

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Eloise Gómez Reyes, Chair  
SB 490 (Hurtado) – As Amended April 25, 2019

**SENATE VOTE:** 38-0

**SUBJECT:** CalFresh: benefit overissuance

**SUMMARY:** Prohibits, to the extent permitted by federal law, the collection of an overissuance of CalFresh benefits caused by administrative error for current and former households that are or were receiving Supplemental Security Income for the Aged, Blind, and Disabled (SSI) Program benefits, deletes the existing \$125 threshold for collecting overissuances caused by administrative error from former CalFresh households, and instead, increases the threshold to \$400, or a higher amount established pursuant to current law, and deletes the \$35 trigger for collecting overissuances caused by inadvertent household error from former CalFresh households, and instead increases that trigger to \$400. Specifically, **this bill:**

- 1) States Legislative intent to prevent the harm of hunger experienced by low-income elderly or Californians with disabilities that would result if they were forced to repay CalFresh benefits that were over-issued as the result of administrative or inadvertent household error.
- 2) Prohibits, to the extent permitted by federal law, an overissuance caused by administrative error from being collected from a household that is receiving SSI benefits.
- 3) Deletes the requirement that an overissuance be less than \$125, or the threshold established by current law, whichever is greater, as a condition for establishing and collecting an overissuance caused by administrative error from a former CalFresh household, and instead prohibits an overissuance caused by administrative error from a former CalFresh household from being established and collection attempted if either of the following applies:
  - a) The overissuance is less than \$400 or the threshold established pursuant to current law, whichever is greater; or,
  - b) To the extent permitted by federal law, the former recipient is elderly or living with a disability, and the former recipient was receiving SSI benefits at the time they stopped receiving CalFresh benefits.
- 4) Deletes the requirement that, for households that no longer receive CalFresh benefits, collection be attempted if an overissuance caused by inadvertent household error is \$35 or more, and instead, requires, for households that no longer receive CalFresh benefits, collection be attempted if an overissuance caused by inadvertent household error is equal to or greater than \$400, as specified.
- 5) Permits the California Department of Social Services (CDSS) to implement the provisions of this bill through all-county letters or similar instructions from the director no later than March 1, 2020.

**EXISTING LAW:**

- 1) Establishes the Supplemental Nutrition Assistance Program (SNAP) under federal law pursuant to the Food Stamp Act of 1964 and establishes, in California statute, the CalFresh program to administer the provision of federal SNAP benefits to families and individuals meeting certain criteria, as specified. (7 United States Code [U.S.C.] Section 2011 *et seq.*, Welfare and Institutions Code [WIC] Section 18900 *et seq.*)
- 2) Establishes the electronic benefits transfer (EBT) Act, and defines the EBT system as the program designed to provide benefits to those eligible to receive public assistance benefits such as CalWORKs and CalFresh. (42 U.S.C. 601 *et seq.*, WIC 10065 *et seq.*)
- 3) Establishes that an overissuance claim against a household is a federal debt subject to certain federal regulations, and requires CDSS to establish and collect any overissuance in compliance with federal regulations. Further, specifies that each person who was an adult member of the household when an overpayment or trafficking occurred, or a person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking is responsible for paying an overissuance. (7 Code of Federal Regulations 273.18(a))
- 4) Requires current and future CalFresh benefits to be reduced in order to recover an overissuance caused by intentional program violation, fraud, or inadvertent household error, as specified. (WIC 18927(a))
- 5) Requires current and future CalFresh benefits to be reduced in order to recover an overissuance caused by administrative error if required by federal law, or if the overissuance exceeds \$125 or the minimum cost-effective threshold for collecting overissuances that the department is authorized to establish, whichever is greater. (WIC 18927(b))
- 6) Prohibits, when recovering an overissuance caused by an administrative error, a recipient household's monthly benefits from being reduced by more than 5% of the household's monthly CalFresh benefits or \$10, whichever is greater, unless the recipient elects for the benefits to be reduced at a higher rate. (WIC 18927(c))
- 7) Prohibits an overissuance from being established and collection being attempted for a household that is no longer receiving CalFresh benefits if the overissuance was caused by administrative error and the overissuance is less than \$125 or the minimum cost-effective threshold, whichever is greater. (WIC 18927(e))
- 8) Requires, if a household is no longer receiving CalFresh benefits, collection to be attempted if the overissuance is caused by inadvertent household error and the overissuance is \$35 or more. (WIC 18927(f))
- 9) Requires CDSS to, no later than January 1, 2019, finalize an analysis and make a determination as to whether it has adequate information to set a minimum statewide cost-effective threshold for collecting CalFresh overissuances from former CalFresh recipients that are caused by administrative error that is higher than \$125. (WIC 18927(h)(1))
- 10) Requires CDSS, if at any time it determines that there is adequate information to set a statewide minimum cost-effective threshold greater than \$125, to include the greater

