

Chapter 816

(Senate Bill 291)

AN ACT concerning

Family Law – Protecting the Resources of Children in State Custody

FOR the purpose of requiring the Department of Human Services, when applying for certain benefits for a child in the Department’s custody, to identify a representative payee or fiduciary in consultation with the child’s attorney; establishing certain duties of the Department when the Department serves as the representative payee or fiduciary for a child receiving certain benefits; requiring the Department to provide certain notice to the child through the child’s attorney of certain actions taken with respect to certain benefits for the child; providing for the application and construction of this Act; and generally relating to children in State custody.

BY adding to

Article – Family Law

Section 5–527.1

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Family Law

5–527.1.

(A) THIS SECTION APPLIES TO CHILDREN COMMITTED TO THE CUSTODY OF THE DEPARTMENT.

(B) WHEN APPLYING FOR BENEFITS UNDER THIS SECTION FOR A CHILD IN THE DEPARTMENT’S CUSTODY, THE DEPARTMENT SHALL, IN COOPERATION WITH THE CHILD’S ATTORNEY, IDENTIFY A REPRESENTATIVE PAYEE OR FIDUCIARY IN ACCORDANCE WITH THE REQUIREMENTS OF 20 C.F.R. §§ 404.2021 AND 416.621.

(C) CONSISTENT WITH FEDERAL LAW, WHEN THE DEPARTMENT SERVES AS THE REPRESENTATIVE PAYEE OR IN ANY OTHER FIDUCIARY CAPACITY FOR A CHILD RECEIVING VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS, THE DEPARTMENT SHALL:

(1) USE OR CONSERVE THE BENEFITS IN THE CHILD’S BEST INTEREST, INCLUDING USING THE BENEFITS FOR SERVICES FOR SPECIAL NEEDS NOT

OTHERWISE PROVIDED BY THE DEPARTMENT OR CONSERVING THE BENEFITS FOR THE CHILD'S REASONABLY FORESEEABLE FUTURE NEEDS;

(2) ENSURE THAT WHEN THE CHILD ATTAINS THE AGE OF 14 YEARS AND UNTIL THE DEPARTMENT NO LONGER SERVES AS THE REPRESENTATIVE PAYEE OR FIDUCIARY, A MINIMUM PERCENTAGE OF THE CHILD'S BENEFITS ARE NOT USED TO REIMBURSE THE STATE FOR THE COSTS OF CARE FOR THE CHILD AND ARE USED OR CONSERVED IN ACCORDANCE WITH ITEMS (3) AND (4) OF THIS SUBSECTION, AS FOLLOWS:

- (I) FROM AGE 14 THROUGH AGE 15, AT LEAST 40%;**
- (II) FROM AGE 16 THROUGH AGE 17, AT LEAST 80%; AND**
- (III) FROM AGE 18 THROUGH AGE 20, 100%;**

(3) FOR THE CHILD'S BENEFITS OR RESOURCES THAT ARE BELOW OR NOT SUBJECT TO ANY FEDERAL ASSET OR RESOURCE LIMIT, EXERCISE DISCRETION IN ACCORDANCE WITH FEDERAL LAW AND IN THE BEST INTEREST OF THE CHILD TO CONSERVE THE FUNDS OR USE THE FUNDS FOR SERVICES FOR SPECIAL NEEDS NOT OTHERWISE PROVIDED BY THE DEPARTMENT, INCLUDING CHOOSING ONE OR MORE OF THE OPTIONS LISTED UNDER ITEM (4) OF THIS SUBSECTION;

(4) 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, INCLUDING:

(I) APPLYING TO THE 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 IS IN THE BEST INTEREST OF THE CHILD TO CONSERVE ALL OR PART OF THE BENEFITS IN THE PASS ACCOUNT;

(II) ESTABLISHING A 529A PLAN FOR THE CHILD AND CONSERVING THE CHILD'S BENEFITS IN THAT ACCOUNT IN A MANNER THAT APPROPRIATELY AVOIDS ANY FEDERAL ASSET OR RESOURCE LIMITS;

(III) 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;

(IV) 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 FOR SPECIAL NEEDS TRUSTS AND THAT APPROPRIATELY AVOIDS ANY FEDERAL ASSET OR RESOURCE LIMITS;

(V) IF THE DEPARTMENT DETERMINES THAT USING THE BENEFITS FOR SERVICES FOR CURRENT SPECIAL NEEDS NOT ALREADY PROVIDED BY THE DEPARTMENT IS IN THE BEST INTERESTS OF THE CHILD, USING THE BENEFITS FOR THOSE SERVICES;

(VI) IF FEDERAL LAW REQUIRES CERTAIN BACK PAYMENTS OF BENEFITS TO BE PLACED IN A DEDICATED ACCOUNT, COMPLYING WITH THE REQUIREMENTS FOR DEDICATED ACCOUNTS UNDER 20 C.F.R. § 416.640(E); AND

(VII) 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;

(5) PROVIDE AN ANNUAL ACCOUNTING TO THE CHILD AND THE CHILD'S ATTORNEY OF HOW THE CHILD'S RESOURCES, INCLUDING VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, AND SOCIAL SECURITY BENEFITS, HAVE BEEN USED OR CONSERVED IN ACCORDANCE WITH THIS SECTION; AND

(6) PROVIDE THE CHILD WITH FINANCIAL LITERACY TRAINING WHEN THE CHILD HAS ATTAINED THE AGE OF 14 YEARS.

(D) (1) THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE CHILD THROUGH THE CHILD'S ATTORNEY OF:

(I) ANY APPLICATION FOR VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, 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;

(II) ANY DECISIONS OR COMMUNICATIONS FROM THE VETERANS ADMINISTRATION OR THE SOCIAL SECURITY ADMINISTRATION REGARDING AN APPLICATION FOR BENEFITS DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH; AND

(III) ANY APPEAL OR OTHER ACTION REQUESTED BY THE DEPARTMENT REGARDING AN APPLICATION FOR BENEFITS DESCRIBED UNDER

ITEM (I) OF THIS PARAGRAPH.

(2) WHEN THE DEPARTMENT SERVES AS THE REPRESENTATIVE PAYEE OR OTHERWISE RECEIVES VETERANS ADMINISTRATION BENEFITS, SUPPLEMENTAL SECURITY INCOME, OR SOCIAL SECURITY BENEFITS ON THE CHILD'S BEHALF, THE DEPARTMENT SHALL PROVIDE NOTICE TO THE CHILD THROUGH THE CHILD'S ATTORNEY OF THE FOLLOWING BEFORE EACH JUVENILE COURT HEARING REGARDING THE CHILD:

(I) THE DATES AND THE AMOUNT OF BENEFIT FUNDS RECEIVED ON THE CHILD'S BEHALF SINCE ANY PRIOR NOTIFICATION TO THE CHILD'S ATTORNEY; AND

(II) INFORMATION REGARDING ALL THE CHILD'S ASSETS AND RESOURCES, INCLUDING THE CHILD'S BENEFITS, INSURANCE, CASH ASSETS, TRUST ACCOUNTS, EARNINGS, AND OTHER RESOURCES.

(E) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY ADDITIONAL NOTICE REQUIRED BY A STATE COURT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 26, 2018.