



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 872 (as introduced 5-14-24)
Sponsor: Senator Jeff Irwin
Committee: Housing and Human Services

Date Completed: 5-20-24

INTRODUCTION

The bill would prohibit the State from using a foster care child's unqualified benefits, such as Federal benefits or proceeds that a child received as a beneficiary of an annuity, as reimbursement for the cost of care for that child, beginning October 1, 2024. The bill would allow the Department of Health and Human Services (DHHS) to use or conserve unqualified benefits for special needs services if the DHHS determined it was in the child's best interest. Additionally, the DHHS would have to screen for and secure all available income and funds for each child in foster care within 60 days for a child entering foster care and annually so long as a child was in foster care. By January 1, 2026, the bill would require the DHHS, if serving as a representative payee or fiduciary for a child in foster care, to provide to the child certain information about the status of an application for benefits or the current amount of benefits and assets. Also, the bill would specify how the DHHS would have to facilitate the transfer of a foster child's assets or income.

FISCAL IMPACT

The bill would have a negative fiscal impact on the State and local governments. The bill would prevent the DHHS from collecting Federal benefits, unqualified benefits, assets, or income of foster care youth and using the funds to offset the costs of their care. The Fiscal Year 2024-2025 authorization for this is \$3.6 million, of which about \$500,000 goes to local governments, so up to that amount in lost revenue would have to be replaced by General Fund/General Purpose.

Proposed MCL 722.958f

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Humphrey Akujobi

CONTENT

The bill would amend the Foster Care and Adoption Services Act to do the following:

- Require the DHHS to secure and screen for unqualified benefits within 60 days of a child entering foster care and annually if a child remained in foster care.**
- Prohibit the State from using a child in foster care's unqualified benefits, assets, or income as reimbursement for the care of that child after October 1, 2024.**
- Prescribe how the DHHS could conserve or use a child's unqualified benefits.**
- By January 1, 2026, require the DHHS to conserve and monitor any benefits of a child in foster care for whom the DHHS served as a representative payee or fiduciary until the DHHS no longer served as a payee or fiduciary.**
- Require the DHHS to notify a child in foster care, through the child's guardian ad litem, of an application for or change in status of any Federal benefits pertaining to the child.**
- By January 1, 2026, require the DHHS to notify a child, through the child's guardian ad litem, of information about the child's assets before each juvenile court hearing regarding the child if the DHHS served as a representative payee or fiduciary.**
- Require the DHHS to facilitate the transfer of assets to the child upon adulthood and specify how the assets would have to be disbursed if the child were discharged from or died in foster care.**
- Specify that the DHHS would have to file timely appeals to a denial, overpayment, or cessation of unqualified benefits on behalf of a child in foster care.**

Under the bill, the DHHS would have to do the following:

- Apply for and secure all income and funds available to a child in foster care, including any unqualified benefits for which a child in foster care was eligible.
- Screen a child in foster care for unqualified benefits within 60 days after the child entered foster care, and annually if the child remained in foster care.

"Unqualified benefits" would mean Federal benefits or payments or proceeds that a child receives as a beneficiary of an annuity, a life insurance policy, or pension. "Federal benefits" would include Social Security benefits, Supplemental Security Income, and United States Department of Veterans Affairs benefits.

By October 1, 2024, and except as otherwise provided below, the State could not use the unqualified benefits of a child in foster care, or any other assets or income that the child had earned, owned, or received, as reimbursement for the cost of care for the child. The DHHS could do either of the following if it determined that it was in the child's best interests:

- Use the child's unqualified benefits for special needs services for the child that were not otherwise provided by the DHHS.
- Conserve the unqualified benefits for reasonably foreseeable future special needs services for the child.

If the DHHS applied for Federal benefits for a child in foster care, the DHHS, in cooperation with the child's guardian ad litem if one had been appointed, would have to identify a representative payee or fiduciary in accordance with the requirements of Federal law. (Generally, 20 CFR 404.2021 and 416.621 establish categories and preferences for selecting a representative payee.)

