

March 6, 2026

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The Hon. Ben Barnes  
Chair, House Appropriations Committee  
120 Taylor House Office Building  
Annapolis, MD 21401

Re: **HB 768 FWA: STRONGLY SUPPORT WITH AN AMENDMENT**

Dear Chair Barnes and Members of the Committee:

I strongly support HB 768 and urge the Committee to issue a favorable report. The bill would end a terrible injustice: the longstanding practice and policy by the Department of Human Services of taking foster children's federal benefits for the agency's own self-reimbursement: Social Security ("OASDI") survivors' benefits accruing due to the deaths of their parents; Supplemental Security Income ("SSI") benefits accruing due to the children's disabilities; or Veteran's benefits due to the death of a parent who served in the U.S. armed forces. DHS takes these benefits to repay itself for the cost of foster care in its fiduciary capacity as the children's representative payee, ostensibly acting in the children's best interest. In reality, DHS is acting in its own self-interest, essentially profiting from the foster children's assets. Orphaned foster children and foster children with disabilities thus are singled out for appropriation of their assets.

These benefits are the property of the foster children. *See In re: Ryan W.*, 434 Md. 577, 610 (2013) (affirming that, even though he was a CINA and foster child in DSS custody, "Ryan, like all OASDI beneficiaries, has a property interest in his benefit").<sup>1</sup> Nevertheless, DHS takes some or all of the children's federal benefits to reimburse itself for the cost of foster care, rather than apply the funds to meet children's needs or to conserve them for future needs, such as when youth age out of the system.

Nearly three months ago, the federal government came out forcefully against this outrageous practice, writing to 39 governors, including Governor Moore, to stop pocketing the children's OASDI funds. DHHS Assistant Secretary Alex Adams, who heads the Administration for Children and Families ("ACF"), told National Public Radio, "There is ***no moral justification*** for why orphans should have to pay their own way'.... 'They are not in foster care by any fault of their own. And they certainly should not be asked to pay their own bill.'" Joseph Shapiro, *Trump administration tells states to end 'orphan tax' on foster kids* (NPR, Jan. 12, 2026) (emphasis

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<sup>1</sup> *See also Alaska v. Z.C.*, 569 P.3d 1153, 1169 (Alaska 2025) (holding that, although a state's "self-reimbursing [representative] payee scheme does not directly risk the deprivation of children's Social Security benefits themselves, it does create a risk of deprivation of the intangible rights and privileges that foster children have by virtue of the intersection between their property interests in SSA benefits and the state foster care stipend.").

March 6, 2026

Page 2

added) (discussing ACF's recognition that taking benefits "stack[s] the deck against children"); U.S. Dep't of Health & Human Servs., *ACF Notifies 39 Governors That States Are Diverting Foster Youths' Earned Social Security Survivor Benefits* (Dec. 11, 2025). He explained, these "might be the last resources that your deceased parents could leave behind for their children. To have those taken from that child and applied to state agency costs — that's why I call it an orphan tax. ***It's morally shocking to me and it's morally corrupt.***" Shapiro, *supra* (emphasis added). He added, "Charles Dickens couldn't have conceived of a plot this cynical." *Id.* Although the new federal policy specifies OASDI survivor's benefits, its logic applies to all federal benefits.

Moreover, in most cases, DHS should not even be serving as the representative payee. Federal regulations and guidelines make clear that states are the payees of last resort, as relatives and other caring competent adults have higher priority status. 20 C.F.R. §§ 404.2021(c), 416.621(c); DHHS Soc. Sec. Admin. POMS 00502.159. When they seek for foster children and appointment of a representative payee for the child, local DSS agencies are required to report relatives to the Social Security Administration ("SSA") in federal Form SSA-BK-11. This typically does not occur, and, because the cases are confidential, the SSA has no other means of locating appropriate relatives to appoint pursuant to federal law. As a result, by default DHS gets control over the children's money when federal law says it should not, and it then takes the funds for its own financial benefit, when it is supposed to be acting in the children's best interest as the children's fiduciary.

