

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1344 (Santiago) – As Introduced February 16, 2023

**SUBJECT:** Surviving child benefits

**SUMMARY:** Establishes the California Survivor Benefit Program (CalSurvivor), commencing July 1, 2024, to provide cash assistance for a minor with a deceased parent, when the minor is not eligible for survivor benefits under the federal Old-Age, Survivors, and Disability Insurance (OASDI) program; Requires, when local child support and human service agencies become aware that a child's parent has died, these agencies to inform a parent or guardian of benefits under the OASDI program, and benefits provided to survivors of veterans by the United States Department of Veterans Affairs (VA). Specifically, **this bill:**

- 1) Requires California Department of Social Services (CDSS) to establish, oversee, and conduct the eligibility determination for CalSurvivor, a county- or county consortia-administered program to provide cash assistance for a minor who is a California resident with a deceased parent, who was also a California resident upon their death, when the minor is not eligible for survivor benefits under the federal OASDI program. Further, specifies that CDSS must determine program eligibility.
- 2) Requires, except as otherwise provided in these provisions, the federal and state laws and regulations governing the federal OASDI program to also govern CalSurvivor.
- 3) Stipulates that benefits provided under these provisions are required to be equivalent to the federal OASDI survivor benefits.
- 4) Subject to the criteria specified in 5) and 6) below, provides, upon application, that a minor is eligible for CalSurvivor if their status as a surviving child of a deceased parent would make them eligible for federal OASDI survivor benefits, but the minor is determined to not be eligible.
- 5) Establishes eligibility under CalSurvivor if the minor child of the deceased Californian meets any of the following:
  - a) They are under 18 years old and unmarried;
  - b) They are under 19 years old and unmarried, but in elementary or secondary school as a full-time student; or,
  - c) They are 18 years old or older and have a severe disability that originated before they turned 22 years old.
- 6) Requires the applicant to provide all of the following documentation to CDSS:
  - a) Death certificate of the deceased parent;
  - b) Birth certificate of the applicant;

- c) Proof that both the parent and the child were residents of California on the date of the death of the parent; and,
  - d) Proof that an applicant is not eligible for federal OASDI survivor benefits.
- 7) Requires CDSS to periodically re-determine the eligibility of each individual.
  - 8) Requires, under the direction of CDSS, counties with an unspecified number of residents, to establish an advocacy program to assist applicants and recipients of aid under these provisions, in the application process for federal OASDI survivor benefits if the applicant is denied for not having the required verification of ineligibility, unless the applicant affirmatively states in writing that they do not want the assistance.
  - 9) Requires CDSS to provide assistance to counties in their efforts to implement the advocacy program, as described, and CalSurvivor.
  - 10) Clarifies that counties are obligated to operate the advocacy program only to the extent that state funds have been provided to counties for this purpose.
  - 11) Requires CDSS to reimburse counties for the cost of actual payments made pursuant to these provisions, and for the administrative costs actually attributable to those payments.
  - 12) Requires CDSS to reimburse fees incurred by attorneys or other authorized representatives during the appeals phase of the federal OASDI survivor benefits application process, but only when the county demonstrates that the legal representative successfully secured approval of federal OASDI survivor benefits. Prohibits the legal fees for each case from exceeding twice the difference between the maximum monthly individual payment provided under these provisions, and the maximum monthly federal OASDI survivor benefits payment.
  - 13) Requires local child support agencies, under the direction of guidance issued by the California Department of Child Support Services (DCSS), to inform a custodial parent or guardian of benefits under the federal OASDI program and benefits provided to survivors of veterans by the VA when the agency becomes aware that a child's noncustodial parent has died and the agency has information that suggests that the child may be eligible for either of those benefits.
  - 14) Requires county human services agencies, under the direction of jointly issued guidance from CDSS and the California Department of Health Care Services, to inform a parent or guardian of benefits under the federal OASDI program and benefits provided to survivors of veterans by the VA when the county becomes aware that a child's parent has died and the county has information that suggests that the child may be eligible for either of those benefits.
  - 15) Requires CDSS to report to the Legislature, by July 1, 2026, on the outcomes of CalSurvivor and the advocacy programs, including the number of cases that were approved for benefits in each program, disaggregated by county.
  - 16) Requires CDSS to submit a report by an unspecified date to the Legislature that includes both of the following:

- a) The requirements and cost to establish a state-funded program to provide cash assistance to a child with a deceased parent who is not eligible for survivor benefits under the federal OASDI program; and,
  - b) An estimate of how many children in California would be eligible for the state-funded program.
- 17) States that nothing in these provisions shall prevent CalSurvivor benefits issued from being a tax credit, if established under the Revenue and Taxation Code.
- 18) Requires, if CalSurvivor benefits issued are deemed to be a tax credit, the Director of CDSS to certify to the Legislature that they have received and complied with any additional required authority from the Franchise Tax Board.
- 19) Permits CDSS, through June 30, 2026, to implement these provisions through all-county letters or similar instructions.
- 20) Requires CDSS to adopt regulations, as otherwise necessary, to implement the applicable provisions no later than July 1, 2026.
- 21) Permits emergency regulations to implement the applicable provisions to be adopted by the Director of CDSS in accordance with the Administrative Procedure Act.
- 22) Stipulates the adoptions of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare and to remain in effect for no more than 180 days.
- 23) Exempts emergency regulations from review by the Office of Administrative Law (OAL) and requires them to be submitted to OAL for filing with the Secretary of State.
- 24) Establishes an operative date of July 1, 2024, and states that implementation of these provisions are subject to an appropriation by the Legislature or a provision of federal funds or private funds to be implemented only during any period that federal benefits are provided as specified under federal law.

