

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 575
 Judiciary

(Delegate Valentino-Smith, *et al.*)

Family Law - Protecting the Resources of Children in State Custody

This bill authorizes the Department of Human Resources (DHR) to serve in a fiduciary capacity for children in its custody. DHR may not impose a debt obligation on a child in its custody or take any other action that requires the child to pay for the child’s own care or custody.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.6 million in FY 2016 and by approximately \$2.2 million annually thereafter in order to maintain the child’s level of care once specified special fund revenues are no longer authorized to be 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 millions)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.6	2.2	2.2	2.2	2.2
Net Effect	(\$1.6)	(\$2.2)	(\$2.2)	(\$2.2)	(\$2.2)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Consistent with federal law, when DHR serves as the representative payee 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) 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. This includes:

- using the benefits for specialized services not otherwise provided by DHR;
- 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 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 establish a plan for achieving self-support (PASS) account for the child and ensure that the child's resources, include insurance, cash assets, trust accounts, and the child's earnings, are deposited into the account. DHR must ensure that when a child attains the age of 14 and until DHR is no longer serving as the representative payee, that a specified percentage of the child's benefits are deposited into the account. DHR must also provide an annual accounting to the child and the child's attorney of specified items 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 the SSI regarding an application for these benefits; and (3) any appeal or other action requested by DHR regarding an application for the 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.

The bill's provisions do not affect the authority of a juvenile court to order the parents of a child to pay child support or the authority of DHR to request and receive federal funding under Title IV-E of the Social Security Act for the cost of providing care for a child in its custody. When applying for these benefits, DHR must, in cooperation with the child's attorney, identify a representative payee in accordance with federal law.

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 and 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 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 information prepared in response to the 2014 *Joint Chairmen's Report*, a total of 654 children received benefits over the course of fiscal 2013 and 2014. In fiscal 2014, the average disability benefit per child was \$3,686, and the average survivor benefit per child was \$2,977. DHR uses these funds, which are recorded in the State's child welfare information system (MD CHESSIE) 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 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.

State Fiscal Effect: DHR did not provide sufficient information in time for inclusion in this fiscal and policy note. Accordingly, the following information is provided as a *preliminary estimate* only.

The bill's provisions prohibit DHR from taking any action that requires the child to pay for the child's own care or custody. Therefore, 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 a specified account. 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 are no longer available to be used for a child's standard cost of care. General fund expenditures increase by approximately \$1,646,905 in fiscal 2016, which reflects the bill's October 1, 2015 effective date, and by \$2,195,873 annually thereafter. This estimate, based on the benefits received in fiscal 2014, reflects the special fund revenues that will no longer be available to DHR to use as cost-of-care reimbursements for standard foster care expenses.

DHR advises that it needs eight additional staff to implement the bill; however, DHR did not provide any information regarding how its estimate was derived and for what specific purposes the staff is needed. While the Department of Legislative Services concurs that the bill increases DHRs workload by requiring 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, because DHR did not provide information regarding how it derived its estimate, it is not included in this fiscal and policy note. To the extent additional staff is needed, general fund expenditures increase further.

Additional Information

Prior Introductions: SB 914 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1270, received a hearing in the House Judiciary Committee, but was subsequently withdrawn.

Cross File: SB 524 (Senator Raskin, *et al.*) - Judicial Proceedings.

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

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510