At one point, Maryland led the way in trying to curb this practice. Following the Maryland Court of Appeals' 2013 decision in *Ryan W.*, which held that taking the benefits without notice violated due process but further held that juvenile courts lacked jurisdiction over the actual funds, legislation was introduced to prohibit the practice. Led by then-Delegate Dumais, a compromise was reached on a sliding scale with children aged 14-15 allowed to keep 40% of their benefits; 16-17 to keep 60%, and 18-20 to keep 100%. Nevertheless, DHS and the Attorney General's Office maintained that federal policy *required* self-reimbursement, that SSI eligibility would be forfeited if a resource limit was exceeded, and that federal policy superseded state policy. SSA rejected Maryland's view, and eventually, after several attempts, the legislation was enacted in 2018—the first of its kind in the country. *See* Md. Code Ann., Fam. Law § 5-527.1.

Though Maryland was the leader in 2018, it is now back in the pack. Nine states (Arizona, Kansas, Massachusetts, Missouri, Nevada, New Mexico, New Jersey, Ohio, and Oregon) and the District of Columbia prohibit state agencies from taking any of the foster children's federal benefits. Idaho, California, and Nebraska prohibit taking orphans' OASDI benefits.

The children's need for the money should not be in serious question. Outcomes for children who age out of foster care typically are poor. Nationally, an estimated 5% of foster children

March 6, 2026

Page 3

receive federal SSI or OASDI benefits.<sup>2</sup> Approximately 20,000 youth “age out” of foster care to “independence” every year without finding a permanent family or home,<sup>3</sup> and having endured multiple changes of placement, school, and friends.<sup>4</sup>

Foster children face uniquely daunting risks. They “have much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delays, and poor school achievement.”<sup>5</sup> For example:

- An estimated 40-80% experience chronic physical health problems, 43% show growth abnormalities, and 33% have untreated health problems.<sup>6</sup>
- Up to 80% of foster children suffer from moderate to severe mental health problems, compared with 18%-22% of their peers.<sup>7</sup>
- A shocking 30% of foster care alumni meet lifetime diagnostic criteria for PTSD based upon trauma experienced before or during foster care, compared with 7.6% of their demographic peers and *double* the PTSD level of war veterans.<sup>8</sup>

National longitudinal studies and federal statistics demonstrate that foster children aging out of care face an uphill battle to achieve self-sufficiency and have high risks for undesirable outcomes:

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<sup>2</sup> Cong. Res. Serv., *Children in Foster Care: Frequently Asked Questions* 1 (Nov. 23, 2021), <https://sgp.fas.org/crs/misc/R46975.pdf>.

<sup>3</sup> Children’s Bureau, U.S. Dep’t of Health & Hum. Servs., *What supports and resources are in place for youth transitioning from foster care?* (July 15, 2021), <https://www.acf.hhs.gov/cb/faq/foster-care#~:text=There%20are%20more%20than%2040%2C000,need%20to%20become%20self%2Dsufficient>.

<sup>4</sup> Three quarters (74.3%) of Maryland children in foster care for 24 months or longer experience three or more placements, a significant increase from 2021 and 2022 (59%). See Children’s Bureau, DHHS, Maryland, <https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/maryland/>.

<sup>5</sup> Am. Acad. of Pediatrics, *Health Care of Young Children in Foster Care*, 109 *Pediatrics* 536, 536 (2002).

<sup>6</sup> Sarah McCue Horwitz et al., *Specialized Assessments for Children in Foster Care*, 106 *Pediatrics* 59, 59 (2000). See also Sandra H. Jee et al., *Factors Associated with Chronic Conditions Among Children in Foster Care*, 17 *J. Health Care for Poor and Underserved*, 328, 336 (2006).

<sup>7</sup> Nat’l Conf. of State Legislatures, *Mental Health and Foster Care* (Nov. 1, 2019), <https://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx>; see also J. Curtis McMillen et al., *Prevalence of psychiatric disorders among older youth in the foster care system*, 44 *J. Am. Acad. Child. Adolesc. Psychiatry* 88 (2005); Susan dos Reis et al., *Mental Health Services for Youths in Foster Care and Disabled Youths*, 91 *Am. J. of Pub. Health* 1094, 1099 (2001)).

