

Testimony of Melissa Hackett  
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January 31, 2024

In Support: LD 2078, An Act to Increase Participation by the Department of Health and Human Services Regarding Federal Benefits for Which Children in the Custody of the Department Are Eligible

Senator Baldacci, Representative Meyer, and esteemed members of the Health and Human Services Committee. My name is Melissa Hackett. I am a policy associate with the Maine Children's Alliance, which serves as the backbone organization for the Maine Child Welfare Action Network, where I am the coordinator. I am testifying in both capacities today in support of this legislation.

I'd like to start with some background. In 2021, a Marshall Project report<sup>1</sup> revealed that most states were employing the practice of screening youth coming into state custody for eligibility for federal survivor and disability benefits. The reporting found further that states were then applying to be the representative payee and using the child's benefits to pay for the cost of their foster care. More recent reporting<sup>2</sup> has shown that action has been or is being taken in multiple jurisdictions to limit this practice and move to preserve these benefits for youth.

The transition to adulthood is an important and often challenging phase for young people, but youth aging out of foster care often experience this without the support of stable, permanent adult relationships, and the resources that often come with that. Data<sup>3</sup> shows that this group of young people experience significant challenges during this transitional period, across a variety of issues, including successful high school completion, stable housing, justice involvement, early parenthood, and employment. If the survivor and disability benefits of young people in state custody were preserved in trust, rather than spent to cover the cost of their care, those resources could represent an important financial support to young people during a critical time in their lives.

This bill seeks to establish a process to ensure the state reserves these benefits in trust, rather than spending them on the cost of foster care. The legislation also includes important provisions related to communication and education to young people of these benefits. All too often, despite the reporting requirements, we have heard from young people that they were unaware that the state was applying for and utilizing benefits on their behalf. These decisions have long-term consequences for young people, and it is critical that they are meaningfully engaged in the decision-making process and utilization of these resources which have been applied for on their behalf.

I would also bring to the committee's attention a recent letter<sup>4</sup> from the federal Administration for Children and Families, clarifying guidance to states on the application for and use of these funds. It includes specific details related to how states could identify alternative representative payees (it's preferred if it's a friend or family member, versus a state agency) and hold benefits in trust on behalf of the young person (through Achieving a Better Life Experience<sup>5</sup> (ABLE) accounts), without impacting eligibility for other benefits. The letter notes that "CB [Children's Bureau] encourages title IV-E agencies to consider using all of the tools at their disposal when conserving youth's federal benefits... as it can be invaluable as that youth enters adulthood."

When children and youth come into the care and custody of the state, they rely on a state agency and the individuals working within it to act in their best interests. For most, this means the state and federal government bear the cost of their care. But for young people who are eligible for federal disability and survivor benefits, the state is using funds on behalf of the young person to pay for that care. While this is technically appropriate, it raises important questions about fairness and what is in fact in the best interest of young people in the state's custody. For most, these are resources that would be invaluable in their transition to adulthood, buffering against what is otherwise a very steep climb to success after the adversity they have faced in their youth. We believe we can do better by these young people, to ensure they have the best chance of achieving success into adulthood. This bill offers us an important opportunity to do just that.

Thank you.

## References

1. The Marshall Project. These States Take Money Meant for Foster Children. <https://www.themarshallproject.org/2021/05/17/these-states-take-money-meant-for-foster-children>.
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3. The Annie E. Casey Foundation. Child Welfare and Foster Care Statistics. <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>.
4. Administration for Children and Families. Reminders to State and Tribal Title IV-E agencies about the Social Security Representative Payee Program and the Title IVE Federal Foster Care Program. <https://www.acf.hhs.gov/sites/default/files/documents/cb/ssa-hhs-joint-letter.pdf>.
5. Social Security. Payee and ABLE Accounts. [https://www.ssa.gov/payee/able\\_accounts.htm](https://www.ssa.gov/payee/able_accounts.htm).



