



# **FOSTER CARE OR FOSTER CON?**

## **PRESERVING THE FEDERAL BENEFITS OF AMERICA'S MOST VULNERABLE CHILDREN**

*AN EVALUATION OF ALL 50 STATES AND THE DISTRICT OF COLUMBIA*

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**CHILDREN'S ADVOCACY INSTITUTE**  
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

## About the Children's Advocacy Institute

The Children's Advocacy Institute is an academic, research, and advocacy organization that works to strengthen the rights and improve the health, safety, and well-being of all children and youth.

CAI works to achieve this mission by identifying and researching systemic problems impacting children and youth; engaging with individuals and communities with lived experience to inform and guide advocacy efforts; advancing creative solutions to address systemic racism, ethnic discrimination, and other inequities experienced by children and youth; advocating for children's interests through federal and state legislative, regulatory, and court action; serving as a catalyst for action by policymakers, child advocacy coalitions, and the general public; promoting effective policy and practice within child-serving systems; demanding accountability when children are harmed or their rights are violated; and delivering high-quality legal education and training to current and future child advocates.

In its advocacy component, CAI has sponsored over 60 federal and state enacted statutes, most in the areas of child welfare and child safety, and has litigated appellate cases in the child welfare area. CAI's published reports include studies surveying the law in each of the 50 states relevant to the reporting of child abuse deaths and the provision of counsel for foster children, among other topics. In its academic component, which is part of a unique child rights concentration at the USD School of Law, CAI provides substantive education as well as clinical training opportunities that allow law students to help represent children in dependency and/or delinquency court and engage in policy advocacy at the state and federal level.

The primary researchers and authors of this report are Melanie Delgado, CAI Senior Staff Attorney; Elisa Weichel, CAI Administrative Director/Senior Staff Attorney; CAI Consultant/Attorney Emily Reinig, and Amy Harfeld, CAI National Policy Director.

## Acknowledgements

CAI is grateful to the many individuals who contributed to this Report and related CAI efforts, including Jessica Heldman, Katie Gonzalez, Emily Reinig, Alyson Hayden, Tanisha Lewis, Sarah Pauter, Steven Jessen-Howard, Ariana Hussing, Byanca Hutchins, Victoria Grout, and Kyla Salazar. CAI also acknowledges the longstanding and tremendous contributions to the issues addressed in this Report by Daniel Hatcher, Professor of Law, University of Baltimore School of Law; Mitchell Y. Mirviss, Partner, Venable LLP; the Arc; the Congressional Coalition on Adoption Institute; the Center for the Rights of Abused Children; Rick Glassman, Disability Law Center, and others. CAI is grateful to the funders supporting our work on this campaign, including the Walter S. Johnson Foundation, the Partnership for America's Children, The Blavin Family Fund at the Chicago Community Foundation, and others.

And above all, CAI wishes to acknowledge and thank all of the lived experience experts who shared their stories, guidance, and input with us about this issue, and who inspire us to persevere in our work to protect the rights and interests of those who are following behind them in the foster care system.



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# Foster Care or Foster Con? Preserving the Federal Benefits of America’s Most Vulnerable Children

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# EXECUTIVE SUMMARY

This Report, published by the Children's Advocacy Institute (CAI), evaluates all fifty U.S. states and the District of Columbia with respect to their laws and policies relating to the protective preservation and management of foster youths' federal benefits. It includes an analysis of the elements of a model law and describes how each state includes or omits such features. Through this Report, CAI aims to encourage each state to adopt laws that safeguard foster youths' federal benefits, creating a basic safety net for our most vulnerable youth as they transition out of care.

## I. THE PROBLEM

Children in foster care may be eligible to receive various types of federal benefits, including Supplemental Security Income (SSI), available to children with qualifying disabilities who meet specified criteria, and survivor benefits through the Old-Age, Survivors, and Disability Insurance (OASDI) program and the Veterans Administration, for eligible children who have lost one or both parents. Most state or county child welfare agencies routinely screen foster children for federal benefit eligibility, and where a child is deemed eligible, states routinely apply to become the child's representative payee, to receive and manage the child's benefits.

Federal and state laws require that these benefits be used or saved in the child's best interest for their needs that are not already required to be met by the child welfare agency. For this subset of foster youth, who face tremendous obstacles when they transition out of care, these assets can serve as a lifeline, contributing to economic stability, self-sufficiency, and successful outcomes. Yet, for decades, states have intercepted funds belonging to children in foster care as a "revenue maximization" strategy – a term commonly used by many states – to offset their duty to pay for the youths' care. Most foster youth eligible for these federal benefits will never see a dollar of their money, or even know that someone has applied for and received benefits on their behalf.

When a child enters foster care, the state assumes the role of a parent to that child. No responsible parent would allow their child to transition to independent living without appropriate resources, especially if the child has a disability. Thus, it is imperative for states, particularly when acting as the representative payee, to manage and preserve any federal Social Security or Veterans benefits belonging to the child during their time in foster care. Foster youth should benefit directly from the federal benefits for which they are eligible. These resources are vital and may very well mean the difference between financial stability and a spiral into homelessness as the child transitions from foster care to adulthood.

## II. THE CONSEQUENCES FOR FOSTER YOUTH AND THEIR FAMILIES

**Exacerbating the Hardships Unique to Youth Aging Out of Care.** The transition from foster care to adulthood presents unique vulnerabilities for all youth – and these challenges are further compounded for those who have a deceased parent or live with a disability. For decades, outcomes for youth exiting the foster care system have been troubling. In sum, educational, employment, and housing outcomes for this group remain dismal; they experience incarceration and become parents at an early age at higher rates than their peers; they experience disabilities at a significantly higher rate than their non-foster care peers and accessing healthcare, particularly mental health services, remains a hurdle. It is of paramount importance for states to protect and preserve any federal benefits belonging to a foster child to provide this vulnerable population a better chance at a successful transition from foster care to adulthood.

**Racial Disproportionality and Equity Issues.** The intersection of racial disparities, disability, and parental loss creates a multifaceted challenge that disproportionately impacts black, indigenous, and other people of color (BIPOC) children and youth in foster care who are eligible for or receiving benefits. This disproportionate impact stems from several factors: BIPOC youth are overrepresented in foster care, there are disability disparities among youth in foster care, BIPOC children and youth experience barriers to diagnosis and appropriate treatment both before and after they encounter the foster care system, and BIPOC children and youth are more likely to lose a parent earlier in life.

**Poverty, Family Preservation, and Reunification.** Research clearly demonstrates that families who are experiencing poverty are far more likely to be reported to child protective services than families with more resources. As a result, most of the children placed in foster care are there, due at least in part,

to their parents' economic hardships. The federal government has acknowledged that charging parents for costs associated with their child being in foster care can hinder a family's efforts to attain economic stability, which in turn, can hinder reunification with their child. For this reason, the federal government has taken steps to end the harmful practice of forcing parents to reimburse the state for their child's cost of care. Yet, they have not acted to stop states from using the children's own benefits to pay for their own care. Conserving funds that belong to children in care, and then turning the funds over to their parents when the family is reunified, or to the children themselves when they leave care, is equally critical to ensuring successful and timely reunifications for the families involved and successful transitions from foster care for the youth involved.