threshold in the state's claims management plan submitted for approval by the United States Department of Agriculture (USDA). (WIC 18927(h)(3))

- 11) Requires CDSS to establish a minimum statewide cost-effective threshold for collecting CalFresh overissuances from former CalFresh recipients that are caused by administrative error that is higher than \$125, if a higher minimum cost-effective threshold has been included in the state's claims management plan and that plan has been approved by the USDA. (WIC 18927(h)(4))
- 12) Establishes in federal law the SSI Program to provide cash assistance to meet the basic needs of aged and blind individuals and individuals with disabilities. (42 U.S.C. 1381-1383(f))
- 13) Establishes the State Supplementary Program for Aged, Blind and Disabled, which is intended to supplement 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. (WIC 12000 *et seq.*)
- 14) 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. (WIC 12000 *et seq.*)

**FISCAL EFFECT:** According to the Senate Appropriations Committee on April 25, 2019, this bill may result in a significant loss in collection of administrative error overissuances, which could potentially be offset by ongoing administrative cost savings due to raising the overissuance recovery threshold, however, administrative savings may be difficult to realize and may only result in minimal administrative impact.

**COMMENTS:**

**CalFresh:** SNAP provides food access to low-income individuals who meet certain eligibility criteria; in California, this program is known as CalFresh. CalFresh benefits are entirely federally funded, and administration at the federal level lies with the USDA. The USDA is tasked with setting specific eligibility requirements for SNAP programs across the country, as well as a gross and net income test, work requirements, and other documentation requirements. Currently, the maximum allowable gross income is 200% of the Federal Poverty Level, although households with elderly members or members with disabilities are not subject to gross income criteria, but must have a net monthly income at or below 100% of the FPL. In California, CalFresh is administered at the local level by county human services agencies, with federal, state, and county governments sharing the costs of program administration. Nearly 4 million individuals in California receive CalFresh benefits; on average, an individual receives approximately \$135 per month in benefits. Benefits are made available on a monthly basis using an EBT card, which is similar to an automated teller machine (ATM) card. Unlike with an ATM card, CalFresh benefits cannot be withdrawn in cash at point-of-sale terminals; instead, recipients may only use the card to purchase certain eligible foods from stores that accept EBT.

**Overissuances of CalFresh benefits:** An overissuance of CalFresh benefits occurs when a household receives additional benefits in excess of the benefits they are authorized to receive. Overissuances can be a result of any of the following:

- Agency error: also referred to as “administrative error,” consists of an error caused by the CalFresh office, such as issuing benefits based on a household size larger than is accurate, or a failure to count income reported on a Semi-Annual Report (SAR) form;
- Inadvertent household error: consists of a household-caused error, such as reporting net instead of gross income on the household’s SAR; or,
- Intentional program violation: consists of an error purposely caused by the household to receive benefits for which the household is ineligible, such as intentionally failing to report wages from a new job.

When an overissuance occurs, the county CalFresh office is required to send a notice of action to the household detailing certain information related to the overissuance and the claim against the household, including: the type of overissuance (be it agency or inadvertent household error, or an intentional program violation), how much the household owes, how the amount owed was calculated and the related formula used to calculate the amount owed, and any amount or allotment reduction or offset that would reduce the claim against the household, among other information. County CalFresh offices can recover overissuances in a number of ways; while a common approach is to reduce the amount of CalFresh benefits a household receives until the overpaid benefits have been paid back, other methods include payment plans, state and/or federal tax intercepts, or seizing of unemployment benefits, among others.

