

Assembly Bill No. 2906

CHAPTER 623

An act to repeal and amend Sections 13753, 13754, and 13757 of, and to repeal and add Section 13756 of, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 26, 2024. Filed with
Secretary of State September 26, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2906, Bryan. Foster care payments.

Existing law provides for the out-of-home placement, including foster care placement, of children who are unable to remain in the custody and care of their parents. Existing law, the federal Social Security Act, provides for benefits for eligible beneficiaries, including survivorship and disability benefits and Supplemental Security Income (SSI) benefits for, among others, blind and disabled children. Existing law requires every youth who is in foster care to be screened by the county for potential eligibility for SSI and requires that screening to occur when the foster youth is at least 16 years of age and not older than 17 years of age.

This bill, among other things, would require a placing agency to act in accordance with specified guidelines and pursuant to certain requirements when acting as the representative payee or in any other fiduciary capacity for a child or youth receive federal Social Security Administration survivors' benefits, including, among other requirements, ensuring that the child's federal Social Security Administration survivors' benefits, as defined, are not used to pay for, or to reimburse, the placing agency for any costs of the child's care and supervision, as defined. The bill would make these requirements operative January 1, 2025, or 30 days after the department issues the necessary all-county letters and informing materials to county placing agencies, whichever is later. By increasing county duties with respect to foster youth, the bill would impose a state-mandated local program.

Existing law requires the State Department of Social Services to convene a workgroup to develop best practice guidelines for county welfare departments to assist eligible children who are in the state's or a county's custody in obtaining all federal benefits for which they are eligible. Existing law requires that workgroup to make recommendations to the department, by December 31, 2006, regarding the feasibility and cost-effectiveness of reserving a designated amount of foster children's social security and SSI/SSP benefits in lieu of reimbursing the county and the state for care and maintenance, and, in making those recommendations, to consider that the reserved benefits would be for the purpose of assisting the foster child

in the transfer to self-sufficient living in a manner consistent with federal law.

This bill would repeal the requirement for that workgroup to make the above-described recommendations regarding feasibility and cost-effectiveness. The bill would also delete other obsolete provisions of law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 13753 of the Welfare and Institutions Code, as amended by Section 62 of Chapter 50 of the Statutes of 2022, is repealed.

SEC. 2. Section 13753 of the Welfare and Institutions Code, as added by Section 63 of Chapter 50 of the Statutes of 2022, is amended to read:

13753. (a) When a foster youth is receiving payments from the federal Social Security Administration, the county shall do all of the following at least six months before the youth's 18th birthday:

(1) Provide information to the youth regarding the federal requirement that the youth establish continuing disability as an adult, if necessary, in order for SSI benefits to continue beyond their 18th birthday.

(2) Provide information to the youth regarding the process for becoming their own payee and steps necessary to maintain the federal Social Security Administration benefits, or designating an appropriate representative payee if benefits continue beyond their 18th birthday, and regarding any federal Social Security Administration benefits that have accumulated on their behalf. The county shall also provide information about the effect, if any, the youth's foster care benefits may have on the amount of the youth's SSI payments.

(3) Assist the youth, as appropriate, in fulfilling the requirements of paragraphs (1) and (2).

(b) Upon the youth attaining 18 years of age, if the youth elects to remain in foster care as a nonminor dependent, the county shall carry out the requirements of subdivision (c) of Section 13754.

(c) The department shall disseminate information to counties to support implementation of this section and shall distribute these materials to county placing agencies prior to implementation of this section.

SEC. 3. Section 13754 of the Welfare and Institutions Code, as amended by Section 64 of Chapter 50 of the Statutes of 2022, is repealed.

SEC. 4. Section 13754 of the Welfare and Institutions Code, as added by Section 65 of Chapter 50 of the Statutes of 2022, is amended to read:

13754. (a) It is the intent of the Legislature that this section shall not be interpreted to preclude a nonminor dependent from accessing the same

benefits, services, and supports, and exercise the same choices available to all dependents. It is further the intent of the Legislature that nonminor dependents who receive federal Social Security Administration benefits can serve as their own payee, if it is determined that the nonminor dependent satisfies the criteria established by the federal Social Security Administration, and should be assisted in receiving direct payment by the county placing agency. It is further the intent of the Legislature that individuals who have had their eligibility for federal Supplemental Security Income benefits established pursuant to Section 13757 be able to maintain that eligibility even when they remain in the state's care as a nonminor dependent. In order to facilitate this, it is the intent of the Legislature that the county placing agency ensure that the youth receives an SSI payment during at least 1 month of each 12-month period while the youth is a nonminor dependent. It is further the intent of the Legislature that the county placing agency supplement the SSI payment that a youth receives during this 1-month period with nonfederal AFDC-FC benefits.