### III. THE LAW

As a whole, the patchwork mosaic of Constitutional law, federal law, caselaw and federal regulation and guidance create both clarity and confusion. Many of the constitutional issues at stake have not yet been litigated or decisively ruled upon. Those that have are limited in scope. Federal law seems clear at first blush, but has not yet reconciled contradictory provisions between laws overseen by different agencies. Thus far, most analyses of current law place a strong emphasis on the fiscal impact to states rather than the lifelong implications for the children involved. Similarly, federal regulations, rules, and guidance provide ample opportunity to conclude that this practice is inconsistent with congressional intent and reasonable statutory analysis, but also confers great deference to states who wish to interpret contradictory provisions to their own benefit. New information about transition aged youth, the importance of youth rights and engagement, the injustice of inequities in the child welfare system, the costs of failed transitions to adulthood, and the availability of ABLE accounts demand a fresh analysis focused on achieving positive outcomes. With more than half of states taking steps to advance reform, federal leadership is desperately needed both by federal agencies and from Congress to convey a clear and consistent message that this practice is not allowed and is antithetical to the best interests of these children.

What is undisputable is that youth in foster care have no obligation to pay for the cost of their own care, and that states have an independent legal obligation to provide for all children in foster care.

**Constitutional Law.** From a Constitutional perspective, any state law, regulation, policy or practice that allows the state to use foster children's federal benefits to offset the cost of their foster care violates both the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

With respect to the Equal Protection Clause, this practice singles out disabled foster children and those who have a deceased parent and requires just that subset of children in foster care to pay for their own care. Appropriating the foster children's federal benefits confers inferior status due to their disability — and constitutes discrimination that must be remedied.

Pursuant to the Due Process Clause, children have a right to notice and opportunity to be heard when a government entity seeks appointment as the children's fiduciary to manage their federal benefits. However, neither Social Security nor the states provide any notice to the child beneficiaries, parents, legal representative, or guardian prior to applying to be the child's Representative Payee — nor do they provide notice that the agency will be using the benefits to offset the child's cost of care.

**Federal Law.** Pursuant to the Title IV-E Foster Care, Prevention, and Permanency program, states are entitled to federal reimbursement for a part of the cost of providing care to some children in foster care. This federal support, however, has diminished considerably over time forcing states to bear an increasing share of foster care maintenance costs. However, instead of urging the federal government to rectify this shortfall — through an end to the outdated "lookback" provision and/or the allocation of more state or local general funds toward foster care support — states began improperly intercepting other federal benefits for which some children in care are eligible and using these funds to offset the child's cost of care. Anemic funding for federal and state child welfare programs is real, pervasive and critical to address. However, we should never turn to the very children these agencies were established to support to foot the bill for their own care.

**Federal Executive Branch.** In sum, federal policy and guidance from the Social Security Administration (SSA) and the Administration for Children and Families (ACF) regarding the protection and

management of foster youths' federal benefits is lacking, ineffective, inconsistent, and at times, contradictory.

SSA is responsible for the proper assignment, disbursement, and use of children's benefits. SSA claims in its Program Operations Manual System (POMS) that it must use the payee preference list appropriately to identify when other, more suitable, Representative Payees are available, placing foster care agencies near the bottom of that list. Yet, SSA has appointed the foster care agency to serve as Representative Payee for at least 80% of the youth eligible for federal benefits. Additionally, per POMS GN 00602.00, SSA requires Representative Payees to apply benefits in the "best interest" of the beneficiary. When a child's maintenance needs are provided and paid for by law by a state agency, as is the case with foster children, use of the child's benefits to supplant the cost of their care provides no benefit to the child. A foster youth's "best interest" is served by using benefits for any unmet current needs and/or conserving the benefits for a successful transition from foster care to adulthood.

Additionally, recent guidance from ACF encouraged states to end the harmful practice of charging parents for costs associated with their child being in foster care, acknowledging that "[i]t is not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation." Unfortunately, ACF stopped short of prohibiting states from intercepting and using the children's own benefits to pay for their care – which creates the same barriers to economic stability for youth returning home or aging out of care.

#### IV. THE LANDSCAPE

**Federal Activity, To Date.** In 2007, Rep. Pete Stark (D-CA) introduced the Foster Children Self-Support Act, which would have, among other things, banned the use of federal benefits paid to representative payees on behalf of foster children to reimburse foster care maintenance payments by states. However, this bill was not enacted. Since then, Rep. Danny Davis (D-IL) has introduced similar legislation, the Protecting Foster Youth Resources to Promote Self-Sufficiency Act, in 2016, 2018, and 2022. These bills were not enacted, and a fourth iteration of this measure is expected to be introduced in 2024. Although officials at the White House, SSA, and ACF have expressed concern about this practice and an interest in ensuring better outcomes for youth, neither SSA nor ACF have yet to put forth policy, guidance, or rules to clarify that using a child's benefits to supplant the state's legal duty to pay for care is never in a child's best interest, and that state representative payees use of a child's funds to pay for care without ever meeting with or consulting with the child about their needs does not comport with a representative payee's fiduciary duty to the child beneficiary. In a joint letter released by SSA and ACF on August 17, 2023, after two years of persistent advocacy by CAI, impacted youth, academics, and others, the agencies declined to issue new guidance that would help protect the best interests of foster youth beneficiaries.

If the U.S. as a whole were to be graded on its federal law in protecting the rights and federal benefits of foster youth with disabilities and those whose parents are deceased, it would receive a resounding F. Across all criteria graded, federal law and policy fail. Although federal law requires agencies to pay for all foster children's care, and for children's benefits to be used only for their individual best interests, there is conflicting policy elsewhere which provides just enough confusion for states to justify continuing to fund their systems off the backs of the very children they exist to serve. This does not need to be the case. The Social Security Administration can—and has vowed to—issue new rules as possible to better protect these assets of these particularly vulnerable foster children. ACF is empowered to issue new guidance discouraging this practice and clarifying existing support available to states to do so. Congress has expressed bipartisan interest in advancing legislation to address any needed reforms beyond that which these agencies can do on their own. An A grade is in reach with the principled leadership of Congress and the Administration.

For example, in a recent positive advance, newly appointed Commissioner Martin O'Malley vowed: "If I can create a rule, I will, and I look to do so very quickly" and SSA officials are now demonstrating their intent to advance meaningful guidance and policy to clarify existing rules and to ensure full accountability and transparency. Similarly, ACF has been providing some guidance to states that have sought technical assistance in implementing new reforms on children's benefits, organized networking and information sharing between state leaders wishing to address this, and indicated that they are eager to move forward with additional guidance.

**State and Local Activity, To Date.** As of this writing, approximately half of the states have attempted, taken, or are considering, action to ensure proper access and use of foster youth's federal benefits, to varying degrees. Activity at the state level has been so rapid over the last year that many states introduced or advanced reforms in the time between the Oct. 31, 2023 cutoff of this report's research and our publication date of April 17, 2024.

[Arizona](#) and [Washington D.C.](#) have passed model bills, and [Oregon](#) requires that all benefits be conserved for the child. To varying degrees, there are rules or there has been legislative or policy reform on this issue in [Maryland](#), [California](#), [Connecticut](#), [Illinois](#), [Nebraska](#), [New Jersey](#), [Hawaii](#), [New Mexico](#), [Alaska](#) (pending Alaska Supreme Court appeal) [Florida](#), and [Washington](#), as well as in [New York City](#), [Philadelphia](#), [Los Angeles](#). States that have considered legislation that was not enacted, or that have pending legislation, include [California](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [Missouri](#), [New Hampshire](#), [New Mexico](#), [Kansas](#), [Colorado](#), [Tennessee](#), [Maine](#), [Virginia](#), and [Texas](#). Although not yet enacted, Oregon and Minnesota proposals went so far as to propose a path to financial restitution for impacted youth, which would reflect a top priority of people with lived experience and establish a new gold standard.