Restrictions on collecting overissuances: Current law establishes certain requirements with which collection of overissuances must comply. For example, when an overissuance is caused by an administrative error, the household’s CalFresh benefits cannot be reduced by more than 5% of the household’s monthly CalFresh benefits, or by \$10, whichever is greater; however, when an overissuance is caused by an inadvertent household error, the household’s monthly CalFresh benefits may not be reduced by more than 10% of the household’s monthly CalFresh benefits, or \$10, whichever is greater. For a household that no longer receives CalFresh benefits but that received over-issued CalFresh benefits as a result of an administrative error, current state law prohibits the overissuance from being collected if the overissuance was less than \$125 or the threshold established by CDSS pursuant to requirements of SB 278 (Wiener), Chapter 388, Statutes of 2017.

SB 278 required CDSS, no later than January 1, 2019, to finalize an analysis and make a determination as to whether it has adequate information to set a minimum statewide cost-effective threshold that is higher than \$125 when collecting CalFresh overissuances that are caused by administrative error from former CalFresh households. In a December 2018 letter to the USDA Food and Nutrition Service (FNS), CDSS stated that:

“For Federal Fiscal Year (FFY) 2019, the CDSS has amended the Claims Management Plan and seeks approval to formally adopt a \$400 threshold for establishing both Administrative Error and Inadvertent Household Error claims, regardless of other conditions or qualifiers. The change is based on the estimated cost of managing the establishment and collection of a claim...CDSS estimates that the state and counties together spend approximately \$279 *per claim* to pursue an overissuance, regardless of the claim’s type. These results illuminate how the current \$125 threshold is not cost effective...To maintain program integrity, CDSS will continue to collect all intentional program violation claims regardless of amount.”

In a March 2019 letter, the USDA FNS stated, “FNS has reviewed the cost analysis to establish claims that was provided by [CDSS]. WRO [Western Regional Office] agrees that the higher threshold will aid in reducing the administrative costs associated with claims collections, and that use of this threshold is a cost effective plan for managing California’s claims. We are pleased to approve a \$400 threshold for non-participating households.” The provisions of this bill would codify the \$400 threshold in state statute and would prohibit, for households no longer receiving CalFresh benefits, an overissuance caused by administrative error from being established and collected if the overissuance is less than \$400 or the threshold established to pursuant law, whichever is greater. The provisions of this bill would also delete the existing \$35 trigger for collecting overissuances caused by inadvertent household error from former CalFresh households, and would instead require attempted collection of those overissuances when the overissuance is equal to or greater than \$400.

***Supplemental Security Income (SSI)/State Supplementary Payment (SSP):*** The SSI/SSP program provides a monthly cash benefit to eligible individuals and married couples who are aged 65 or older, are blind, or are living with disabilities. To be eligible, individuals must meet certain federal income and resource requirements, including a limit on an individual’s monthly income and a cap on the value of assets owned by the individual, such as a primary residence or car, among other items. If an individual is eligible for federally-funded SSI, they are automatically deemed eligible for SSP, which is funded using state General Fund dollars. A January 2018 report from the Legislative Analyst’s Office estimated that the 2017-18 SSI caseload was approximately 1.3 million recipients.

***California’s cash out policy:*** In 1974, states were given the option to increase monthly SSP grant payments by \$10 (which was approximately equivalent to the food benefit at the time), instead of providing federal food benefits to the SSI/SSP population. California’s adoption of this option, referred to as “cash out,” deemed SSI/SSP recipients in the state ineligible for CalFresh benefits by virtue of receiving a \$10 supplemental payment as a part of their SSI/SSP benefits. Over time, states did away with their cash out policy, leaving California as the only remaining state that had such a policy. The purchasing power of this supplemental payment eroded while food stamp benefit levels increased, and a large number of Californians who were aged, blind, or had a disability struggled to afford food due to their ineligibility for CalFresh benefits. In 2018, with the adoption of AB 1811 (Committee on Budget), Chapter 35, Statutes of 2018, California ended the SSI cash out and deemed individuals who were receiving SSI/SSP benefits as eligible for CalFresh.

