SB 442

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 442 (Senator Madaleno, *et al.*)
Finance

Family Law - Protecting the Resources of Children in State Custody

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This bill establishes requirements for the management and use of specified benefits, assets, and resources of children in the custody of the Department of Human Resources (DHR).

Fiscal Summary

State Effect: DHR did not provide requested information regarding the fiscal impact of this bill. Accordingly, this fiscal and policy note relies on information used to develop estimates for similar bills in prior years. General fund expenditures increase by $1.6 million in FY 2018 and by approximately $2.1 million annually thereafter in order to maintain the child's level of care once specified special fund revenues are no longer used for standard expenses relating to a child's care. Potential additional significant increase in general fund expenditures for DHR to hire additional staff to help monitor a child's benefits. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	$0	$0	$0	$0	$0
GF Expenditure	1,600,000	2,133,400	2,133,400	2,133,400	2,133,400
Net Effect	($1,600,000)	($2,133,400)	($2,133,400)	($2,133,400)	($2,133,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Consistent with federal law, when applying for specified benefits for a child in its custody, DHR must, in cooperation with the child's attorney, identify a representative payee or fiduciary. When DHR serves as the representative payee or in any other fiduciary capacity for a child receiving Veterans Administration (VA) benefits, Supplemental Security Income (SSI), or Social Security benefits, DHR must (1) use or conserve the benefits in the child's best interest, including using the benefits for specialized services not otherwise provided by DHR or conserving the benefits for the child's reasonably foreseeable future needs and (2) ensure that when the child attains the age of 14, and until DHR no longer serves as the representative payee or fiduciary, that a minimum percentage of the child's benefits are not used to reimburse the State for the cost of care and are instead conserved in accordance with the bill's provisions. The bill specifies that (1) from age 14 through age 15, at least 40% of benefits may not be used to reimburse the State; (2) from age 16 through age 17, at least 80% of benefits may not be used; and (3) from age 18 through age 20, no benefits may be used for State reimbursements.

DHR must appropriately monitor any federal asset or resource limits for the benefits and ensure that the child's best interest is served by using or conserving the benefits in a way that avoids violating any federal asset or resource limits that would affect the child's eligibility to receive the benefits. DHR must exercise discretion, for benefits or resources below or not subject to any federal asset or resource limit, to conserve or use the funds for services for special needs not otherwise provided by DHR. These options include:

- applying to the Social Security Administration (SSA) to establish a Plan for Achieving Self-Support account for the child and determining whether it is in the best interests of the child to conserve all or part of the benefits in the account;

- establishing an individual development account or a 529A plan for the child and conserving the child's benefits within the accounts in a manner that appropriately avoids any federal asset or resource limits;

- establishing a special needs trust for the child and conserving the child's benefits in the trust in a manner that appropriately avoids any federal asset or resource limits; and

- applying any other exclusions from federal asset or resource limits available under federal law and using or conserving the child's benefits in a manner that appropriately avoids any federal asset or resource limits.

DHR must also provide an annual accounting to the child and the child's attorney of how the child's resources have been used or conserved and provide the child with financial literacy training when the child reaches age 14. DHR must immediately notify the child, through the child's attorney, of (1) any application for VA benefits, SSI, or Social Security benefits made on the child's behalf or any application to become representative payee for those benefits on the child's behalf; (2) any decisions or communications from the VA or SSA regarding an application for benefits; and (3) any appeal or other action requested by DHR regarding an application for benefits.

When DHR serves as the representative payee or otherwise receives VA benefits, SSI, or Social Security benefits on the child's behalf, DHR must provide notice to the child, through the child's attorney, of the following before each juvenile court hearing regarding the child: (1) the dates and the amount of benefit funds received on the child's behalf since any prior notification to the child's attorney and (2) information regarding all of the child's assets and resources, including the child's benefits, insurance, cash assets, trust accounts, earnings, and other resources.

Current Law/Background: A government entity may be designated as the representative payee of a child in out-of-home placement if the child's parent or other relative is not available to serve in that role. As the representative payee, a state is required to manage the child's benefits and to use the benefits for the current maintenance of the child. In recent years, some child welfare advocates have challenged the practice of using these benefits to reimburse states for the cost of providing the care, arguing that the practice amounts to requiring children to pay for their own stay in foster care. Advocates argue that instead, benefits should be invested or otherwise saved for the child's future. Conversely, other advocates and state agencies assert that the use of such funds is critical for agencies operating on tight budgets and that using the funds to pay for the cost of current maintenance is consistent with the purpose of providing the funds. Advocates have also expressed concern that if states were no longer allowed to use the benefits as reimbursement for care, states would simply stop screening children for eligibility. This is of particular concern, as according to the Congressional Research Service, children in foster care often have greater physical, mental health, and developmental needs. One study of a nationally representative sample of children placed in out-of-home care estimated that more than 20% had physical or mental health conditions that would likely make them eligible for SSI. However, only an estimated 6% of children in foster care are reported as receiving SSI benefits.