## V. THE CALL TO ACTION

CAI, along with a growing number of impacted youth, advocates, and policymakers find that state interception of foster youths' federal benefits violates foster youths' due process and property rights, as well as various federal provisions of law and policy. Simply put, this practice is both immoral and predatory. If enacted, the following measures would ensure that this population of vulnerable youth are afforded the safety net and tools needed for a successful start:

**Congressional Action.** Congress must reintroduce and enact the *Protecting Foster Youth Resources to Promote Self-Sufficiency Act*, which would, among other things: (1) Prohibit agencies from taking a foster youth's assets or benefits to reimburse foster care costs; (2) Require agencies to screen foster youth for eligibility for Social Security or Supplemental Security Income benefits, apply for the benefits, and help youth apply for continued benefits prior to leaving care; (3) Require child welfare entities to notice the youth and/or their attorney or guardian ad litem that the state is the representative payee and provide benefit updates; (4) Mandate that the agency, along with the representative payee and the child, develop a child-specific plan to help achieve self-sufficiency after leaving care, including conserving the funds in an appropriate account (e.g., a Chaffee Foster Care Independence Program account, an ABLE account, or an Individual Development Account) for future needs; (5) Require agencies to enter into information-sharing agreements with the SSA related to serving as representative payee.

### Executive Branch Action.

- **White House:** The White House must sign the *Protecting Foster Youth Resources to Promote Self-Sufficiency Act* when passed.
- **Social Security Administration (SSA):** SSA must take the following actions to protect foster children eligible for federal benefits: (1) Declare that it is contrary to the fiduciary obligation of a state agency serving as representative payee for a child in foster care to use the child's federal benefits to offset the state's obligation to pay for the child's current foster care and/or maintenance costs, as the agency is independently obligated to pay for those costs for all children in foster care; (2) Require states to notify beneficiaries over age 15, the beneficiary's parent if parental rights have not been terminated, and the beneficiary's legal representative (attorney/GAL) of any and all actions taken by the state to apply for federal benefits and/or to apply to serve as representative fee, and any communications received by the agency in relation to those applications; (3) Mandate that SSA staff deny state agency applications to serve as representative payee if they fail to demonstrate that the above notice was provided; (4) Require states serving as representative payee for children in foster care to provide beneficiaries over age 15, the beneficiary's parent if parental rights have not been terminated, and the beneficiary's legal representative (attorney/GAL) with annual accountings showing how the beneficiary's benefits were used and/or conserved; (5) Prohibit the automatic appointment of state agencies as representative payee for child beneficiaries in foster care and mandate that SSA staff document the steps taken to identify alternative payees and the reasons for not

selecting them, prior to appointing a state agency to so serve as representative payee; (6) As part of the annual accounting, require that state agencies serving as representative payees for children in foster care document how the child's benefits were used and/or conserved for their sole use and best interest, and what benefit they derived from their benefits specific to their disability or loss of parent to address unmet current or projected future needs, beyond the basic needs the agency is already required to provide and does provide to all other children in care; (7) As part of the annual accounting required of state agencies serving as representative payee for youth in foster care, require that the agencies document that they met with the beneficiary on a regular basis to ascertain their current and foreseeable needs; (8) Provide guidance and best practices to state agencies on how to conserve foster youth federal benefits in appropriate accounts that will not impact the youth's eligibility for any federal benefits.

- **Administration for Children and Families (ACF):** ACF must take the following actions to foster children eligible for federal benefits: (1) Declare that it is contrary to the fiduciary obligation of a state agency serving as representative payee for a child in foster care to use the child's federal benefits to offset the state's obligation to pay for the child's current foster care and/or maintenance costs, as the agency is independently obligated to pay for those costs for all children in foster care; (2) Clarify that screening and applying for children's benefits upon entry into care is necessary in order to properly administer the Title IV-E child welfare program, and issue policy clarification that IV-E administrative funds may be claimed for these purposes; (3) Ensure that notice to children and their attorneys/GALs is provided by the child welfare agency when benefits are applied for and received or upon any material change in benefits; (4) Affirm agencies' obligations to follow SSA's rules on representative payee preference, fiduciary duties as organizational representative payees, accounting requirements, and use of funds for the child's benefit; (5) Issue technical assistance and provide support to states on establishing, monitoring, and conserving children's assets in appropriate accounts.

**State and Local Action:** States and local jurisdictions must enact legislation to ensure that federal benefits belonging to children in foster care are used in a manner that furthers their best interest, and/or are conserved to meet their future unmet needs. The model law elements, set forth in Appendix A, would appropriately protect and promote the interests of youth in foster care who are eligible for federal benefits. Other actions that can be taken at the state and local levels include enactment of executive orders prohibiting the state agency from taking federal benefits from children in foster care, and requiring that the agency use or conserve the child's benefits in a manner serving the best interest of the child beneficiary, and adoption of agency regulations, directives, policies, and guidance prohibiting the use of foster children's federal benefits to offset the state's obligation to provide foster care, and including other elements of the model law.

## **VI. ABOUT THIS REPORT**

This Report evaluates the laws and policies of all fifty U.S. states and the District of Columbia regarding the protection and management of foster youths' federal benefits, namely Supplemental Security Income and Survivor benefits. Specifically, the Report analyzes state law and policy based on the following seven key elements of a model law relating to the protection and management of foster youths' federal benefits:

- (1) Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care?
- (2) Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee?
- (3) Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?

- (4) Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?
- (5) Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?
- (6) Does the state require the agency to file an appeal on the child's behalf?
- (7) Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney?

Regrettably, few states fared well under this examination:

- Only two jurisdictions, Arizona and the District of Columbia, earned an "A."
- An alarming 44 states received an "F."

However, the tide is turning, and meaningful reform is on the rise at the state and local levels. As noted above, to date 28 jurisdictions have taken, are currently considering, or have considered action (to varying degrees) to ensure proper access and use of foster youth's federal benefits. [Arizona](#) and [Washington D.C.](#) have passed model bills, and [Oregon](#) requires that all benefits be conserved for the child. To varying degrees, there are rules or there has been legislative or policy reform on this issue in [Maryland](#), [California](#), [Connecticut](#), [Illinois](#), [Nebraska](#), [New Jersey](#), [Hawaii](#), [New Mexico](#), [Alaska](#) (pending Alaska Supreme Court appeal) [Florida](#), and [Washington](#), as well as in [New York City](#), [Philadelphia](#), [Los Angeles](#). States that have considered legislation that was not enacted, or that have pending legislation, include [California](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [Missouri](#), [New Hampshire](#), [New Mexico](#), [Kansas](#), [Colorado](#), [Tennessee](#), [Maine](#), [Virginia](#), and [Texas](#). Although not yet enacted, Oregon and Minnesota proposals went so far as to propose a path to financial restitution for impacted youth, which would reflect a top priority of people with lived experience and establish a new gold standard.

Through this Report, CAI aims to: (1) inform the public, policymakers at both federal and state levels, and stakeholders about this critical issue (2) highlight model legislation, recognize states with outstanding laws and policies, acknowledging the rapid pace of reform being pursued across the country; (3) identify and apply public pressure to states requiring improvements in their laws and policies, detailing necessary reforms; (4) offer a strategic guide for states aiming to improve their legal frameworks and better safeguard the assets and the futures of foster children and youth under their care.

## PART 1: DISCUSSION

### I. The Problem: State Agencies Taking Federal Benefits Belonging to Foster Children and Youth

#### A. Overview

Children in foster care may be eligible to receive various types of federal benefits. For purposes of this Report, the term “federal benefits” refers exclusively to two types of benefits: (1) Supplemental Security Income (SSI), which is available to children with qualifying disabilities who meet specified criteria, and (2) survivor benefits through the Old-Age, Survivors, and Disability Insurance program and the Veterans Administration, for eligible children who have a deceased parent.<sup>1</sup>

Children and youth in foster care who are disabled or who have a deceased parent constitute some of our nation’s most vulnerable citizens. Although reliable data is lacking, an estimated 40,000-80,000 of our nation’s foster youth are either receiving or eligible for such federal benefits, which can amount to over \$900 per month.<sup>2</sup> A foster child spends an average of 17.5 months in care,<sup>3</sup> which means that benefits could accrue in excess of \$15,000 per child.