**Subject: Reminders to State and Tribal Title IV-E agencies about the Social Security Representative Payee Program and the Title IV-E Federal Foster Care Program**

August 17, 2023

Dear Colleague:

The Social Security Administration (SSA) and the Administration for Children and Families (ACF) are writing to share reminders about how State and Tribal title IV-E agencies (title IV-E agencies) that serve as representative payees (payee) for children receiving Social Security or Supplemental Security Income (SSI) benefits, or both, must manage those benefits. We are also sharing reminders on the use of federal foster care funds authorized by title IV-E of the Social Security Act (Act) for children in foster care. Finally, we want to encourage title IV-E agencies to work with youth and young adults to understand their benefits, particularly as they transition out or leave foster care.

**Social Security's Representative Payee Program**

When a Social Security beneficiary or SSI recipient is unable to manage or direct the management of their own benefits, SSA appoints a payee to manage their benefits for them. In general, children under the age of 18 must have a payee.

When selecting a payee, SSA prefers the beneficiary's parent, legal guardian, spouse, or other close relative or friend who has a strong interest in the beneficiary's welfare. However, when such people are unavailable, unsuitable, or unwilling to serve, SSA may select an organization, such as a title IV-E agency. SSA carefully evaluates the suitability of people or organizations applying to be a payee.

The Act requires all payees to use Social Security and SSI benefits for the "use and benefit" of the beneficiary. Under SSA's regulations, this generally means a payee must use the benefits for the beneficiary's "current maintenance" (e.g., food, clothing, shelter, medical care, and personal comfort items). A payee must conserve any benefits not needed for current maintenance for the beneficiary's future needs.

**Title IV-E Agencies Who Serve as Representative Payees**

*Use and Conservation of Benefits*

Like other payees, title IV-E agency payees may use Social Security benefits to meet the current needs of child beneficiaries, including housing, food, medical care, and personal items. If the payee meets the child's current and foreseeable needs without using the full benefit amount, it must conserve the rest for the child's future needs. If the child receives other benefits, such as

federal foster care payments, the title IV-E agency should consider whether the child has needs in excess of what those funds cover. If there are unmet needs, the title IV-E agency may use the child's Social Security benefits to supplement any other funds to meet those current or future additional needs. This can be important in assuring that the child's needs and well-being are appropriately and fully addressed. There may be cases where the child is eligible for but not receiving other benefits, such as title IV-E foster care payments, in which case the title IV-E agency should consider whether these other benefits are appropriate to meet the needs of the child. SSA's guidance explains that title IV-E agency payees must meet with youth who are in foster care on a regular basis to ascertain their current and foreseeable needs.

Payees must be mindful that conserving funds can affect a child's eligibility for the SSI program; in general, a single person will be ineligible for SSI if they have more than \$2,000 in countable resources. There are certain resources that may not count against this resource limit—for example, Achieving a Better Life Experience Accounts (ABLE accounts). For more information on ABLE accounts, see SSA's online resource for the Use of ABLE Accounts by Representative Payees. Payees must consider whether using an excluded resource to conserve funds would be in the best interest of the beneficiary. SSA welcomes the opportunity to provide information to stakeholders on these excluded resources.

SSA encourages title IV-E agencies to act within their authority and capacity to make the best decision for using each child's Social Security benefits. In addition to SSA's rules, title IV-E agency payees may be subject to state or local rules on the use of benefits. SSA works closely with title IV-E agency payees to ensure compliance with SSA rules and provide technical assistance on using SSA benefits to optimize the well-being of child beneficiaries.

### *How SSA Monitors Payees*

There are two primary ways that SSA ensures that payees, including title IV-E agencies, are using benefits in the best interest of the beneficiary: site reviews and the annual accounting report. Site reviews include a face-to-face meeting with the payee, an examination of the payee's financial records and supporting documentation, and interviews with beneficiaries and third parties.

