

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1512 (Bryan) – As Amended April 6, 2023

SUBJECT: Foster care payments

SUMMARY: Revises requirements for counties to screen foster youth eligibility for benefits to now include all the federal Social Security Administration (SSA) benefits including Social Security Income (SSI) benefits, regardless of age, and requires 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. Requires the placing agency to promptly notify the child, the child's attorney, and the child's parents or guardians, of any application for benefits administered by the federal SSA made by the agency on the child's behalf. Specifically, **this bill:**

- 1) States legislative intent that no federal SSA benefit received by a child or youth in foster care can be utilized by the county placing agency to offset the cost of the child or youth's care, and that placing agencies must instead conserve those funds for the future use of the beneficiary.
- 2) 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.
- 3) Requires the placing agency, when serving as the representative payee or in any other fiduciary capacity for a child or youth receiving federal SSA 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 benefits are not used to pay for, or to reimburse the placing agency for, any costs of the child's care 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;
 - c) Provide, at least once every six months, 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; and,

- d) Document in specified court reports how the county is complying with these provisions, including the amounts spent or designated and for what purpose, consistent with specified accounting reports, and the county's consideration of the child's best interests, consistent with federal guidance.
- 4) Requires the placing agency to promptly notify the child, the child's attorney, and the child's parents or guardians, of 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; and,
 - d) Any action taken by the agency regarding an application for benefits, as described.
 - 5) Requires the county placing agency to summarize in specified court reports how the county is complying with 3) above.
 - 6) Requires, within 30 days of the child's exit from foster care, 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 develop a written plan in the best interests of the child for the future use and control of any funds conserved under these provisions.
 - 7) Requires every youth, regardless 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, to be screened by the county for potential eligibility for federal SSA benefits.
 - 8) Revises the screening to occur within 60 days of the child's entry into foster care, and annually thereafter 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.
 - 9) Strikes references to "SSI payments" when enumerating the requirements counties must complete at least six months before a foster youth's 18th birthday, to instead include "payments from the federal SSA" and requires counties to assist the youth with any applicable financial literacy training and support, and to document that assistance in the youth's transitional independent living plan (TILP).
 - 10) Requires 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.

- 11) Strikes references to “federal Supplemental Security Income payments” and “SSI benefits” and instead includes “federal SSA benefits” when enumerating the requirements for counties when identifying an appropriate representative payee for a nonminor dependent (NMD) who is receiving federal SSA benefits, and adds the following requirements for the county:
 - 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 federal SSA benefits 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.
- 12) Strikes obsolete language and makes conforming changes.

EXISTING LAW:

- 1) Establishes in federal law the “SSI for the Aged, Blind, and Disabled Program” to provide cash assistance to meet the basic needs of aged and blind individuals and individuals with disabilities. (42 United States Code 1381-1383(f))
- 2) 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)
- 3) Establishes the “State Supplementary Payment” (SSP) for people who are aged, blind or disabled, which is intended to supplement federal SSI and provide persons whose need results from age, blindness or disability with assistance and services that help them meet basic needs and maintain or increase independence. Further provides that eligibility requirements for SSP match federal SSI criteria, and requires a minimum level of SSP benefits to be provided in order to maintain federal Medicaid funding, as specified. (Welfare and Institutions Code Section (WIC) 12000 *et seq.*)
- 4) 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. (WIC 300)
- 5) 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)

- 6) 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 TILP, as specified. (WIC 11400(v))
- 7) Provides that the court may have within its jurisdiction any NMD, between the age of majority and 21 years of age, as defined. Further provides that an NMD shall retain all of their legal decision-making authority as an adult, as provided. (WIC 303(a)(d))
- 8) Defines “eligible for financial participation” to mean that the payment is consistent with a federally approved state plan authorizing federal financial participation an 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)
- 9) 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))
- 10) States legislative intent that NMDs who have had their eligibility for SSI established, as provided, be able to maintain that eligibility even when they remain in the state’s care as a NMD, and to facilitate this, states further legislative intent that the county child welfare agency ensure that the youth receives an SSI payment during at least one month of each 12-month period while the youth is an NMD and that the county child welfare agency supplement that SSI payment that a youth receives during this one-month period with nonfederal AFDC-FC benefits. (WIC 13754(a))
- 11) Requires counties to provide information on how, and assist the youth with, establishing continuing disability as an adult and how to become their own payee or designate an appropriate representative payee to all foster youth who are receiving SSI payments and approaching their 18th birthday, as provided. (WIC 13753)
- 12) 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))
- 13) 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))
- 14) 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))

- 15) 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))
- 16) 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))

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

COMMENTS:

Background: *Child Welfare Services (CWS).* California's CWS system exists to protect children from abuse and neglect, and in doing so, provides for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a doctor or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of a youth are met.

The California Department of Social Services secures federal funding to support child welfare services programs, provides statewide best practices training for social workers, and conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements. Foster parents receive a monthly payment to meet the needs of the youth placed in their care and is intended to cover food, clothing, transportation, and vary based on the child, their age and any special needs they may have.

As of January 1, 2023, there are 52,265 youth between birth and up to 21 years old in foster 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 regardless of age.

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 be 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 provides 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 suggests 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 require counties to screen every youth, regardless of age, who are in foster care for potential eligibility for SSA benefits.

Many children who come into CWS custody suffer not only from abuse or neglect, but also have serious physical or mental disabilities. These children with disabilities may qualify for additional assistance through federal social security benefits and/or the federal Supplemental Security Income program and the State Supplemental Payment (SSI/SSP).

Following the legislative efforts to ensure best practices for youth maintaining SSI eligibility on foster care, in 2008, the SSA granted the state approval to allow California's disabled foster youth to apply for SSI/SSP benefits prior to age 18; in early 2010, the SSA issued a nationwide directive allowing other states to follow suit.

This bill would update the current practices to require counties to notify the youth and attorneys about the status of their application and benefits, and work to identify other adults to serve as the representative payee, rather than the county, and ensure the youth's SSA benefits are not used to pay for, or to reimburse the placing agency for any costs of the child's care, and can instead be used for unmet current needs or conserve remaining funds in appropriate accounts for the child's future use.

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 and/or disability 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. In 2021 the Department of Child and Family Services in Los Angeles County (DCFS) collected about \$5.4 million in revenue through this practice. While this \$5.4 million accounts for only 0.18% of DCFS's budget, for youth with disabilities or 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."

Need for this bill: Currently, county placing agencies in California are required to screen and apply for disability and survivor 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.”

The author states that DCFS has estimated that in any given month, it receives the benefits of about 600 children in its custody, equating to about \$5.4 million in revenue in 2021, which is less than 0.18% of the FY23 DCFS budget. This bill would change the current county practice of offsetting its costs with federal SSA benefits from the foster youth they serve, and instead allow these vulnerable youth to keep the funds for which they were determined to be eligible.

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. AB 1512 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.

RELATED AND PRIOR LEGISLATION:

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 the ages of 18 and 21.

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 Legal Services of San Diego (Co-Sponsor)
Childrens Advocacy Institute (Co-Sponsor)
County of Los Angeles (Co-Sponsor)
Youth Law Center (Co-Sponsor)
Advokids
California Alliance of Caregivers
California Youth Connection (CYC)
Children Now
Coalition of California Welfare Rights Organizations
Dependency Advocacy Center
Dependency Legal Services
John Burton Advocates for Youth
Law Foundation of Silicon Valley
Public Counsel
Youth Will

Opposition

None on file

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