By January 1, 2026, and consistent with Federal law, if the DHHS served as the representative payee or in any other fiduciary capacity for a child in foster care that received Federal benefits, the DHHS would have to do all the following until the DHHS no longer served as the representative payee or fiduciary:

- Conserve the Federal benefits in the child's best interests or use the Federal benefits as authorized for special needs services for the child as described above.
- Provide an annual accounting to the child and the child's guardian ad litem, if one had been appointed, of how the child's unqualified benefits had been used or conserved in accordance with the bill's provisions.
- Subject to the DHHS' authorized uses of unqualified benefits, appropriately monitor any Federal asset or resource limits for the Federal benefits and ensure that the child's best interests were served by using or conserving the Federal benefits in a way that avoided violating any Federal asset or resource limits that would affect the child's eligibility to receive the Federal benefits described below.

The bill would specify that the Federal benefits the DHHS would have to monitor would include any of the following:

- Applying to the United States Social Security Administration to establish a plan for achieving self-support (PASS) account for the child under the Social Security Act and determining whether it was in the best interests of the child to conserve all or part of the Federal benefits in the PASS account.¹
- Establishing a plan for the child under Section 529A of the Internal Revenue Code and conserving the child's Federal benefits in a manner that appropriately avoided any Federal asset or resource limits.²
- Establishing an individual development account for the child and conserving the child's Federal benefits in that account in a manner that appropriately avoided any Federal asset or resource limits.³
- Establishing a special needs trust for the child and conserving the child's Federal benefits in the trust in a manner that was consistent with Federal requirements for the trust and that appropriately avoided any Federal asset or resource limits.⁴
- If Federal law required certain back payments of unqualified benefits to be placed in a dedicated account, complying with the requirements for dedicated accounts under Federal law.⁵
- Applying any other exclusions from Federal asset or resource limits available under Federal law and using or conserving the child's Federal benefits in a manner that appropriately avoided any Federal asset or resource limits.

¹ A PASS program allows individuals who receive Supplemental Security Income benefits to save money in an account that must be used for certain work-related goals.

² Section 529A of the Internal Revenue Code allows for the creation of an ABLE program which allows states or state agencies to establish a savings program for an individual to make contributions for the benefit of meeting qualified disability expenses of a designated beneficiary.

³ Individual development accounts are savings accounts for individuals with low incomes in which the account sponsor will match deposits and the money must be saved for approved goals such as housing, education, or funding a small business.

⁴ Generally, a special needs trust is established to provide for the needs of individuals receiving benefits under Medicaid or other governmental programs while allowing the individual to stay eligible for such programs.

⁵ Generally, a dedicated savings account is an account that the Social Security Administration requires payees to establish for a child entitled to certain benefit amounts and into which the Social Security Administration will deposit back payments.

The DHHS would have to immediately notify a child in foster care, through the child's guardian ad litem if one had been appointed, of any of the following:

- An application for Federal benefits made on the child's behalf or any application to become representative payee for Federal benefits on the child's behalf.
- A decision or communication from the Federal government regarding an application for Federal benefits made on the child's behalf or any application to become representative payee for Federal benefits on the child's behalf.
- An appeal or other action requested by the DHHS regarding an application for Federal benefits made on the child's behalf or any application to become representative payee for Federal benefits on the child's behalf.

By January 1, 2026, if the DHHS served as the representative payee or otherwise received unqualified benefits on behalf of a child in foster care, the DHHS would have to provide notice to the child, through the child's guardian ad litem if one had been appointed, of all the following before each juvenile court hearing regarding the child:

- The amount of unqualified benefits received on the child's behalf since any previous notification to the child's guardian ad litem, if one had been appointed, and the date of each receipt.
- Information regarding all the child's assets and resources, including the child's unqualified benefits, insurance, cash assets, trust accounts, earnings, and other resources.

Additionally, the DHHS would have to facilitate the transfer of any assets or income that the child had earned, owned, or received to the child when the child was discharged from foster care or reached the age of 18, whichever was sooner. The DHHS would have to assist the child in nominating a representative payee, if applicable. If the child died while in foster care, the DHHS would have to facilitate the transfer of any of the child's assets or income to the child's heirs. If the child were discharged from foster care into the care of a parent, guardian, or conservator, the DHHS would have to facilitate the transfer of any assets or income to the child's parent, guardian, or conservator to be managed for the benefit of the child.

As appropriate, the DHHS would have to file timely appeals to a denial, overpayment, or cessation of unqualified benefits on behalf of a child in foster care. The bill would specify that the provisions described above would not affect any additional notice required by a State court.

Finally, by January 1, 2026, the bill would require the DHHS to provide a child in foster care with financial literacy training if the child were at least 14 years old and able to receive the training.

SAS\S2324\s872sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.