA survivors' benefits received by a child or youth in foster care shall not be utilized by the county placing agency to offset the cost of the child or youth's care, and that placing agencies shall instead conserve those funds for the future use of the beneficiary.
- 13) Specifies that these provisions shall become operative on January 1, 2025, or 30 days after the California Department of Social Services issues the necessary all-county letters and informing materials to county placing agencies, whichever is later.
- 14) Strikes obsolete language and makes conforming changes.

EXISTING LAW:

State law:

- 1) Provides that a child who has suffered, or is at substantial risk of suffering, abuse or neglect, as provided, by the child's parent or guardian is within the jurisdiction of the juvenile court, which may adjudge the child a dependent child. (Welfare and Institutions Code [WIC] § 300)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, 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) Defines "nonminor dependent" as a current or former foster youth who is a current dependent child or ward of the juvenile court, or who is a nonminor under transition jurisdiction of the juvenile court, who is between 18 and 21 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, as specified. (WIC § 11400(v))
- 4) Defines "eligible for financial participation" to mean that the payment is consistent with a federally approved state plan authorizing federal financial participation in the Federal Aid to Families with Dependent Children-Foster Care (AFDC-FC) payment. Further, prohibits, until and unless federal financial participation is obtained, no payment of AFDC-FC to be made from either state or county funds on behalf of a child determined to be eligible for AFDC-FC solely as a result of certain litigation, as specified. (WIC § 11402.1)
- 5) States legislative intent that NMDs access the same benefits, services, and supports, and exercise the same choices available to all dependents, and states further intent that NMDs who receive SSI benefits can serve as their own payee, as provided, and be assisted in receiving that direct payment by the county child welfare department. (WIC § 13754(a))

- 6) Requires the county to apply to be the appointed representative payee on behalf of a child beneficiary in its custody when no other appropriate party is available to serve. Further requires the county to provide information to NMDs, and assist NMDs with becoming their own payee or finding and designating an appropriate representative. (WIC § 13754(b)(1)-(2))
- 7) Requires counties serving as representative payees for a foster child or youth's SSI benefits to follow certain best practices, including the creation of no-cost, interest bearing maintenance accounts for each child the county serves as representative payee for, itemized expenditures from the account, creation of procedures for disbursing money from the account, limitations on the purposes for which deductions may be made from the accounts, as provided. (WIC § 13754(c))
- 8) Requires the county to screen every youth in foster care who is nearing emancipation for potential eligibility for the federal SSI program, utilizing best practice guidelines, as provided. (WIC § 13757(a)(1))
- 9) Requires the county SSI screening only to occur when the foster youth is at 16 to 17 years of age and requires an application be submitted to the SSA on behalf of a youth who is screened as being likely to be eligible for SSI. Further requires, to the extent possible, the application be timed to allow for a determination of eligibility by the SSA prior to the youth's emancipation from care including, if appropriate, the suspension of SSI benefits for no more than 12 months. (WIC § 13757(a)(2))
- 10) Requires, in the case of a youth receiving federally funded AFDC-FC benefits, the county to forego federally funded AFDC-FC and instead use nonfederal AFDC-FC resources to fund the placement in the month of the SSI application or in the month after making an application, and to subsequently reclaim federally funded AFDC-FC in order to ensure the youth meets all of the SSI eligibility requirements in a single month while the application is pending, as provided by federal law and regulation. Further requires the county child welfare agency to forego the federally funded AFDC-FC benefit and instead use nonfederal AFDC-FC resources to supplement the SSI benefit that the youth receives during at least one month of every 12-month period, in instances where an NMD has been approved for SSI benefits. (WIC § 13757(b)-(c))

Federal law:

- 11) Provides that if payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. (20 Code of Federal Regulations § 416.645)
- 12) Establishes eligibility criteria for child survivors' benefits for certain children of individuals who are deceased and were insured under the SSA program. (Title 42 United States Code § 402(d))

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

COMMENTS:

Background: Currently, county placing agencies in California are required to screen for federal SSI benefits on behalf of eligible youth in their care who are over the age of 16. Advocates

report that these agencies often fail to notify the youth and their attorneys that they are applying for benefits, and report that after the youth has been approved for benefits, county placing agencies automatically apply to serve as representative payees for the youth and use the youth's funds to reimburse themselves for the costs of the child's care. While this practice is legal, there have been numerous articles questioning this practice. A CalMatters article from July of 2022 entitled, "*California Counties Siphon Social Security Benefits from Some Foster Kids*" stated, "When she was 15 and had been a ward of the courts for half her life, Kristina [last name omitted] learned the cost of her stays in group homes and with foster families was coming out of her own pocket. She had qualified for monthly survivor benefits checks, a Social Security program for children whose parents had died. Instead of the hundreds of dollars a month going to her or toward savings, it went to Butte County, she said, to cover checks issued to her foster care providers."

This bill would require counties, before applying to be appointed representative payee, to send a written notice of the intent to be appointed the representative payee to the child's counsel and parents or legal guardians and to expand the screening to include potential eligibility for all federal SSA benefits.

