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Testimony of the Office of Child and Family Services
Maine Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

In opposition to 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.*

Sponsor: Representative Roeder
Hearing Date: January 31, 2024

Senator Baldacci, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services, my name is Bobbi Johnson, and I serve as the Director of the Office of Child and Family Services (OCFS) in the Department of Health and Human Services. I am here today to testify in opposition to 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.*

This bill would require the Department to determine whether a child in the Department's custody is eligible for Social Security or Veterans Affairs benefits. If the child is eligible, the Department would be required to apply for benefits on their behalf. The bill prohibits the Department from using the federal benefit to pay for or reimburse the Department for any costs of the child's care and would require the Department to establish a special-needs trust to use and conserve the child's benefit. This bill also requires staff who implement these requirements to receive specialized training.

OCFS is not opposed to seeking benefits for a child in state custody who may qualify, in fact we already apply for benefits on behalf of a child when we are aware that they qualify. Our opposition stems primarily from two pieces of this bill. First, the prohibition of use of the federal benefit to pay for the cost of caring for a child in state custody and requirement we establish special needs trusts and second the requirement that we definitively determine for each child in care whether they are eligible for a benefit (which is problematic primarily for disability-related benefits).

The intent of Social Security and Veterans Affairs benefits is to assist with the cost of caring for a child, regardless of who is responsible for the care and custody of that child. The benefits are meant to meet the needs of the child if a parent is deceased, or the child meets the criteria for disability. The Social Security Administration explicitly states that the funding is to be used to care for the child due to disability or in lieu of the support that otherwise would have been provided by a deceased parent. This intent is further demonstrated by the fact that Social Security

Administration rules that terminate benefits once a child reaches \$2,000 in assets. Disallowing the Department's use of benefits to reimburse the costs of caring for a child in state custody would have a State General Fund impact of approximately \$2.5 million annually.

We also raise a concern about language in this bill that would require that for each child in the Department's custody the Department determine if they are "eligible" for a federal benefit. In some cases, such eligibility is quite clear (for instance if the child has a deceased parent) but for disability related benefits available through the Social Security Administration those determinations are nuanced and without applying on behalf of every child in custody the Department cannot make an accurate determination regarding eligibility. Social Security Disability Payments for those under the age of 18 are available when the child meets the following criteria:

- The child has a medically determined physical or mental impairment (including emotional or learning impairment) that results in marked and severe limitations and either:
 - Can be expected to result in death; or
 - Has lasted or can be expected to last for a continuous period of not less than 12 months.

Additionally, the only entity authorized to make an eligibility determination is the Social Security Administration.

The Social Security Administration recently completed a comprehensive audit of OCFS' administration and use of their benefits for children in care and issued a report which indicated OCFS is fully in compliance with all requirements and there were no concerns.

The changes required in this bill would have a significant fiscal impact as well as requiring additional staff to complete the work associated with eligibility determinations and administering funds held on behalf of children in state custody.

Additionally for consideration, special needs trusts can be complicated and if not managed properly by an individual could impact a child's ability to access other important benefits like MaineCare, housing, and other social service programs with asset and income limits.

We understand and appreciate the motivation behind this bill and welcome the opportunity to have this discussion with the Committee and stakeholders.