In *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003), the Supreme Court affirmed the right of states to act as representative payees and to use the benefits to reimburse the cost of care. The *Keffeler* decision also noted that, absent state assistance, "many eligible children would either obtain no Social Security benefits, or need some very good luck to get them."

(*Keffeler*, p. 19.) In Maryland, the Court of Appeals held in *In Re Ryan W.*, 434 Md. 577 (2013), that the juvenile court had no subject matter jurisdiction over a local department of social services' allocation of a foster child's federal Old-Age and Survivor's Disability Insurance benefits, where DHR had been appointed as a representative payee and applied the funds to reimburse itself for the current maintenance cost for the child. It further held that a local department of social services must notify, at a minimum, the child's counsel whenever it applies to be appointed as a representative payee and whenever it receives the funds.

According to DHR, a total of 460 children received benefits totaling $2.1 million in fiscal 2015 (the latest information readily available). DHR uses these funds, which are recorded in the State's child welfare information system, as "available for cost of care," to offset the cost of a child's foster care. Funds in excess of the cost of care for individual children are deposited into trust fund bank accounts and may be used to fund specified authorized purchases or conserved for the child. Within local departments of social services, child beneficiaries may have separate accounts, or commingled accounts may be used. In fiscal 2014 (the latest information readily available), the average cost of care per child receiving disability benefits was $32,003, and the average cost of care per child receiving survivor benefits was $17,762. These cost of care amounts exceed the average benefit received per child.

State Fiscal Effect: The bill requires a child's benefits to be used or conserved in the child's best interest, including using the benefits for specialized services not otherwise provided by DHR. As indicated above, in the last fiscal year for which information is available, the average cost of care per child receiving benefits exceeds the average benefit received per child. **Although DHR did not provide updated information**, it is assumed for purposes of this analysis that this is still true. Accordingly, DHR has previously advised for similar bills in prior years, that it is assumed that special fund revenues that have in the past been designated as "available for cost of care" are no longer available for that use. Instead, the revenues must be used only for specified purposes, including using them for specialized services not otherwise provided by DHR or conserved for the child's benefit. In addition, the bill requires that once a child reaches age 14, specified percentages of the child's benefits must be deposited into specified accounts. Because the bill primarily alters the purposes for which these funds may be used, it is assumed that the bill has no material impact on special fund finances, as DHR still receives the benefit payments on behalf of the child and DHR uses the funds on the child's behalf as specified by the bill or deposits the payments into specified accounts to be conserved for the child.

However, general fund expenditures increase to supplant the loss of special fund revenues (as discussed above) that DHR will no longer consider available to be used for a child's standard cost of care. Based on estimates provided in prior years, general fund expenditures increase by approximately $1,600,043 in fiscal 2018, which reflects the bill's

October 1, 2017 effective date, and by $2,133,391 annually thereafter. This estimate, based on the benefits received in fiscal 2015, reflects the special fund revenues that are no longer available to DHR to use as cost-of-care reimbursements for standard foster care expenses.

DHR has also previously advised that it needs additional staff to implement these provisions. The Department of Legislative Services concurs that the bill increases DHR's workload by necessitating more stringent monitoring of a child's assets, such as ensuring that appropriate amounts are deposited into a child's account and that benefits are used only for allowed purposes. Without actual experience under the bill, a more specific estimate of staffing costs cannot be reliably estimated. *For illustrative purposes only*, for every new caseworker required, general fund expenditures increase by approximately $59,300 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date, and by a minimum of $74,400 annually thereafter.

Additional Information

Prior Introductions: SB 262 of 2016, a similar bill, was recommitted to the Senate Judicial Proceedings Committee. Its cross file, HB 772, was withdrawn. SB 524 of 2015, a similar bill, passed the Senate with amendments but received an unfavorable report from the House Judiciary Committee. Its cross file, HB 575, received an unfavorable report from the House Judiciary Committee. SB 914 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1270, was heard by the House Judiciary Committee but later withdrawn.

Cross File: HB 416 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts; Department of Legislative Services

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mm/jc

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