<sup>8</sup> Peter Pecora et al., *Mental health of current and former recipients of foster care: A review of recent studies in the USA*, 14 *Child & Family Social Work* 132, 139 (2009).

March 6, 2026

Page 4

- Within 5-7 years after leaving state care, large percentages (12%-30%) of former foster youth find themselves homeless.<sup>9</sup>
- Transition-aged foster youth have elevated risks of depression, suicidal ideation, and other mental health disorders, as well as chronic physical health conditions including asthma, hypertension, tuberculosis, diabetes, hepatitis, and substance abuse disorders.<sup>10</sup>
- A recent of former foster youth found that 15% had no high school diploma or GED, and only 5% and 6%, respectively, obtained two or four-year post-secondary degrees.<sup>11</sup>
- Youth aging out of care face high unemployment and earn little income.<sup>12</sup> One-fifth to one-third have “very low probabilities of employment and hardly any earnings at any time between ages 18 and 24,” and an additional one-fifth to one half are not likely to be employed during their early and mid-twenties.<sup>13</sup>
- Up to 75% of former foster youth rely on means-tested benefits.<sup>14</sup>

The average age of self-sufficiency in the United States is 26, and the average youth receives \$62,000 in support from parents between ages 18-34,<sup>15</sup> yet foster youth are expected to attain self-sufficiency with scant resources and little or none of the adult support enjoyed by their peers. By continuing this myopic policy to protect a tiny fraction of the state child-welfare budget,

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<sup>9</sup> Amy Dworsky et al., *Assessing the Impact of Extending Care Beyond Age 18 on Homelessness: Emerging Findings from the Midwest Study* 3 (2010), [http://chapinhall.org/sites/default/files/publications/Midwest\\_IB2\\_Homelessness.pdf](http://chapinhall.org/sites/default/files/publications/Midwest_IB2_Homelessness.pdf); Children’s Aid Soc., *Youth Aging Out of Foster Care Face Poverty, Homelessness, and the Criminal Justice System* 3 (2006), <http://www.childrensaidsociety.org/files/upload-docs/FosterCare.pdf>; Mark E. Courtney et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 23*, at 19 (2020), [https://www.chapinhall.org/wp-content/uploads/CY\\_YT\\_RE1020.pdf](https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf).

<sup>10</sup> Md. Dep’t of Legis. Servs., *Overview of Homelessness and Homeless Services in Maryland* 15 (Sept. 2015) (compiling research); cf. Courtney et al., *supra* note 9, at 74.

<sup>11</sup> Courtney et al., *supra* note 9, at 31.

<sup>12</sup> Jennifer Earle Macomber, et al., *Coming of Age: Employment Outcomes for Youth Who Age Out of Foster Care Through Their Middle Twenties*, i (2008), <https://www.urban.org/research/publication/coming-age-employment-outcomes-youth-who-age-out-foster-care-through-their-middle-twenties>.

<sup>13</sup> *Id.* at ii; see also Children’s Aid Soc., *supra* note 11, at 2; Carol Brandford et al., *Foster Youth Transition to Independence Study: Final Report*, 4 (2004) (less than half of aged-out foster youth in study were employed).

<sup>14</sup> Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26* (2011), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf>.

<sup>15</sup> This number is derived by applying the annual CPI to data in Robert F. Schoeni et al., *Material Assistance Received From Families During Transition to Adulthood* in “On the Frontier to Adulthood: Theory, Research and Public Policy” 405 (2005) (Richard A. Settersten, Jr. et al., eds.).

March 6, 2026

Page 5

the state ultimately incurs exponentially greater costs.<sup>16</sup> This Committee should not doubt for a moment that these benefits will make a profoundly positive difference.<sup>17</sup>

As for the representative payee issue, the 2018 law has proven ineffective. It requires the Department of Human Services to work “in cooperation with the child’s [CINA] attorney” to identify a representative payee or fiduciary in accordance with the requirements of 20 C.F.R. §§ 404.2021 and 416.621.” In practice, this typically does not occur. The CINA attorneys are not consulted, and, presumably, the Form BK-11 is submitted with question 8 (relatives) left blank. As a result, the local DSS becomes the representative payee by default. HB 768 makes clear that this profitable violation of federal law must stop, and that DHS or the local DSS may apply to serve as representative payee “only if no suitable alternative is available.” Page 2, lines 20-21. Moreover, DHS must “document all efforts to locate a suitable candidate,” and it must periodically review the case to determine if a suitable alternative is available. *Id.* lines 22, 23-26.