Federal and state law require that these benefits be used or saved in the **child’s best interest**, to address current or future needs not already met by the child welfare agency or other sources. For this subset of foster youth who face tremendous obstacles when they return home, achieve permanency elsewhere, or age out of care, these assets, if properly conserved on behalf of the child, can serve as a lifeline for their families and/or the youth themselves, contributing to economic stability, self-sufficiency, and successful outcomes.

Foster youth should benefit directly from federal benefits for which they are eligible. However, the vast majority of foster youth eligible for these federal benefits will never see a dollar of their money, or even know that someone has applied for and received benefits on their behalf.



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I never thought that the system that was supposed to be helping me really was stealing from me the entire time.

**Antonio L.J.**  
*former foster youth*

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<sup>1</sup> When using the term “federal benefits,” this Report primarily focuses on these specific types of benefits, a variety of other federal benefits, such as those provided through the Retirement, Survivors, and Disability Insurance (RSDI) program, the Railroad Retirement Act of 1974, and the Black Lung Benefits Act, exist as well on a smaller scale.

<sup>2</sup> See Social Security Administration, *SSI Federal Payment Amounts For 2024* (available at <https://www.ssa.gov/oact/cola/SSI.html>) and Zhe Li, *Social Security Survivors Benefits*, Congressional Research Service, at Table 2 (May 16, 2022) (available at <https://crsreports.congress.gov/product/pdf/RS/RS22294/33>).

<sup>3</sup> The Annie E. Casey Foundation, *Child Welfare and Foster Care Statistics* (May 30, 2023) (available at <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>).

Most state or county foster care agencies routinely screen children for federal benefit eligibility. The motivation for doing so is unfortunately not to best support or look out for the child, but the opposite—to maximize state revenue. When a child is deemed eligible, states apply for the benefits on behalf of youth. They then routinely apply to be the child’s representative payee, to receive and manage the child’s benefits. After receiving the child’s benefits, most foster care agencies then intercept the full amount of the monthly benefits to reimburse themselves for that child’s foster care. For the most part, all of this goes on behind closed doors, with no notice to the child, the child’s parent, the dependency court judge, or the child’s attorney/guardian ad litem (GAL)/CASA.

## **B. Purpose and Background of this Report**

The Children’s Advocacy Institute (CAI), along with a growing array of impacted youth, advocates, policymakers, and other stakeholders find that this practice violates foster youths’ due process and property rights, as well as various federal provisions of law and policy – and that it is immoral and predatory. A public agency taking desperately needed assets away from the most vulnerable children in state care behind their backs and using the money for the agency’s own financial benefit, rather than in the child’s best interest, is indefensible. Children in foster care have already been traumatized by the circumstances that led to their removal and/or the removal itself. They are entirely reliant upon the foster care agency that is obligated to intervene on their behalf and to act in their best interests. It is a fundamental breach of our social contract to engage in such a sneaky, shortsighted, and self-interested manner when serving in *parens patriae*. Fiscal actions like this in other contexts might be called any number of things, including misappropriation, breach of fiduciary duty, commandeering, takings, seizure, theft, embezzlement, or fraud. How is such behavior allowed to continue when it impacts those most in need of protection? It is undisputed that youth in foster care have no obligation to pay for the cost of their own care – that is the self-assigned duty of our federal, state, tribal, and in some cases, local governments when they take a child into care. Excluding youth themselves as well as their attorney/GALs from information about these benefits, opportunities to co-design their use, and challenge the agency’s decisions reeks of the very paternalism many in this field have fought to leave behind.

In addition to these factors, this practice detrimentally impacts the health and well-being of the children and youth themselves. If managed, conserved, or used as intended, in their best interests, SSI benefits could help a child fully address the physical, mental, and developmental aspects of their disability during their childhood, all of which could improve their lives tremendously. OASDI and VA survivor benefits are perhaps the only “inheritance” that many children will have from their deceased parents; imagine the emotional trauma of finding out, after the fact, that the one thing your parent left you was taken behind your back, and used to pay a debt you did not owe. About a third of foster youth who age out will experience homelessness and close to half will find themselves couch surfing within a short period of time after aging out<sup>4</sup>—horrible outcomes for any young person, and entirely avoidable ones for those youth who have been receiving federal benefits while in foster care. The fact that we allow this ill-begotten practice to happen to our fallen service members and veterans’ children, who sometimes land in foster care, is especially egregious.

CAI has been engaged in advocating to preserve the benefits of foster youth since the introduction of the first bill in Congress to end this practice in 2007, the Foster Children Self-Support Act. Notably, Xavier Becerra, our current Secretary of the Department of Health and

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<sup>4</sup> Kelly, P., *Risk and protective factors contributing to homelessness among foster care youth: An analysis of the National Youth in Transition Database*, Child Welfare League of America (2020), at pg. 4 (available at <https://doi.org/10.1016/j.childyouth.2019.104589>).

Human Services (which contains the Administration for Children and Families and the Children's Bureau responsible for our nation's foster care), co-sponsored this legislation, yet has not addressed it squarely in his role as Secretary. Subsequent bills were introduced in Congress in 2016, 2018, and 2022. Much of the early action around this issue resulted from a groundbreaking law review expose written by former Legal Aid attorney turned law professor, Daniel Hatcher, who has continued to advocate to change this policy within state legislatures, through litigation, and as a close ally and partner of the Children's Advocacy Institute.<sup>5</sup> CAI raised this issue as a major concern in its 2011 report, [\*The Fleecing of Foster Children — How We Confiscate Their Assets and Undermine Their Financial Security\*](#). In that report, we highlighted this unjust and ill-advised practice as one of the several state practices that directly harm youth in care, complicate reunifications, and undermine their financial security after leaving care. Unfortunately, not much changed with regard to this practice until 2018, when, after four consecutive years of advocacy, Maryland became the first state to enact legislation partially limiting this practice.<sup>6</sup>

This issue then returned to the national radar in 2021, when [NPR and the Marshall Project](#) published a Pulitzer-Prize nominated investigative series about this topic. CAI provided considerable background for this series. This coverage significantly expanded public awareness of this issue and sparked interest in reform across the country. Other media coverage followed, with in-depth reporting by the Philadelphia Inquirer, CBS News Chicago, Hawaii News Now, the Imprint, and The Hill, among others, helping to drive a wave of reform.

In response to the renewed interest in this issue, in 2021 CAI amplified its efforts to eradicate this practice nationwide by launching the ambitious multidimensional Campaign to Preserve Foster Youth Benefits. With funding from the Walter S. Johnson Foundation, the Partnership for America's Children, The Blavin Family Fund at the Chicago Community Foundation, and others, CAI has been at the epicenter of the movement to protect the rights and preserve the benefits of foster youth. The Campaign is dedicated to comprehensive policy reform, which has been pursued alongside a dedicated group of youth advisors with lived experience, through local and state reform, federal reforms through legislation and Administrative advocacy, litigation, and public education/training of frontline attorneys and judges. This report is one aspect of that campaign; for information on other activities, please visit CAI's website at <https://www.sandiego.edu/cai/advocacy/youth-benefits/>.

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<sup>5</sup> Daniel L. Hatcher, Foster Children Paying for Foster Care, *Cardozo Law Review*, Vol. 27, pp. 1797-1852 (2006) (available at SSRN: <https://ssrn.com/abstract=942007>).

