

# Legislative Analysis



## FOSTER YOUTH BENEFITS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4694 as introduced**  
**Sponsor: Rep. Kathy Schmaltz**  
**Committee: Families, Children and Seniors**  
**Complete to 11-9-23**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4694 would amend the Foster Care and Adoption Services Act to require that the Department of Health and Human Services (DHHS), when applying for benefits for a child in foster care, and in cooperation with the child's attorney, identify a representative payee or fiduciary in accordance with specified federal regulations.<sup>1</sup>

Consistent with federal law, when DHHS serves as the payee or in any other fiduciary capacity for a child receiving Veterans Administration (VA) benefits, federal Supplemental Security Income (SSI), or Social Security benefits, DHHS would have to do the following:

- Use or conserve the benefits in the child's best interests, including using benefits for services for special needs not otherwise provided by DHHS or conserving the benefits for the child's reasonably foreseeable future needs.
- Ensure that when the child attains the age of 14 years and until DHHS no longer serves as the representative payee or fiduciary, a minimum percentage of the child's benefits is not used to reimburse the state for the cost of care and is used or conserved as described below, as follows:
  - From age 14 through age 15, at least 40%.
  - From age 16 through age 17, at least 80%.
  - From age 18 through age 20, 100%.
- For the child's benefits or resources that are below or not subject to any federal asset or resource limit, use discretion in accordance with federal law and in the best interests of the child to conserve the funds for services for special needs not otherwise provided by DHHS, including choosing one or more of options described in the next bulleted item.
- Appropriately monitor any federal asset or resource limits for the benefits and ensure that the child's best interests are 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, including the following:
  - Applying to the Social Security Administration to establish a plan for achieving self-support (PASS) account<sup>2</sup> for the child under the federal Social Security Act<sup>3</sup> and determining whether it is in the best interests of the child to conserve all or part of the benefits in the account.

<sup>1</sup> 20 CFR 404.2021: <https://www.ecfr.gov/current/title-20/chapter-III/part-404/subpart-U/section-404.2021>  
and 20 CFR 416.621: <https://www.ecfr.gov/current/title-20/chapter-III/part-416/subpart-F/section-416.621>

<sup>2</sup> <https://choosework.ssa.gov/library/faq-plan-to-achieve-self-support>

<sup>3</sup> <https://www.law.cornell.edu/uscode/text/42/chapter-7>

- Establishing a plan under section 529A of the Internal Revenue Code for the child and conserving the child's benefits in that account.<sup>4</sup>
- Establishing an individual development account for the child and conserving the child's benefits in that account 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 is consistent with federal requirements and appropriately avoids any federal asset or resource limits.
- If DHHS determines that using the benefits for services for current special needs not already provided by DHHS is in the best interests of the child, using the benefits for those services.
- If federal law requires certain back payments of benefits to be placed in a dedicated account, complying with the applicable requirements.
- 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.
- Provide an annual accounting to the child and the child's attorney of how the child's resources, including VA benefits, SSI, and Social Security benefits, have been used.
- Provide the child with financial literacy training when the child has attained the age of 14 years.

DHHS would be required to immediately notify the child through the child's attorney of any of the following:

- An 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.
- A decision or communication from the VA or the Social Security Administration regarding an application for benefits.
- An appeal or other action requested by DHHS regarding an application for benefits.

When DHHS serves as the representative payee or receives VA benefits, SSI, or Social Security benefits on the child's behalf, DHHS would have to provide notice to the child through the child's attorney of the following before each juvenile court hearing:

- The date and the amount of benefit funds received since any previous notification to the child's attorney.
- Information regarding all of the child's assets and resources, including, insurance, cash assets, trust accounts, earnings, and other resources.

The bill would apply to children in foster care. It would not affect any additional notice required by a state court.

Proposed MCL 722.968c

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<sup>4</sup> <https://www.law.cornell.edu/uscode/text/26/529A>

## **FISCAL IMPACT:**

House Bill 4694 would increase state expenditures to the Department of Health and Human Services and have no significant fiscal impact on local units of government. In FY 2022-23, the department received \$3.2 million in restricted revenue from federal benefits for eligible children in foster care. According to the department, 100% of those funds will be used to reimburse the state for the cost of care. Under the provisions of the bill, the department would not be able to use the entirety of that revenue on the cost of a child's care but instead need to redirect a portion of these revenues to be saved based on the age of the child starting at age 14 and ending at age 20. The minimum percentage that they department is required to save for a youth in foster care ranges from 40% to 100% unless a child has special needs that require more funding to maintain the current level of care. GF/GP would have to be used to offset any associated reduction in restricted revenue currently used for the cost of care.

Legislative Analyst: E. Best  
Fiscal Analyst: Sydney Brown

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.