(b) (1) The county shall apply to be appointed representative payee on behalf of a child beneficiary in its custody when no other appropriate party is available to serve.

(2) Before applying to be appointed representative payee pursuant to paragraph (1), the county shall send a written notice of the intent to be appointed to the child's counsel and parents or legal guardians.

(c) In consultation with the nonminor dependent, the county shall identify an appropriate representative payee, which may include the nonminor dependent, a trusted adult, or the county. For a nonminor dependent who is receiving federal Social Security Administration benefits the county shall do all of the following:

(1) (A) If the nonminor dependent requests a representative payee that is not the county, the county shall assist the nonminor dependent in requesting a change of payee to the federal Social Security Administration. The county shall assist the nonminor dependent or the nonminor dependent's representative payee in understanding any restrictions on the use of federal Social Security Administration funds and communicating any changes in the nonminor dependent's foster care case to the federal Social Security Administration if those changes would affect the nonminor dependent's eligibility for, or the amount of, benefits from the federal Social Security Administration.

(B) The county shall assist the nonminor dependent in taking the necessary steps to establish continuing disability as an adult, including, but not limited to, steps the nonminor dependent will need to take to gather and submit relevant records to the federal Social Security Administration and requesting an appeal, as needed. The county shall provide the nonminor dependent with any information maintained in the nonminor dependent's case file that may assist them in establishing and maintaining federal Social Security Administration benefits, upon request of the nonminor dependent. The county shall also provide information to the nonminor dependent on how to access any known legal representation and advocacy organizations

or entities for further assistance and, if the nonminor dependent requests to obtain a federal Social Security Administration advocate, shall assist the nonminor dependent in communicating and coordinating with that advocate.

(2) If the nonminor dependent selects the county as their representative payee, the county shall follow the procedures described in Section 13757 to maintain eligibility for SSI payments. The county shall advise the nonminor dependent on an annual basis of the nonminor dependent's right to request a different representative payee and document in the nonminor dependent's transitional independent living case plan steps the nonminor dependent can take to become their own payee by 21 years of age. If the nonminor dependent exits care prior to attaining 21 years of age, the county shall provide information to the nonminor dependent of the steps the nonminor dependent will need to take to submit a change of payee request to the federal Social Security Administration and shall provide the necessary assistance to ensure that the nonminor dependent receives SSI payments as soon as possible after exiting care.

(3) To support nonminor dependents in establishing and maintaining federal Social Security Administration benefits eligibility pursuant to this subdivision, the county may contract with legal services organizations or other entities to provide extended legal representation on behalf of children or nonminor dependents in foster care.

(d) In its capacity as representative payee, the county shall do all of the following:

(1) Establish a no-cost, interest-bearing maintenance account for each child in the department's custody, and nonminor dependent in the department's placement and care responsibility, for whom the department serves as representative payee. Interest earned shall be credited to the account. The county shall keep an itemized current account, in the manner required by federal law, of all income and expense items for each child's and nonminor dependent's maintenance account.

(2) Establish procedures for disbursing money from the accounts, including disbursing the net balance to the beneficiary upon release from care. The county shall use federal Social Security Administration funds, including benefits only for the following purposes:

(A) For the use and benefit of the child or nonminor dependent.

(B) For purposes determined by the county to be in the child's or nonminor's best interests.

(3) Establish and maintain a dedicated account in a financial institution for past-due monthly benefits that exceed six times the maximum monthly benefit payable, in accordance with federal law. The representative payee may deposit into the account established under this section any other funds representing past due benefits to the eligible individual, provided that the amount of the past due benefits is equal to or exceeds the maximum monthly benefit payable. Funds from the dedicated account shall not be used for basic maintenance costs. The use of funds from the dedicated account must be for the benefit of the child and are limited to expenditures for the following purposes:

- (A) Medical treatment.
- (B) Education or job skills training.
- (C) Personal needs assistance.
- (D) Special equipment.
- (E) Housing modification.
- (F) Therapy or rehabilitation.
- (G) Other items or services, deemed appropriate by the federal Social Security Administration.

(4) Ensure the child's or nonminor dependent's federal survivors' benefits are used for the child or nonminor dependent, consistent with Section 13756.