Governor's Veto Message. This bill is substantially similar to AB 1512 (Bryan) of 2023, which was vetoed by Governor Newsom. The Governor's veto message stated:

"This bill would require counties to take additional actions relating to foster youth eligibility for all federal Social Security Administration (SSA) benefits and would prohibit using a child's benefits to pay for any costs of the child's care.

I share the author's commitment to ensure that foster youth receive the benefits and support services they need. However, this bill creates implementation challenges that should be considered as part of the annual budget process. Both Supplemental Security Income (SSI) and foster care benefits are intended to provide for the daily care and supervision of youth, including costs for housing and food. If counties are not permitted to use SSI to cover the cost of providing care to foster youth, the General Fund will need to offset those costs. This was not contemplated as part of the budget process.

In partnership with the Legislature, we enacted a budget that closed a shortfall of more than \$30 billion through balanced solutions that avoided deep program cuts and protected education, health care, climate, public safety, and social service programs that are relied on by millions of Californians. This year, however, the Legislature sent me bills outside of this budget process that, if all enacted, would add nearly \$19 billion of unaccounted costs in the budget, of which \$11 billion would be ongoing.

In order to address Governor Newsom's concerns stated above, the author of this bill narrowed the provisions to pertain to federal SSA survivors' benefits and submitted a budget request to supplement county foster care costs to account for counties no longer collecting and redeeming SSA survivor benefits on behalf of foster youth in their care.

Federal Social Security Administration Benefits and Foster Youth. Foster youth can be eligible for different types of federal benefits under the SSA such as survivor benefits, SSI benefits, and disability benefits. This bill strikes references to SSI benefits and broadens the references to include the various forms of federal benefits that foster youth can be eligible for, and that counties are required to screen for eligibility.

If the child in foster care has a biological parent who has died, then they may be eligible to receive survivors' benefits, which are based on the work history of their deceased parent. Eligibility and benefit amounts are determined by the worker's contributions to Social Security through either payroll taxes or self-employment taxes.

Some youth with disabilities nearing their transition out of foster care are eligible for SSI, which is a needs-based program administered by the SSA. SSI provides payments to people with low-income who are aged, blind, or disabled and who meet strict eligibility rules. SSA determines low-income status based on current income and resources. SSA defines adult disability as the inability to engage in substantial gainful activity because of any medically determinable physical or mental impairment which has lasted for a continuous period of not less than 12 months or is expected to result in death. SSA defines disability differently for children. Most children in foster care are not eligible for SSI payments, even if they meet the childhood disability definition, because their federal foster care payments exceed the income limit for SSI eligibility. An individual must meet both income and need standards to qualify and provide monthly benefits to qualified retired and disabled workers and their dependents, and to survivors of insured workers.

Typically, foster youth under 18 years of age who receive federal SSA benefits do not receive their benefits check directly. Instead, a person called a "representative payee," - which can be a relative, adult friend, or the county - receives the check. Existing law states that the county should be the payee of last resort - applying only when no other appropriate party is available to serve.

As the representative payee, the county may use the child's SSA benefit to offset the cost of the care it provides to the child in foster care. In fact, in 2003 the Supreme Court unanimously upheld the right of the states to offset the costs of foster care with its ruling in *Washington State Department of Social and Health Services v. Guardianship Estate of Danny Keffeler*, 537 U.S. 371. The Court noted in its ruling that prohibiting a state from doing so could disadvantage children in foster care because the state would not maintain the child's SSI eligibility.

The payee must use that money to pay for things like medical care, housing, clothing, food and personal comfort items. When there is money left over from SSA payments that are not needed to pay for such items, the payee deposits the money into a bank account called a "maintenance account" which can be accessed by the youth when they reach 18 years of age. Maintenance accounts cannot exceed \$2,000 (due to federal SSI rules). If assets exceed \$2,000, the child/youth can lose SSI eligibility. Counties work with the youth and caregiver to spend down the funds in the maintenance account to meet youth's basic needs, pursuant to AB 1633 (Evans), Chapter 641, Statutes of 2005, and federal requirements.

If the county has been serving as a foster youth's representative payee, when they reach 18 years of age, the county is required to assist these youth in receiving their own SSA checks or to find a responsible adult to be appointed as the representative payee. County social workers are required to help with transition planning which may include keeping SSA benefits after exiting foster care. If a youth is already receiving SSI when they reach 18 years of age, the SSA will ask for information related to the disability around the time the youth turns 18 to make a determination whether they will qualify for SSI under the adult rules, a practice called an "Age 18 Redetermination." For SSA to find that a youth is eligible for SSI as an adult, they must have a medical condition that keeps them from working.

California led the way in the nation for establishing laws that work to ensure youth are appropriately screened for SSI eligibility while in care. AB 1633 established a workgroup whereby counties and child welfare stakeholders developed best practice guidelines for establishing and maintaining social security eligibility for youth in foster care. Recommendations issued by the workgroup were included in a subsequent bill, AB 1331 (Evans), Chapter 465, Statutes of 2007, which required all counties to screen foster youth and submit applications on their behalf between the ages of 16 years and six months and 17 years and six months as a means of ensuring SSI benefits are in place when the youth turns 18.