<sup>6</sup> Enacted in 2018, Md. Code, Fam. Law § 5-527.1 requires the Department of Human Resources to work with a child's attorney to identify a representative payee, and puts specific requirements in place when the Department serves as the representative payee. For example, the Department must use or conserve the benefits in the child's best interest; when the child attains age 14, a minimum percentage of the child's benefits must be conserved for the child; the funds must be conserved or used for services for special needs not otherwise provided by the Department; and the Department must monitor federal asset or resource limits and use funds in a way that avoids violating any federal asset or resource limits that would affect the child's eligibility.

University of San Diego

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# Preserving Federal Benefits of Foster Youth

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## WHAT IS THE ISSUE?

Foster youth should benefit from their benefits. Disabled foster youth and those who have lost a parent constitute some of our nation's most vulnerable children. Approximately 40,000-80,000 children and youth in foster care are eligible for or receiving Social Security disability, survivor, or other benefits, which can amount to over \$900 per month. Federal law requires these benefits be used in the child's best interest for unmet needs. For this subset of foster youth who face tremendous obstacles when they leave or age out of care, these assets can serve as a lifeline to cover housing, food, health care, and transportation.

**IN THIS SECTION**

- Federal Law and Policy
- Policy Reform
- Practice Tools
- Policy Advocacy Tools
- Litigation

## C. Types of Federal Benefits at Issue

As noted above, for purposes of this Report, the term “federal benefits” refers to two specific types of benefits: (1) Supplemental Security Income, which is available to children with qualifying disabilities who meet specified criteria, and (2) survivor benefits through SSA’s Old-Age, Survivors, and Disability Insurance program and the Veterans Administration, for eligible children who have a deceased parent. This Report does not propose to evaluate or discuss other benefits such as those provided through the Railroad Retirement Act of 1974, the Black Lung Benefits Act, or other types of federal programs, nor does this Report discuss other types of assets that children and youth in foster care may own, such as civil judgments, inheritances, earnings, etc., as these are beyond the scope of our research. However, CAI strongly believes that no benefits, property, assets, or earnings of children or youth in foster care should be utilized to pay for their cost of care or any foster care related expenses.

The two types of federal benefits encompassed in this Report are described briefly below.

### 1. Supplemental Security Income

The Supplemental Security Income (SSI) program, administered by the Social Security Administration (SSA), provides income support to blind or disabled children, among others, who meet specified eligibility requirements.<sup>7</sup> To be eligible, a child must not have income or resources that exceed specified limits; the child must have a medical condition or a combination of conditions, that results in “marked and severe functional limitations” (meaning that the condition(s) must very seriously limit the child’s activities); and the child’s condition(s) must have been disabling or be expected to be disabling for at least 12 months, or the condition(s) must be

<sup>7</sup> Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin, 2023* (Nov. 2023) at 18 (available at <https://www.ssa.gov/policy/docs/statcomps/supplement/2023/supplement23.pdf>).

expected to result in death.<sup>8</sup> The limit for countable resources is \$2,000 for an individual receiving SSI.<sup>9</sup>

## 2. Survivor Benefits

In addition to SSI benefits, this report includes two types of survivor benefits within the term “federal benefits” – those administered by SSA’s Old-Age, Survivors, and Disability Insurance program and benefits administered by the Veterans Administration, as discussed below.

### a. OASDI

The Old-Age, Survivors, and Disability Insurance (OASDI) program provides monthly benefits to a child with a parent who is retired or has a disability and is entitled to Social Security benefits, and to a child with a parent who died after having worked long enough in a job where they paid Social Security taxes.<sup>10</sup> Eligibility and benefit amounts are determined by the worker’s contributions to Social Security. There is no means test to qualify a child survivor for benefits.<sup>11</sup>

### b. Veterans Administration

The Veterans Administration (VA) Dependency and Indemnity Compensation (DIC) program provides a monthly benefit to the surviving child of a service member who died in the line of duty or a Veteran who died from a service-related injury or illness.<sup>12</sup> The VA’s Survivors Pension offers monthly payments to qualified unmarried dependent children of wartime Veterans who meet certain income and net worth limits set by Congress; a child may be eligible for this benefit if they are unmarried and meet at least one of these requirements: under age 18; under age 23 and attending a VA-approved school; or unable to care for themselves due to a disability that happened before age 18.<sup>13</sup> If a child is eligible for both the DIC and Survivors Pension benefits, they will receive whichever benefit provides the most money (a child cannot receive both).<sup>14</sup>

## D. The Role and Duties of SSA/VA Representative Payees

When a child is in foster care, any federal benefits they are eligible for must be managed by a fiduciary, referred to as a Representative Payee, who must receive, manage, use, and conserve the child’s funds pursuant to the beneficiary’s best interest. For SSI and OASDI benefits, SSA is supposed to evaluate potential candidates and appoint a representative payee to serve in this role. For VA survivor benefits, that agency refers to this role as a VA fiduciary. For most child beneficiaries, this role is filled by a parent, family member, friend, or legal guardian.

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<sup>8</sup> Social Security Administration, *Benefits for Children with Disabilities* (2024) at 2–3 (available at <https://www.ssa.gov/pubs/EN-05-10026.pdf>).

<sup>9</sup> However, various types of special accounts allow eligible individuals to save and invest additional resources, generally without affecting their continued eligibility for public benefits. See, e.g., ABLE National Resource Center at <https://www.ablencr.org/>.

<sup>10</sup> Social Security Administration, *Benefits for Children* (available at <https://www.ssa.gov/pubs/EN-05-10085.pdf>).

<sup>11</sup> Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin, 2023* (Nov. 2023) at 7 (available at <https://www.ssa.gov/policy/docs/statcomps/supplement/2023/supplement23.pdf>).

<sup>12</sup> U.S. Department of Veterans Affairs, *About VA DIC for Spouses, Dependents, and Parents* (available at <https://www.va.gov/disability/dependency-indemnity-compensation/>).

<sup>13</sup> U.S. Department of Veterans Affairs, *VA Survivors Pension* (available at <https://www.va.gov/pension/survivors-pension/>).

<sup>14</sup> U.S. Department of Veterans Affairs, *2024 VA DIC Rates for Spouses and Dependents* (available at <https://www.va.gov/disability/survivor-dic-rates/>).

As is discussed below, the role of either the representative payee or VA fiduciary is to ensure that the beneficiary’s federal benefits are used or conserved exclusively in a manner benefiting the beneficiary, and to avoid self-dealing. Because it is the legal responsibility and standard practice of the federal, state, tribal, and/or local governments to pay for the cost of foster care through dedicated funding streams, a child’s federal benefits are not needed for this purpose—and in no respect would such a use ever be in the benefit of the beneficiary, since foster care is not a debt these children are obligated to pay, and the services provided extend no special benefit to the child beyond the care they would otherwise receive were they not receiving benefits. Thus, for children in foster care, federal law requires that the duly appointed Representative Payee, who is charged with specific fiduciary duties, may use a child’s federal benefits only for the child’s **unmet** current needs or conserve them on behalf of the beneficiary to address his/her future needs.



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If foster care was a service I was being charged for,  
I want a refund.

Ian M.  
*former foster youth*

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## 1. SSA Representative Payee.

An SSA representative payee serves in a fiduciary role, and is entrusted to use the benefits received on behalf of a beneficiary “**only for the use and benefit of the beneficiary. A payee must use benefits to provide for the beneficiary’s current needs or for reasonably foreseeable needs. If not needed for these purposes, the payee must conserve or invest benefits on behalf of the beneficiary.**”<sup>15</sup>

Specific to children in foster care, SSA claims that “[c]ases involving foster care are among the most sensitive [SSA] encounters. It is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents to do so. It is extremely important that SSA follow all legal requirements, including conducting a complete investigation of the individual or organizational representative payee (payee) applicant, using the payee preference list appropriately to identify when other payee leads should be developed and providing due process to the child’s parent and/or legal guardian.”<sup>16</sup>

The payee preference list mentioned above lists eight types of potential representative payee, in “preferred order of selection.” Social service agencies and custodial institutions are listed as number seven out of eight on that list:

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<sup>15</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00602.001 Use of Benefits* (Effective Dates: 08/05/2022 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602001>) (emphasis added).