**AMENDMENT:** HB 768 does not address one small shortcoming of the existing law. In 2018, Maryland had not yet had much experience with “ABLE” accounts, which were established by the Maryland ABLE Act of 2016 (codified at Md. Code Ann., Educ. § 18-19C–01, et seq.). DHS opposed using ABLE accounts, so the current law does not mention them in its enumerated examples. Other jurisdictions do use ABLE accounts for foster children without any reported problem, and there is no reason not to use them in Maryland. The statute therefore should be amended to include ABLE accounts as an option: *i.e.*, on pg. 3 after line 35, adding “5. ESTABLISHING AN “ABLE” 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.”

**FISCAL NOTE:** DLS has a relatively modest annual cost of approximately \$650,000 based on a projected staffing increase of four. This projection appears to be unduly high in two respects. First, because the current law already requires conservation of the children’s funds

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<sup>16</sup> Pew Charitable Trusts reports that each national cohort of young people leaving foster care costs taxpayers \$8 billion in the long term from lost revenues due to lost earnings and costs including homelessness, substance abuse treatment, criminal justice involvement, unplanned pregnancies, medical expenses, mental health treatment, Food Stamps, and other public benefits. See Teresa Wiltz, *States Tackle ‘Aging Out’ of Foster Care* (Mar. 25, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/3/25/states-tackle-aging-out-of-foster-care#:~:text=Each%20cohort%20of%20young%20people%20leaving%20foster%20care,the%20Jim%20Casey%20initiative.%20Signs%20of%20Good%20Results>.

<sup>17</sup> The North Carolina case of John G. is illustrative. Abandoned at age 3 and abused by multiple guardians, John arrived in foster care with nothing but survivor benefits and title to an old house facing foreclosure due to default by his last guardian. Instead of paying his mortgage, the local DSS pocketed his OASDI until a court intervened and ordered it to use the benefits to save and repair the house. Erick Eckholm, *Child Welfare Agencies Seek Foster Children’s Assets*, N.Y. Times (Feb. 17, 2006).

March 6, 2026

Page 6

starting at age 14, the administrative burden should not increase materially—the principal difference is the amount of funds in question and how early they will be withheld. In most cases, it will be the same children, just starting at a different point in time. Second, if DHS were to comply with the law and locate suitable relatives or other adults as representative payees, DHS would have no administrative burden in those cases. Therefore, the bill should *reduce* current administrative costs if compliance occurs. Surely, the fiscal note should presume compliance.

**CONCLUSION:** HB 768 fixes a major injustice in Maryland’s foster-care system. The existing law, with a sliding-scale for some but not all federal benefits, was intended as a starting point, not the final determination. Eight years later, multiple other jurisdictions have caught up and passed Maryland and now provide full relief. The federal government now favors full relief. Having initiated this movement, Maryland needs to do the same and let foster children benefit from their benefits. It will make a lifetime of difference for abused, neglected, and abandoned children in foster care committed to state custody—*our* custody.

I have a longstanding interest in this issue. Professor Dan Hatcher (University of Baltimore Law School) and I co-authored an amicus brief in *Ryan W.* Afterwards, I co-drafted and advocated for the bill that ultimately was enacted; worked with DHS to implement the legislation; and monitored implementation. More recently, I co-argued the issue in the Alaska Supreme Court and co-authored amici briefs in New Jersey. I am, since 1988, lead counsel for Baltimore City foster children in the federal *L.J. v. López* case and, with Disability Rights Maryland, represent the foster children in the federal *T.G. v. DHS* case challenging hospital overstays. I also represented hundreds of foster children while at Maryland Legal Aid. Based on this cumulative experience, I believe that HB 768 would have lifelong positive impact on Maryland’s most vulnerable children. I urge the Committee to issue a favorable report.

Respectfully submitted,

/s/ Mitchell Y. Mirviss