

**ASSEMBLY, No. 4495**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JUNE 6, 2024

**Sponsored by:**

**Assemblywoman SHANIQUE SPEIGHT**

**District 29 (Essex and Hudson)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblyman Atkins**

**SYNOPSIS**

Prohibits DCF from using certain federal benefits to reimburse State for cost of a child's care; requires DCF to conserve benefits for child's unmet or future needs.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/6/2024)**

1 AN ACT concerning federal benefits for children in foster care and  
2 supplementing P.L.1991, c.290 (C.9:6B-1 et. seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in this act:

8 “Division” means the Division of Child Protection and  
9 Permanency in the Department of Children and Families.

10 “Federal benefits” means any cash payments from the federal  
11 government for which a child may be eligible, including but not  
12 limited to, Social Security benefits pursuant to Title II of the Social  
13 Security Act (42 U.S.C. s.401 et seq.) and Title XVI of the Social  
14 Security Act (42 U.S.C. s.1381 et seq.), and Veterans  
15 Administration benefits.

16 “Representative payee” has the same meaning as provided in  
17 paragraph (j) of Section 405 of Title II of the Social Security Act  
18 (42

19 U.S.C. s.405(j)(1)(A)) and in paragraph (a) of Section 1383 of Title  
20 XVI of the Social Security Act (42 U.S.C. s.1383(a)(2)(A)(ii)(I)).

21

22 2. a. In the case of a child in the custody of the division, the  
23 Department of Children and Families shall make a determination as  
24 to whether the child is currently receiving, or is eligible for, federal  
25 benefits within sixty days after the child is placed in the division’s  
26 custody.

27 b. If the department determines that the child is eligible or may  
28 be eligible for federal benefits, the department shall apply for such  
29 benefits on behalf of the child, after notifying the child, the child’s  
30 attorney, the child’s parent, provided parental rights have not been  
31 terminated, or the child’s guardian.

32

33 3. a. If a child is receiving federal benefits before the division  
34 assumes custody of the child, or if the Department of Children and  
35 Families applies for benefits on the child’s behalf, the department  
36 shall:

37 (1) identify, in consultation with the child and the child’s  
38 attorney, a representative payee, in accordance with 20 C.F.R.  
39 404.2021 and 20 C.F.R. 416.621, who shall apply to become the  
40 representative payee for the child’s benefits; or

41 (2) apply to become the representative payee for the child’s  
42 benefits, provided no other suitable candidate is available.

43 b. If the department is appointed to serve as the child’s  
44 representative payee under subsection a., the department:

45 (1) is prohibited from using the child’s federal or other benefits,  
46 savings, or assets to offset the State’s costs for the child’s care; and

47 (2) may use the child’s federal or other benefits, savings, or  
48 assets for the child’s current unmet needs beyond the amount that

1 the department is obligated, required, or agrees to pay, or may  
2 reserve the benefits, savings, or assets for the child's future needs.

3

4 4. a. If the Department of Children and Families is appointed  
5 to serve as the representative payee of a child under the custody of  
6 the division, the department shall establish an account, at a  
7 federally insured financial institution, to reserve and use the child's  
8 federal benefits in the child's best interest for current unmet and  
9 future needs, in a manner consistent with federal and State asset and  
10 resource limits.

11 b. The account established under subsection a. may include, but  
12 shall not be limited to:

13 (1) a special needs trust, established pursuant to P.L.2015, c.276  
14 (C.3B:31-37);

15 (2) an Achieving a Better Life Experience Account, established  
16 pursuant to P.L.2015, c.185 (C.52:18A-250 et seq.), in accordance  
17 with section 529A of the federal Internal Revenue Code of 1986, 26  
18 U.S.C. s.529A; or

19 (3) any other trust account determined not to interfere with the  
20 income or asset limitations for any benefit program for which the  
21 child is eligible.

22 c. The department shall provide an annual accounting of the  
23 use, application, or conservation of the federal benefits of a child  
24 under the custody of the division to the child, the child's attorney,  
25 the child's parent, provided parental rights have not been  
26 terminated, or the child's legal guardian.