<sup>16</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (Effective Dates: 09/12/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159>).

- (1) natural or adoptive parent who has custody of the beneficiary or legal guardian;
- (2) natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;
- (3) natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward the beneficiary's support but is demonstrating strong concern for the beneficiary's well-being;
- (4) relative or stepparent who has custody of the beneficiary;
- (5) relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;
- (6) relative who does not have custody of the beneficiary but is demonstrating strong concern for the beneficiary's well-being, or close friend who does not have custody of the beneficiary but is demonstrating strong concern for the beneficiary's well-being;
- (7) social service agency or custodial institution; and
- (8) any person or organization not listed in this chart who shows concern for the beneficiary, is suitable, able, and willing to act as payee.<sup>17</sup>

In addition to listing social service agencies near the bottom of its own payee preference list, SSA's own guidance provides as follows:

- "Appoint the applicant who will best serve the beneficiary."
- "In the absence of a parent, be sure to consider whether other concerned relatives are a better payee candidate."
- "While the foster care agency has custody and may be legally responsible for the child, there may be other concerned relatives who would be better choices as payees. Relatives with close ties to the child might be better able to make more balanced choices regarding use of the child's benefits."<sup>18</sup>

According to SSA, the top three duties of a Representative Payee for a child are to meet with the beneficiary on a regular basis to ascertain their current and foreseeable needs; use funds in the beneficiary's best interest; and conserve benefits not needed for the beneficiary's current needs. Further, SSA provides that "[i]t is a legal requirement that we provide advance notice about the payee appointment to the proper person(s). The parent(s) (or legal guardian) of a child in foster care must be provided advance notice of the appointment unless their parental rights were terminated by a court" and requires that advance notice be sent to the legal guardian or legal representative if not the proposed payee."<sup>19</sup>

Our research and findings reveal that SSA is not complying with its own payee preference list, guidance, and instructions, nor is it holding state foster care agencies accountable for proper use of foster children's benefits. SSA routinely rubber stamps foster care agencies' applications

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<sup>17</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.105 Preferred Representative Payee Order of Selection Charts* (Effective Dates: 05/23/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502105#b>).

<sup>18</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (Effective Dates: 09/12/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159>).

<sup>19</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00503.100 Advance Notice at E.2.a* (Effective Dates: 08/14/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200503100>).

to serve as representative payee for children in foster care—explicitly flouting its own admonition not to do so without identifying or exploring other candidates:

When selecting a payee for a child in foster care, SSA is to exercise caution and follow proper procedures to ensure they appoint the best payee available and provide appropriate due process. **Do not routinely appoint the foster care agency as payee for a child in foster care.** Gather all pertinent information and make a thoughtful and careful choice and decide each case on its own merit.<sup>20</sup>

According to the Congressional Research Service, SSA appoints the state foster care agency as the child’s representative payee to receive and manage the SSI and OASDI benefits on the child’s behalf in at least 80% of cases.<sup>21</sup> In most cases, SSA appoints the foster care agencies to this role without SSA or the state agencies providing any notice regarding the application for benefits, the representative payee appointment, or the award to the child, the dependency court judge, the child’s attorney/guardian ad litem,<sup>22</sup> or the child’s Court Appointed Special Advocate.

## 2. VA Fiduciary.

Veterans Survivor benefits are often available to the dependent children of members of the U.S. military who died during active duty. Upon determining a beneficiary is unable to manage his/her financial affairs, VA will appoint a fiduciary. The fiduciary, normally chosen by the beneficiary, must undergo an investigation of their suitability to serve. Only after a complete investigation is a fiduciary appointed to manage a beneficiary’s VA benefits. The fiduciary is responsible to the beneficiary and oversees financial management of VA benefit payments. Generally, family members or friends serve as fiduciaries for beneficiaries; however, when friends and family are not able to serve, VA looks for qualified individuals or organizations to serve as a fiduciary.<sup>23</sup> When seeking a fiduciary the following individuals may be considered: a spouse or family member; court-appointed fiduciaries; another interested party; or a professional fiduciary.<sup>24</sup>

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<sup>20</sup> Social Security Administration, POMS TN 88 (09-23), *GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (effective dates 09/12/2023-Present) (available at <https://secure.ssa.gov/poms.nsf/lnx/0200502159>) (emphasis original).

<sup>21</sup> Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* at 1 (November 23, 2021) (available at <https://sgp.fas.org/crs/misc/R46975.pdf>).

<sup>22</sup> Pursuant to the federal Child Abuse Prevention and Treatment Act (CAPTA), states are to ensure that every abused and neglected child who has a pending judicial proceeding has been appointed a guardian ad litem to represent the child in such legal proceedings. See Children’s Bureau, An Office of the Administration for Children & Families, *The Child Abuse Prevention and Treatment Act (CAPTA)* at Section 106.b.2.xiii (available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/capta.pdf>). It does not appear that these legal representatives are provided with advance notice of the appointment of a representative payee for their clients.

<sup>23</sup> U.S. Department of Veterans Affairs, *VA Fiduciary Program Description* (available at <https://www.benefits.va.gov/fiduciary/>).

<sup>24</sup> U.S. Department of Veterans Affairs, *VA Fiduciary Program Description: Beneficiary Overview* (available at <https://www.benefits.va.gov/fiduciary/beneficiary.asp>).

A VA fiduciary is responsible for managing the beneficiary's VA income and ensuring the beneficiary's "just debts" are paid, conserving excess funds in a federally or state insured interest bearing account or United States savings bonds, and protecting the beneficiary's funds from the claims of creditors since the beneficiary's funds are protected by law.<sup>25</sup> Surviving children of Military veterans not in active duty may also be eligible for benefits through the Department of Defense, which is outside the scope of this report.



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If my Social Security benefits had been saved for me, rather than kept by DFCS, I would almost be finished with college and better able to support myself and maybe a family some day.”

**Amber I.**  
*former foster youth*

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## **E. The Scope of the Problem**

### **1. The Number of Impacted Youth**

Accurate data quantifying exactly how many children in foster care are eligible for or are receiving the federal benefits relevant to this Report have been elusive, despite the 2018 federal law intended to provide this data. A detailed investigation by NPR and The Marshall Project estimated that 10% of foster children are eligible for SSA benefits.<sup>26</sup> While the Congressional Research Service estimates that 5.3% of all children in foster care receive benefits from SSA (SSI or OASDI), it notes one study estimating that over 20% of children in foster care have physical or mental health conditions that would likely make them eligible for SSI.<sup>27</sup> Another study estimates that as many as 60% of children in foster care have disabilities<sup>28</sup> (but did not further estimate what proportion of these children would qualify for SSI). No data or estimates of the number of foster youth eligible for or receiving VA or DOD survivor benefits could be found.

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<sup>25</sup> U.S. Department of Veterans Affairs, *VA Fiduciary Program Description: Fiduciary Overview* (available at <https://www.benefits.va.gov/fiduciary/fiduciary.asp>). As indicated earlier, it is the position of the Report's authors that the cost of foster care is not a "just debt" owed by the child beneficiaries.

<sup>26</sup> Eli Hager, Joseph Shapiro, *State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care*, NPR (April 22, 2021) (available at <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>).

<sup>27</sup> Emilie Stoltzfus, Paul Davies, William Morton, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions*, Congressional Research Service, at 8, 24 (Nov. 23, 2021) (available at <https://sgp.fas.org/crs/misc/R46975.pdf>).