**EXISTING LAW:**

- 1) Establishes the Social Security Act, a system of federal benefits for people who are aged and low-income. (42 United States Code (USC) *et seq.*)
- 2) Establishes in federal law OASDI benefits, as well as insurance benefits for spouses and widowers of an individual entitled to old-age or disability insurance benefits, as provided. (402 USC)
- 3) Establishes in federal law the Child's Insurance Benefits (CIB) program, within OASDI, to provide every child, as defined, of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child:
  - a) Has filed an application for the CIB program;

- b) Was unmarried at the time the application was filed and either had not yet turned 18, or was a full-time elementary or secondary school student and had not yet turned 19, or is under a disability, as defined, which began before the child turned 22; and,
  - c) Was dependent upon the insured individual if: such individual is living, at the time the application was filed; if such individual has died, at the time of such death; or, if the individual had a period of disability which continued until they became entitled to old-age or disability insurance benefits, or until the month of their death, at the beginning of such period of disability or at the time they became entitled to such benefits. (42 USC 402(d)(1)(A)-(C))
- 4) Terminates a child's receipt of the CIB program in the following circumstances, among others: when the child dies; when the child marries; or, in the case of a child who is not under a disability, when the child attains the age of 18 and is not a full-time elementary or secondary school student. (42 USC 402(d)(1)(D)-(E))
- 5) Provides that an immigrant who is not lawfully present in the United States is eligible for any state or local public benefit through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility. (8 USC 1621(d))

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

**COMMENTS:**

**Background:** *Federal OASDI program.* The OASDI program, administered by the Social Security Administration (SSA), provides monthly benefits to qualified retired and disabled workers and their dependents, and to survivors of insured workers. Eligibility and benefit amounts are determined by the worker's contributions to Social Security through either payroll taxes or self-employment taxes.

According to the SSA, in 2020, about 180 million people work in employment or self-employment that is covered under the OASDI program and states that approximately 93% of the U.S. workforce is covered by OASDI.

Workers excluded from coverage fall into five major categories:

- a) Civilian federal employees hired before January 1, 1984;
- b) Railroad workers (who are covered under the railroad retirement system, which is coordinated with Social Security);
- c) Certain employees of state and local governments who are covered under their employers' retirement systems;
- d) Domestic workers and farm workers whose earnings do not meet certain minimum requirements (workers in industry and commerce are covered regardless of the amount of earnings); and,
- e) Persons with very low net earnings from self-employment, generally under \$400 annually.

This bill seeks to capture the proportion of the population in California who would not be eligible for the federal survivors program by establishing a state-funded program to provide benefits to children who have lost a parent.

*COVID-19.* According to the Global Reference Group for Children Affected by COVID-19, 32,219 children in California lost a primary or secondary caregiver to COVID-19. To the extent that any of those children do not qualify for OASDI survivor benefits, this bill seeks to ensure they will receive assistance.

To address this devastating reality, the 2022-23 budget allocated \$100 million to create interest-bearing trust fund accounts for children who lost a parent or primary caregiver to COVID-19, entitled the Hope, Opportunity, Perseverance, and Empowerment for Children Trust Account Fund, which will seed trust funds for these youth. The funds, known as “baby bonds,” are started with state money and allowed to grow until the child turns 18, at which time the youth is permitted to use the funding for housing, education or other expenses.

*Impact on eligibility for other assistance programs.* Depending on the size of the impacted family and how many children are in receipt of CalSurvivor benefits, there is the possibility that a family could become ineligible for California Work Opportunity and Responsibility to Kids (CalWORKs) benefits as a result. CalWORKs benefits are provided based on need and compliance with specified work requirements. To determine CalFresh eligibility, most applicants are subject to a gross income determination test. The maximum gross income allowed is 200% of the Federal Poverty Level. The current income eligibility standards for a household size of one would be \$2,266 and \$4,626 for a family of four. Depending on the amount provided by CalSurvivor, which would be determined by the deceased parent’s contributions to Social Security, families could still be eligible for CalFresh and Medi-Cal benefits.

**Author’s statement:** According to the author, “All survivors experience the emotional toil and financial hardship after the loss of a parent. [This bill] would establish a state funded survivor benefits program for children who are not eligible for the federal Old-Age, Survivors, and Disability Insurance (OASDI) program and increase awareness of both programs. California must act now to provide all surviving children with the financial assistance they need for a healthy and whole future.”