(e) Beginning in the 2011–12 fiscal year, and each fiscal year thereafter, funding and expenditures for programs and activities under this section shall be in accordance with the requirements provided in Sections 30025 and 30026.5 of the Government Code.

SEC. 5. Section 13756 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 13756 is added to the Welfare and Institutions Code, to read:

13756. (a) The Legislature finds that the State of California has utilized federal benefits administered by the federal Social Security Administration to offset the cost of foster care placement and that the utilization of these funds to support youth and young adults with their transition to adulthood would meet an urgent need for a population that is at high risk of homelessness. The Legislature finds that it is in a child's best interests to ensure that federal survivors' benefits for which they are eligible are available for their current and future use. It is the intent of the Legislature that federal Social Security Administration survivors' benefits received by a child or youth in foster care shall not be utilized by the county placing agency to offset the cost of the child or youth's care, and that placing agencies shall instead conserve those funds for the future use of the beneficiary.

(b) When the placing agency serves as the representative payee or in any other fiduciary capacity for a child or youth receiving federal Social Security Administration survivors' benefits, the placing agency shall act in accordance with the Guide for Organizational Representative Payees, as published by the federal Social Security Administration, and shall do all of the following:

(1) Ensure that the child's survivors' benefits are not used to pay for, or to reimburse the placing agency for, any costs of the child's care and supervision, as defined in subdivision (b) of Section 11460, and are conserved in accordance with paragraph (2).

(2) Monitor any applicable federal asset, resource, or income limits for the child's benefits and ensure that the child's best interests is served by conserving the benefits in a way that avoids termination of those benefits as a result of exceeding the federal asset, resource, or income limits, including establishing and maintaining a dedicated account on behalf of the child and preserves eligibility for other benefits to which the child may be entitled.

(3) Provide, upon request, an accounting to the child if the child is 12 years of age or older and the child's attorney of how, and in what amount, the child's resources, including any benefits administered by the federal Social Security Administration, have been conserved, consistent with the accounting report requirements described in Sections 404.2065 and 416.665 of Title 20 of the Code of Federal Regulations, and the county's consideration of the child's best interests, consistent with federal guidance.

(c) Any reference to "federal survivors' benefits" or "Social Security Administration survivors' benefits" in this section shall have the same meaning as benefits to which a child of an individual who dies is entitled pursuant to Section 402(d) of Title 42 of the United States Code.

(d) (1) The placing agency shall notify the child, the child's attorney, and the child's parents or guardians, before, or concurrent with, all of the following:

(A) Any application for benefits administered by the federal Social Security Administration made by the agency on the child's behalf pursuant to subdivision (a) of Section 13757.

(B) Any application by the placing agency to become a representative payee for benefits administered by the federal Social Security Administration on the child's behalf.

(C) Any decisions or communications from the federal Social Security Administration regarding an application for benefits described in subparagraph (A).

(D) Any action taken by the agency regarding an application for benefits described in subdivision (c) of Section 13757.

(2) In addition to notification, as required under paragraph (1), the placing agency shall also provide the information in subparagraphs (A) to (D), inclusive, of paragraph (1) to the child, the child's attorney, and the child's parents or guardians upon request.

(e) At least 30 days before the child's exit from foster care to permanency, if the placing agency is the representative payee, the placing agency shall collaborate with the child, the child's attorney, and the child's parents or guardians if the child is exiting to reunification or the child's guardian or adoptive parent if the child is exiting to guardianship or adoption, to begin transfer or control and responsibility for any funds conserved under this section to the child's parent, guardian, adoptive parent, or the child if the child has exited after 18 years of age, unless the child chooses to select another representative payee. Transfer of conserved funds shall be made in accordance with the federal Social Security Administration's rules for changes of representative payee.

(f) This section shall become operative on January 1, 2025, or 30 days after the department issues the necessary all-county letters and informing materials to county placing agencies, whichever is later.

SEC. 7. Section 13757 of the Welfare and Institutions Code, as amended by Section 66 of Chapter 50 of the Statutes of 2022, is repealed.

SEC. 8. Section 13757 of the Welfare and Institutions Code, as added by Section 67 of Chapter 50 of the Statutes of 2022, is amended to read:

13757. (a) (1) Subject to paragraph (2), every youth over 16 years of age who is in foster care under the supervision of the county child welfare department, juvenile probation department, or tribal organization, if the tribal organization requests the screening from the county, shall be screened by the county for potential eligibility for the federal Social Security Administration benefits.