<sup>28</sup> Emilie Stoltzfus, Evelyne P. Baumrucker, Adrienne L. Fernandes-Alcantara, Bernadette Fernandez, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, Congressional Research Service (Nov. 19, 2014) (available at <https://crsreports.congress.gov/product/pdf/R/R42378>).

Using the most conservative estimate of impacted youth (5.3%) and the estimated percentage of youth who qualify for federal benefits (20%) reveals that this practice impacts between 39,000-60,000 of the country's 600,000 children who pass through foster care in a typical year.

## **2. The Benefit Amounts at Issue**

The current SSI benefit rate for children is \$943/month<sup>29</sup> and the average monthly benefit for a child of a deceased worker eligible for OASDI benefits is \$983.<sup>30</sup> The maximum monthly benefit through the VA's DIC program is \$681.<sup>31</sup> While the total amount of federal benefits received will vary on a case-by-case basis, recent federal data indicates that the average amount of time a child spends in foster care is 17.5 months.<sup>32</sup> Applied here, this means that each foster youth beneficiary could receive at least \$16,000 in Social Security benefits. Many older youth experience much longer stays in foster care, so this amount would be substantially greater. From the state's perspective, the benefit amounts per youth are a drop in the bucket compared to their general budgets – and even when compared just to their child welfare budgets. But from the perspective of the child, to whom these funds belong, these resources represent a lifeline. If the benefits were used to address the children's disabilities (where applicable) or conserved for their future use after leaving care, they could make the difference between a young person being homeless and having a place to call home, and between a life of poverty and the opportunity for stability and self-sufficiency.

## **3. The Lack of Data to Define the Scope of the Problem**

Accurate and comprehensive data regarding the full scope of this problem has been elusive and challenging to obtain. As CAI's advocacy moved forward, we asked and researched data regarding how many foster youth received benefits. Primarily, the response we received from the Administration for Children and Families Children's Bureau was, "Go ask SSA." When we approached the Social Security Administration to inquire how many of its beneficiaries were in foster care and how much money was at stake, we were told to "Go ask ACF." In response to a 2015 Freedom of Information Act (FOIA) request made by the Children's Advocacy Institute to SSA for documents containing information related to the appointment of representative payees for children who are eligible for various Social Security benefits while in foster care, SSA responded as follows: "We cannot provide a response to this request because we do not have sufficient data in our records to definitively identify a foster care situation."<sup>33</sup> This demonstrates a disappointing dearth of transparency, accountability, and a strong aversion towards cross-agency collaboration. Pending FOIAs from CAI have been met with even stronger resistance, calling into question the public interest served by the request, and requiring that we pay for the information.

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<sup>29</sup> Social Security Administration, *SSI Federal Payment Amounts For 2024* (available at <https://www.ssa.gov/oact/cola/SSI.html>).

<sup>30</sup> Zhe Li, *Social Security Survivors Benefits*, Congressional Research Service, at Table 2 (May 16, 2022) (available at <https://crsreports.congress.gov/product/pdf/RS/RS22294/33>).

<sup>31</sup> U.S. Department of Veterans Affairs, *2024 VA DIC rates for spouses and dependents* (available at <https://www.va.gov/disability/survivor-dic-rates/#dic-rates-if-youre-the-survivi>).

<sup>32</sup> The Annie E. Casey Foundation, *Child Welfare and Foster Care Statistics* (May 30, 2023) (available at <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>).

<sup>33</sup> Letter from Mary Ann Zimmerman, Acting Freedom of Information Officer, Social Security Administration, to Robert Fellmeth (CAI Executive Director) (Feb. 18, 2016) (available at <https://drive.google.com/file/d/1QoYIPopSHI0jxeOVFEym6vbAq77ZVN1W/view?usp=sharing>).

Independent research by the Marshall Project and NPR in 2021 showed that, at that time, agencies swept up foster children’s federal benefits for the state’s own benefit in at least 49 states plus Washington, D.C.<sup>34</sup>

As noted above, SSA claims (and has done so for years) that “[c]ases involving foster care are among the most sensitive [SSA] encounters. It is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents to do so. It is extremely important that SSA follow all legal requirements, including conducting a complete investigation of the individual or organizational representative payee (payee) applicant, using the payee preference list appropriately to identify when other payee leads should be developed and providing due process to the child’s parent and/or legal guardian.”<sup>35</sup> Since then, some additional data has started to be forthcoming, after the passage of the Strengthening Protections for Social Security Beneficiaries Act of 2018 included provisions for stronger monitoring of representative payees and additional information sharing between SSA and state agencies. Section 103(a) of the Act requires SSA to enter into agreements with states to share and match child welfare and SSA data on a monthly basis, and for any represented minor beneficiary in foster care whose foster care arrangements have changed, redetermine the appropriate representative payee. Additionally, the Act included a provision for the U.S. Government Accountability Office (GAO) to evaluate the number of represented minor beneficiaries in foster care under the responsibility of a state, and for those beneficiaries, the type of representative payee and how the Social Security funds were used.<sup>36</sup> Although the intent of this bill, for which CAI helped advocate, was to get to the bottom of the lack of transparency and cross-agency data quantifying the extent of this problem in order to advance further policy solutions, that data is still largely elusive five years later.

In its 2021 evaluation, GAO reported that as of April 2021, only 14 states were actively exchanging data with SSA.<sup>37</sup> According to GAO, the reason for such poor compliance and outcomes is that SSA and some state child welfare agency officials found there to be challenges to entering into, implementing, and maintaining data exchanges after an agreement is signed. With regard to entering into the exchanges, SSA reported that the Act does not explicitly provide that states have an obligation to enter into data exchange agreements with SSA; nor does the Act provide SSA with a mechanism to compel states to enter into data exchange agreements or act within a certain time frame.<sup>38</sup> This, in fact, is a challenge within most if not all of the federal child welfare law—meaningful mechanisms to enforce the law are so limited as to detract from the law’s intent and purpose.<sup>39</sup> In spite of this poor compliance, no enforcement action has been taken by the respective Offices of the Inspector General or penalties applied to states refusing to comply.

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<sup>34</sup> Michelle Pitcher, Weihua Li, and David Eads, *These States Take Money Meant for Foster Children*, Marshall Project, NPR (May 17, 2021) (available at <https://www.themarshallproject.org/2021/05/17/these-states-take-money-meant-for-foster-children>).

<sup>35</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (Effective Dates: 09/12/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159>).

<sup>36</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>37</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 5 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>38</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 5 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>39</sup> See, e.g., the Child Abuse Prevention and Treatment Act, 42 USC 5101 et seq; 42 USC 5116 et seq. (available at <https://www.govinfo.gov/content/pkg/USCODE-2017-title42/html/USCODE-2017-title42-chap67.htm>) and the

Status of Data Exchange	States (including the District of Columbia and territories)
Exchanging data	Alabama, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Nebraska, Nevada, Ohio, South Dakota, Vermont, Virginia (14)
Actively testing	Arizona, California, Massachusetts, Montana, Tennessee, Texas, Utah (7)
Entered into a data exchange agreement, but no additional steps	Alaska, Florida, Hawaii, Kansas, Louisiana, Maryland, Missouri, Oregon, Rhode Island, West Virginia (10)
Not entered into a data exchange agreement	American Samoa, Arkansas, Colorado, Connecticut, Georgia, Guam, Idaho, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Commonwealth of Puerto Rico, South Carolina, United States Virgin Islands, Washington, Wisconsin, Wyoming (24)

**Status of SSA’s Section 103(a) Data Exchanges with State Child Welfare Agencies as of April 2021<sup>40</sup>**

The limited data GAO provided in its 2021 evaluation included the following:

- A child welfare agency was the representative payee for about 81% of minor beneficiaries in foster care as of the end of November 2020.<sup>41</sup>
- The **seven** jurisdictions that provided 2020 data on how much of the funds they had conserved on behalf of the intended beneficiaries reported as follows:<sup>42</sup>
  - Nebraska: 15%
  - Virginia: 7%
  - District of Columbia: 4%
  - Delaware: 3%
  - Iowa: 2%
  - Kentucky: 0%
  - Maine: 0%

More recent data indicates that as of June 2023—five years after the enactment of the federal Act—only 23 states were actively exchanging this much-needed information with SSA.<sup>43</sup> Unfortunately, of the nation’s ten most populous states, only three (Texas, Illinois, and Ohio) were among the states sharing data at that time. As of that date, California, Florida, New York,

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Bipartisan Budget Act of 2018 - Public Law (P.L.) 115-123 which included the Family First Prevention Services Act (FFPSA) (available at <https://www.congress.gov/115/plaws/publ123/PLAW-115publ123.htm>).