If a site review finds that a payee is misusing funds or performing poorly, SSA will take appropriate action, which can include replacing the payee and requiring the payee to return misused funds. State Protection and Advocacy Systems (P&A) conduct the site reviews on behalf of SSA. The P&As conduct periodic site reviews every 3-4 years as well as targeted site reviews when SSA receives a report that a payee is not performing well.

Title IV-E agency payees are also subject to SSA's annual accounting process. SSA requires payees to report annually on who made the decisions on how benefits were spent or saved, how the payee used the benefits, how much of the benefits were saved, and how those savings were invested. A payee's answers may cause SSA to further investigate the payee or initiate a site review.

### *Foster Care Data Exchanges*

SSA is required by law to establish data sharing arrangements with States to receive timely data on when children enter or exit the foster care system. These exchanges help protect child beneficiaries by letting SSA know quickly when there is a need to remove or replace a child's payee. Only twenty-two States are actively participating in this exchange program. SSA invites States that may have questions about, or are interested in, participating in the exchange program to please contact us at [ORDP.Data.Exchange@ssa.gov](mailto:ORDP.Data.Exchange@ssa.gov).

### **Title IV-E Federal Foster Care Program**

Funds are available to title IV-E agencies under title IV-E of the Act for monthly foster care maintenance payments for the daily care and supervision (among other things) of eligible children. Under the program, federal funds are available to reimburse title IV-E agencies for a portion of the cost of foster care maintenance payments. In order to receive these federal funds, title IV-E agencies must provide a non-federal share of these costs. The title IV-E agency's non-federal share must be provided from State-appropriated monies raised from non-federal revenue sources. As such, an agency may not use a child's Social Security benefits to meet the title IV-E non-federal share. ACF has advised states, however, that a title IV-E agency payee may use the child's Social Security benefits to pay for or contribute to the costs of maintenance for a child in foster care as long as the agency does not seek IV-E match for those benefits.

Title IV-E agencies are required to prepare older youth and young adults for the transition from foster care to living as an independent adult. Consistent with those provisions, ACF's Children's Bureau (CB) emphasizes that a basic standard of good practice is for title IV-E agency payees to work with older youth and young adult beneficiaries so that they understand the Social Security benefits to which they are entitled or eligible, such as SSI. Under a special application procedure for transition-age foster youth, SSA will accept an SSI application up to 180 days before foster care payments are to end and the youth meets other requirements. Similarly, CB expects that each title IV-E agency will discuss and explain to older youth and young adults how the agency is managing their benefits, and ways in which the older youth/young adult might manage various federal benefits when no longer in foster care. CB strongly encourages title IV-E agencies to begin transition planning with older youth, as appropriate, well in advance of the statutorily required timeframe. Many of the transition-related issues are best discussed as soon as the youth is able to co-design how they want to manage funds as an adult with the support of the title IV-E agency.

CB also encourages title IV-E agencies to consider using all of the tools at their disposal when conserving youth's federal benefits, if it is in their best interest, as it can be invaluable as that youth enters adulthood. As discussed above, this might include using ABLE accounts or other such vehicles.

Finally, agencies should be alert to family or close friends who show interest in the well-being of the child and may be willing to serve as the payee for the child's Social Security benefits. Other

individuals in the child's life may apply to be the child's payee at any time. If SSA receives an application from such an individual to serve as payee, SSA will assess whether the payee applicant is a more suitable candidate than the title IV-E agency.

For more information about SSA's Representative Payee Program, visit the [Representative Payee website](#). For general questions about managing Social Security benefits, you may call SSA toll-free at 1-800-772-1213, or you may call your local Social Security office.

Sincerely,

/s/

Stephen Evangelista  
Acting Deputy Commissioner  
Office of Retirement and Disability Policy  
Social Security Administration

/s/

Rebecca Jones Gaston, MSW  
Commissioner  
Administration on Children, Youth and Families  
U.S. Department of Health and Human Services