This bill would instead require counties to screen every foster youth over 16 years of age for potential eligibility for SSA benefits and specifies that an application is required to be submitted to the federal SSA on behalf any youth who is screened as being likely to be eligible for any benefits administered by the federal SSA, and to the extent possible, for foster youth approaching 18 years of age, require the application to be timed to allow for a determination before their 18th birthday.

Equity Implications: Foster youth are among our state’s most vulnerable populations. Close to 31% of transition-age foster youth experience homelessness, another 25% come into contact with the justice system within two years of aging out of foster care, and about 20% report having a health condition or disability that limits their daily activities. Only 50% complete their high school education, and less than 10% attain a college degree. California’s foster youth population is disproportionately Black and Latino when compared to their non-foster youth peers. Foster youth face significant barriers while in the system and have even more challenges as they transition out of the child welfare system and into adulthood and self-sufficiency. This bill would ensure that eligible foster youth have increased resources for a stable and independent life while in care and after they exit care into adulthood.

Author’s Statement: According to the Author, “With [this bill] California will join a national movement of states ending the archaic practice of recouping the costs of a child’s time in foster care through collecting their survivor’s benefits. However, these agencies fail to notify the youth, their loved ones, and their attorneys that they are doing so. Instead, they apply to be representative payees for the youth and use the funds to reimburse themselves for the costs of the child’s care—despite federal law explicitly placing the financial responsibility of care on foster care agencies. For foster youth who have lost a parent, this money could be the difference between going to college or going to prison. [This bill] will require counties to instead use this money for the best interest of the youth and/or conserve the funds for the youth to access when they have aged out of the system, and to notify youth when applications for benefits are being made on their behalf.”

Proposed Committee Amendments: Following the identification of a technical error, the Author has agreed to amend the bill to strike the word “promptly” in Section 4, subparagraph (d)(2) as follows:

WIC § 13756...

(d) (1) The placing agency shall notify the child, the child’s attorney, and the child’s parents or guardians, before, or concurrent with, all of the following:

(A) Any application for benefits administered by the federal Social Security Administration made by the agency on the child’s behalf pursuant to subdivision (a) of Section 13757.

(B) Any application by the placing agency to become a representative payee for benefits administered by the federal Social Security Administration on the child's behalf.

(C) Any decisions or communications from the federal Social Security Administration regarding an application for benefits described in subparagraph (A).

(D) Any action taken by the agency regarding an application for benefits described in subdivision (c) of Section 13757.

(2) In addition to ~~prompt~~ notification, as required under paragraph (1), the placing agency shall also provide the information in subparagraphs (A) to (D), inclusive, of paragraph (1) to the child, the child's attorney, and the child's parents or guardians upon request.

RELATED AND PRIOR LEGISLATION:

AB 1512 (Bryan) of 2023, would have expanded the information counties are required to provide to foster youth receiving SSI benefits who are approaching their 18th birthday, to include information regarding all federal SSA benefits, and would have required counties to ensure that the child's benefits are not used to pay for, or to reimburse the placing agency for, any costs of the child's care and supervision. Would have required the county, prior to applying to be appointed representative payee, to send a written notice of the intent to be appointed to the child's counsel and parents or legal guardians. *AB 1512 was vetoed by Governor Newsom due to cost.*

SB 1300 (Durazo) of 2022, would have revised the requirements that counties must complete before, and upon, a foster youth who is receiving federal SSI payments reaches their 18th birthday. *SB 1300 was held on the Assembly Appropriations Committee suspense file.*

AB 1331 (Evans), Chapter 465, Statutes 2007, required counties to screen emancipating foster youth to determine their potential eligibility for SSI and to make applications for those youth who may be eligible.

AB 212 (Beall), Chapter 459, Statutes of 2011, made various clarifying and substantive changes to the California Fostering Connections to Success Act in order to ensure proper implementation on January 1, 2012, and other changes to existing state law in order to comply with various provisions of federal law.

AB 12 (Beall), Chapter 559, Statutes of 2010, the "California Fostering Connections to Success Act", provided an option for continued jurisdiction of federally eligible NMDs or former dependents of the juvenile court who are between 18 and 21 years of age.

AB 1633 (Evans), Chapter 641, Statutes of 2005, developed best practices to improve access to federal disability benefits for foster youth, among other things.

AB 1110 (Lara) of 2011, would have required additional reporting and court oversight concerning the receipt of SSI income for foster youth. *AB 1110 was held on the Appropriations Committee suspense file.*

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Boys and Men of Color (Co-Sponsor)
Alliance for Children's Rights (Co-Sponsor)
Children's Law Center of California (Co-Sponsor)
Children's Advocacy Institute (Co-Sponsor)
Aspiranet
California Alliance of Caregivers
California Catholic Conference
California Youth Connection (CYC)
Children Now
John Burton Advocates for Youth
Los Angeles Dependency Lawyers, INC.
Public Counsel
Western Center on Law & Poverty
Youth Law Center

Opposition

None on file.

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