(2) The screening required in paragraph (1) shall occur when the foster youth is at least 16 years of age and not older than 17 years of age. This does not preclude counties from screening youth for eligibility prior to the youth attaining 16 years of age. An application shall be submitted to the federal Social Security Administration on behalf of any youth who is screened as being likely to be eligible for any benefits administered by the federal Social Security Administration. To the extent possible, for a foster youth approaching 18 years of age, the application shall be timed to allow for a determination of eligibility by the federal Social Security Administration before the youth's 18th birthday.

(3) The screening required in paragraph (1) shall occur for a nonminor dependent if any of the following are true:

(A) The nonminor dependent was not screened before the youth's 18th birthday as required in paragraph (2).

(B) The nonminor dependent has had a change of circumstance, including a medical condition that is expected to last more than one year.

(C) The nonminor dependent has been approved for regional center services since the last screening.

(D) The nonminor dependent, their court-appointed attorney, or a member of their child and family team requests screening.

(E) The juvenile court orders the county to screen the nonminor dependent.

(F) The county determines the screening is appropriate based on the nonminor dependent having a physical or mental impairment that limits their ability to work.

(4) An application shall be submitted to the federal Social Security Administration on behalf of any nonminor dependent who is screened as being likely to be eligible for federal Social Security Administration benefits and consents to the application.

(b) In carrying out the requirements of subdivision (a) for a youth receiving federally funded AFDC-FC benefits, the county shall, if necessary, forego federally funded AFDC-FC and instead use nonfederal AFDC-FC resources to fund the placement in the month of application or in the month after making an application, and to subsequently reclaim federally funded AFDC-FC, in order to ensure that the youth meets all of the SSI eligibility requirements in a single month while the application is pending, as provided by federal law and regulation. Notwithstanding subdivision (a) of Section 11402, this section shall apply to a foster youth regardless of their federal AFDC-FC eligibility.

(c) For foster youth whose applications for federal Social Security Administration benefits are denied, the county placing agency shall file, or

cause to be filed, a request for reconsideration with the federal Social Security Administration. If the request for reconsideration is denied, then the county shall subsequently file an appeal to the federal Social Security Administration and, if necessary, file an appeal to the Appeals Council of the federal Social Security Administration. The county is not required to file a request for reconsideration or an appeal if the county does not possess the information or evidence to support an appeal after making efforts to acquire that information, or other reasons that shall be documented in the case plan.

(d) The assistance by the county, as the authorized representative, or by any other entity on behalf of the nonminor dependent, provided pursuant to subdivisions (a) and (c) shall adhere to the guidelines of the federal Social Security Administration, as specified in Section 416.1540 of Title 20 of the Code of Federal Regulations, which includes, but is not limited to, gathering and submitting relevant records to the federal Social Security Administration, notifying the youth of any denials or terminations of aid, and assisting with timely requesting an appeal, as needed. The county may contract with legal services organizations or other entities, or may partner with other county agencies, to fulfill these duties.

(e) (1) When a nonminor dependent has been approved for SSI payments pursuant to this section, but is receiving a federally funded AFDC-FC benefit in an amount that exceeds the SSI payment, causing the SSI payment to be placed in suspense, the county placing agency shall, during at least 1 month of every 12-month period, beginning with the date that the SSI benefit is placed in suspense, forego the federally funded AFDC-FC benefit and instead use nonfederal AFDC-FC resources to supplement the SSI benefit that the youth receives during that month. The county shall subsequently reclaim the federally funded AFDC-FC benefit in the following month.

(2) If the county is the nonminor dependent's representative payee, the county shall inform the federal Social Security Administration that the youth is not receiving any federal financial participation during that month in order to permit the nonminor dependent to receive an SSI benefit during a single month in every 12-month period.

(3) If the county is not the nonminor dependent's representative payee, then for the period that the nonminor dependent remains in foster care, in order to permit the nonminor dependent to receive an SSI benefit during a single month in every 12-month period, the county shall assist the nonminor dependent or the nonminor dependent's representative payee in providing this information to the federal Social Security Administration and keeping track of the number of months that the nonminor dependent's SSI payment has been placed in suspense.

(f) Beginning in the 2011–12 fiscal year, and each fiscal year thereafter, funding and expenditures for programs and activities under this section shall be in accordance with the requirements provided in Sections 30025 and 30026.5 of the Government Code.

SEC. 9. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service

mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.