**Need for this bill:** The provisions of this bill are seeking to address the children whose deceased parent did not attain enough work credits to qualify for OASDI benefits. Because children of those who were incarcerated, undocumented, or working in agricultural or domestic services settings often do not have enough eligible work experience to qualify for OASDI benefits, these children not only have to endure the trauma of losing a loved one, but also the effects of losing their financial contributions.

Currently, there are no state programs that capture these excluded survivors. Through prior legislation, several wraparound programs to support those left behind in federal assistance programs have been created such as the Cash Assistance Program for Immigrants and the California Food Assistance Program.

This bill seeks to address the disparity in how these survivors are compensated by creating a state-funded program that would provide financial assistance to children who are often in deep poverty that is compounded by losing a parent and their income. In order to receive these benefits, their remaining parent or other caregiver must know they are eligible and apply. As a

result, some children are left without this federal benefit. In addition to establishing a state-funded survivor benefits program for children who are not eligible for the federal OASDI program, this bill would increase awareness of both programs by directing the relevant human services and child support agencies to inform a parent or guardian of benefits under the OASDI program, and benefits provided to survivors of veterans by the VA.

**Equity Implications:** The COVID-19 pandemic laid bare the existing inequities in our society, particularly when it comes to work environments. For those who could weather the pandemic from the safety of their home office, shopping online and generally outsourcing the activities of daily life to a class of workers who served on their behalf, the devastating effects of the COVID-19 pandemic were minimized. However, for those workers who did not have the luxury nor choice to work from home, the impacts were deeply felt by those families who lost loved ones as a result of COVID-19.

According to data from “Hidden Pain”, a report from the COVID Collaborative, a nonprofit advocacy group, non-White children lost caregiving adults at higher rates than their White peers. American Indian and Alaska Native and Native Hawaiian and Pacific Islander children lost caregivers at rates of nearly four times the rate of White children; Black and Latino children at nearly 2.5 times the rate of White children; and Asian children at 1.6 times that of White children.

Nationally, more than 140,000 children have lost a parent to COVID-19 and 67% of these children are children of color, and many of those who died were low-wage workers working in jobs that continued despite pandemic shutdowns.

There is currently no data available on the proportion of the 140,000 youth who lost a parent to COVID and ineligible for OASDI; however, this bill could provide a crucial safety net.

This bill would also capture other survivor children whose parent, for whatever reason, was not eligible for or contributing to Social Security and therefore not eligible for federal survivor benefits.

By compensating these youth in the same way that other youth who have lost a parent are compensated, these vulnerable youth can avoid falling deeper into poverty after encountering the death of their parent.

**Policy Considerations:** The Committee notes a lack of specificity in several components of this bill as follows:

- This bill does not address the potential impact on eligibility for other assistance programs that might occur as a result of receiving CalSurvivor benefits. Individuals should know of the impact to make an informed decision.
- There are two reports required by the provisions of this bill: one to gain data on surviving children who are ineligible for federal survivor benefits, and has a due date of July 1, 2026; and one to report on data for CalSurvivor benefits once the program is operable, that does not have a due date. The due dates should be specified in statute and be set within a reasonable timeframe.

- This bill directs counties with an unspecified number of residents, under the direction of CDSS, to establish an advocacy program to assist applicants and recipients of CalSurvivor benefits.

**Proposed Amendments:**

To address the policy considerations stated above, the Committee proposes amendments to do the following:

- The Committee suggests in order to ensure they are making an informed decision that potential CalSurvivor recipients are advised that if an individual receives CalSurvivor benefits, then they could lose other public assistance.
- The Committee suggests the due date for the report required in Section 3 related to data on surviving children who are ineligible for OASDI benefits should be extended by one year to July 1, 2025, and the report in Section 4 that requires data on the outcomes of CalSurvivor shall have a due date of July 1, 2027.
- The Committee suggests that counties be permitted to opt-in to the advocacy program regardless of the number of residents instead of establishing an advocacy program according to the size of the county.

**Double referral:** This bill will be referred to the Assembly Judiciary committee should it pass out of this committee.

**RELATED AND PRIOR LEGISLATION:**

*SB 854 (Skinner) of 2022*, would have established the “Hope, Opportunity, Perseverance, and Empowerment (HOPE) Account Program” to provide eligible children, qualifying wards or dependents of the Juvenile Court and children from lower-income households who have lost a parent or guardian to COVID-19, with state-funded trust fund accounts in an effort to address financial disparities and long-term economic outcomes. Additionally, SB 854 would have created the “CalSurvivor Benefit Program”, which mirrored the federal OASDI program, to provide monthly survivor benefits for those dependents who do not qualify for federal survivor benefits. *SB 854 was held on the Senate Appropriations Committee suspense file and the HOPE Account Program policy was enacted through the Budget Act of 2022.*

**REGISTERED SUPPORT / OPPOSITION:****Support**

Coalition of California Welfare Rights Organizations

**Opposition**

None on file

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