27

28 5. The Department of Children and Families shall annually  
29 review whether an appropriate individual, other than the  
30 department, is available to serve as the representative payee for a  
31 child under the custody of the division, and, if such a person is  
32 available, and with the agreement of the child and the child's  
33 attorney, petition to have this individual appointed as the child's  
34 representative payee.

35

36 6. a. The Department of Children and Families shall notify a  
37 child, who is in the custody of the division, the child's parent,  
38 provided parental rights have not been terminated, or the child's  
39 legal guardian of any application, decision, or appeal related to the  
40 child's federal benefits.

41 b. In the case of a denial of the child's federal benefits, the  
42 department shall consult with the child's attorney and appeal the  
43 denial, provided doing so is in the child's best interest.

44

45 7. The Department of Children and Families shall annually  
46 review the cases of children who are in the custody of the division  
47 to determine whether a child may have become eligible for federal

1 benefits after the department's initial assessment of the child's  
2 eligibility.

3

4 8. Upon the child's exit from the division's custody, and  
5 termination of the Department of Children and Families'  
6 responsibility for the child, the department shall release any  
7 remaining funds to the child's credit, pursuant to the requirements  
8 of the original funding source or, in the absence of any such  
9 requirements, shall release the remaining funds to:

10 a. the child, if the child is aged 18 years or older or is  
11 emancipated; or

12 b. the child's parent or legal guardian, if the child is a minor  
13 and is not emancipated.

14

15 9. The Commissioner of Children and Families, in accordance  
16 with the "Administrative Procedure Act," P.L.1968, c.410  
17 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to  
18 implement the provisions of this act.

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20 10. This act shall take effect immediately.

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#### STATEMENT

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25 The bill requires the Department of Children and Families (the  
26 department) to determine, within 60 days of a child's placement in a  
27 foster home, whether the child currently receives, or is eligible for,  
28 federal benefits, such as Social Security or Veteran's  
29 Administration benefits. Upon determining that a child is eligible  
30 for federal benefits, the department will apply for these benefits on  
31 the child's behalf, after notifying the child, the child's attorney, the  
32 child's parent, provided parental rights have not been terminated, or  
33 the child's legal guardian.

34

35 If a child received federal benefits prior to placement in a foster  
36 home, or if the department applies for federal benefits on the child's  
37 behalf, the department, in consultation with the child and the child's  
38 attorney, will identify a representative payee. If no suitable  
39 candidate is available to serve as the child's representative payee,  
40 the department may apply to become the representative payee for  
41 the child's benefits. In such cases, the department is required to  
42 annually review whether an appropriate individual is available to  
43 serve as representative payee; if so, and with the consent of the  
44 child and the child's attorney, the department will petition to have  
45 this individual appointed as representative payee.

46

47 If the department is appointed as the representative payee, the  
48 department is prohibited from using the child's federal or any other  
benefits, savings, or assets to offset the State's costs for the child's  
care. The department is also required to utilize the child's federal

1 benefits for the child's unmet needs, or to save for the child's future  
2 needs.

3 Under the bill, the department is required to establish an account  
4 at a financial institution, into which the child's federal benefits will  
5 be deposited, consistent with federal and State asset and resource  
6 limits. The department may establish certain types of accounts,  
7 such as a special needs trust or an Achieving a Better Life  
8 Experience (ABLE), which will not conflict with the income and  
9 asset limits of certain federal benefits programs. The department  
10 will annually provide the child, the child's attorney, and the child's  
11 parent or legal guardian with an account of the use, application, or  
12 conservation of the child's benefits.

13 The department is also required to annually review the cases of  
14 children in foster care to determine whether a child may have  
15 become eligible for federal benefits in the time since the  
16 department's initial assessment of the child's eligibility.

17 Upon termination of the department's responsibility for a child,  
18 the department must turn over any remaining federal benefits to the  
19 child, if the child is age 18 years or older or is an emancipated  
20 minor, or to the child's parent or legal guardian.