The provisions of this bill would prohibit, to the extent permitted by federal law, the establishment and collection of an overissuance caused by an administrative error for a household that is receiving SSI benefits. This bill would also prohibit, for households that no longer receive CalFresh benefits, an overissuance caused by administrative household error from being established and collected if, to the extent permitted by federal law, the former recipient is elderly or living with a disability, and the former recipient was receiving SSI benefits at the time they stopped receiving CalFresh benefits.

***Need for this bill:*** The provisions of this bill seek to build upon past legislation related to collecting CalFresh benefits overissuances from certain households, as well as legislation that ensures SSI/SSP recipients receive adequate food benefits.

Specifically, the provisions of this bill would prohibit the collection of overissuances caused by administrative error from being collected from a current CalFresh household that is receiving SSI benefits. The provisions of this bill would also prohibit an overissuance caused by administrative error from being established and collected from former CalFresh households if, to the extent permitted by federal law, the former recipient is elderly or living with disabilities, and the former recipient was receiving SSI benefits at the time they stopped receiving CalFresh benefits.

The provisions of this bill also increase from \$125 to \$400 (or the amount established pursuant to current law, whichever is greater) the threshold at which an overissuance caused by administrative error may be established and collected from a former CalFresh household. Finally, the provisions of this bill would delete the existing \$35 trigger for collecting overissuances caused by inadvertent household error from former CalFresh households, and instead, would require an overissuance caused by inadvertent household error be collected from a former CalFresh household when the overissuance is equal to or greater than \$400.

According to the author, “[This bill] would codify a federal amendment that prevents low-income Californians who are elderly or disabled in receipt of SSI from having to pay back over-issued CalFresh benefits by exempting them from paying back any food assistance paid to their household errantly as a result of county error. SNAP, known as CalFresh in California, is the most important anti-hunger program in the country. It helps low-income people who are elderly or disabled with a food basket to help them meet their basic food needs. In the Central Valley, for example, thousands of families are aided by SNAP and are eligible for CalFresh benefits with over 280,000 people per month having been helped by a food bank or food distributions. [This bill] will help prevent hunger among low-income people who are elderly or disabled and in receipt of SSI by requiring the county to abstain from collecting an over-issued CalFresh benefit from them if the over-issuance was caused by a county error.”

***Recommended committee amendments:*** In order to clarify that it is a household, rather than an individual, who receives, and is subsequently required to pay back, over-issued CalFresh benefits, ***committee staff recommends the following amendments beginning on line 28 of page 3 of the bill:***

28       (2) ~~The~~ *To the extent permitted by federal law, the former household*  
 29       ~~recipient is elderly or disabled, and the former recipient~~ was  
 30       receiving Supplemental Security Income benefits at the time ~~they~~ it  
 31       stopped receiving CalFresh benefits.

#### **PRIOR LEGISLATION:**

***AB 1811 (Committee on Budget), Chapter 35, Statutes of 2018,*** granted CalFresh eligibility to recipients of SSI, SSP, or both as of June 1, 2019, among other things.

***SB 278 (Wiener), Chapter 388, Statutes of 2017,*** required CDSS to determine whether there is adequate information to set a minimum statewide cost-effective threshold for collecting CalFresh overissuances from former CalFresh recipients caused by an administrative error, and if it determines that there is adequate information and other specified criteria are met, to set a minimum statewide cost-effective threshold for collecting these CalFresh overissuances.

*SB 1391 (Liu), Chapter 491, Statutes of 2012*, established procedures for recovering CalFresh overissuances for both current and former recipient households, and defined minimum thresholds for overissuance establishment and collection caused by administrative error, inadvertent household error, intentional program violation, or fraud, and authorized CDSS to establish a minimum cost-effective threshold for collecting overissuances.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Western Center on Law & Poverty, Inc. (Sponsor)  
National Association of Social Workers, California Chapter

**Opposition**

None on file

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