<sup>40</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 5 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>41</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 9 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>42</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 11 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>43</sup> See *Interim Foster Care Data SFC 071223*, spreadsheet provided by the Office of Sen. Ron Wyden (D-OR) to the Children’s Advocacy Institute (available at <https://docs.google.com/spreadsheets/d/176ugj6Bru1N7si4-nYkRkm2qwUBhP6vy/edit?usp=sharing&ouid=100069285172863872566&rtpof=true&sd=true>).

Pennsylvania, Georgia, North Carolina, and Michigan were not sharing this critical information. Until all states are actively participating in this data exchange, accurate information about the management and use of federal benefits belonging to foster care beneficiaries will be difficult to obtain. This failure of accountability resulting in a lack of reliable cross-agency data considerably delays and interferes with reform efforts.

## II. The Consequences for Foster Youth and their Families

### A. Exacerbating the Hardships Unique to Youth Aging Out of Care

The transition from foster care to adulthood presents unique vulnerabilities for all youth—and these challenges are further compounded for those who have a deceased parent or live with a disability. As these individuals "age out" of foster care between the ages of 18 and 21, they encounter formidable challenges without the familial or social safety nets available to their peers.



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"It's really messed up to steal money from kids who grew up in foster care. We get out and we don't have anybody or anything. This is exactly what survivor benefits are for."

**Tristan H.**  
former foster youth

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For decades, outcomes for youth exiting the foster care system have been troubling. The federal government and the states have been undertaking efforts to improve outcomes. However, educational, employment, and housing outcomes for this group remain dismal. The attainment of postsecondary degrees remains markedly lower among foster youth, which directly impacts their employment prospects and financial stability.<sup>44</sup> For example, less than three percent obtain a bachelor's degree, an outcome with little variation over the past two decades.<sup>45</sup> Research reveals that approximately 29% of youth who remained in foster care beyond their 17th birthday experienced homelessness between the ages of 19 and 21, a rate significantly higher than their peers in the general population.<sup>46</sup> They experience incarceration at higher rates than their peers and become parents at an early age at higher rates than their peers. According to Annie E. Casey Foundation, among youth aging out of foster care, one in five report being incarcerated between

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<sup>44</sup> Abigail Rose Lindner, Ryan Hanlon, *Outcomes of Youth with Foster Care Experiences Based on Permanency Outcome – Adoption, Aging Out, Long-Term Foster Care, and Reunification: A Systematic Review*, Children and Youth Services Review (2024) Volume 156, 107366, at pg. 2 (available at <https://www.sciencedirect.com/science/article/pii/S0190740923005625?via%3Dihub>).

<sup>45</sup> Sarubbi, M., Parker, E., & Sponsler, B. A. (2016, October). *Strengthening Policies for Foster Youth Postsecondary Attainment*. Education Commission of the States. <https://files.eric.ed.gov/fulltext/ED570481.pdf>

<sup>46</sup> Kelly, P., *Risk and protective factors contributing to homelessness among foster care youth: An analysis of the National Youth in Transition Database*, Child Welfare League of America (2020), at pg. 4 (available at <https://doi.org/10.1016/j.childyouth.2019.104589>).

ages 17 to 19 as well as between ages 19 to 21.<sup>47</sup> Furthermore, one in 10 report becoming a parent between the ages of 17 and 19, while nearly one in four (23%) become parents between the ages of 19 and 21.<sup>48</sup> Additionally, accessing healthcare, particularly mental health services, remains a hurdle for these vulnerable young adults.<sup>49</sup>

Children and youth in foster care experience disabilities at significantly higher rates than their non-foster care peers.<sup>50</sup> Moreover, their early exposure to trauma, among other factors, significantly elevates their risk of mental health disorders, such as PTSD, at rates far surpassing their non-foster peers.<sup>51</sup> These health challenges carry over into other areas such as educational achievement and work opportunities. It is estimated that workers with disabilities who have at least a high school education earn 37% less on average than their non-disabled peers, further highlighting the critical importance of youth having access to their benefits to help address this unique shortfall. Foster youth with disabilities who are eligible for Social Security disability benefits encounter these already challenging outcomes, compounded by the additional challenge and expense of living with a disability.

When a child enters foster care, the state assumes the role of parent to that child. Parents aim to set their children up for success, and most would not allow their child to transition to independent living without appropriate resources, especially if the child has a disability. It is, therefore, imperative for the state, particularly when a state or county agency acts as the Representative Payee, to manage and preserve any federal Social Security or veterans benefits belonging to a foster child as if he/she were our own. These resources are vital and may very well mean the difference between financial stability and a spiral into poverty, homelessness, and despair as the youth transitions from foster care to adulthood.

## **B. Racial Disproportionality and Equity Issues**

The intersection of racial disparities, disability, and parental loss creates a multifaceted challenge that disproportionately impacts black, indigenous, and other people of color (BIPOC) children and youth in foster care who are eligible for or receiving benefits. This disproportionate impact stems from several factors: BIPOC youth are overrepresented in foster care, there are disability disparities among youth in foster care, BIPOC children and youth experience barriers to diagnosis and appropriate treatment both before and after they encounter the foster care system, and BIPOC children and youth are more likely to lose a parent earlier in life.

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<sup>47</sup> Annie E. Casey Foundation, *Child Welfare and Foster Care Statistics*, KIDS COUNT Data Center (May 30, 2023) (available at <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>).

<sup>48</sup> *Id.*

<sup>49</sup> Abigail Rose Lindner, Ryan Hanlon, *Outcomes of Youth with Foster Care Experiences Based on Permanency Outcome – Adoption, Aging Out, Long-Term Foster Care, and Reunification: A Systematic Review*, Children and Youth Services Review (2024) Volume 156, 107366, at pg. 3 (available at <https://www.sciencedirect.com/science/article/pii/S0190740923005625?via%3Dihub>). See also American Institutes for Research, *Those with Disabilities Earn 37% Less on Average; Gap is Even Wider in Some States* (Dec. 2014) (available at <https://www.air.org/news/press-release/those-disabilities-earn-37-less-average-gap-even-wider-some-states>).

<sup>50</sup> Jennifer E. Blakeslee, A. Del Quest, Jennifer Powers, Laurie E. Powers, Sarah Geenen, May Nelson, Lawrence D. Dalton, Elizabeth McHugh, other members of the Research Consortium to Increase the Success of Youth in Foster Care, *Reaching Everyone: Promoting the Inclusion of Youth with Disabilities in Evaluating Foster Care Outcomes*, Children and Youth Services Review, at pg. 1802 (available at <https://www.sciencedirect.com/science/article/pii/S0190740913002661?via%3Dihub>).

<sup>51</sup> Austen McGuire, Lindsay Huffhines, Yo Jackson, *The Trajectory of PTSD Among Youth in Foster Care: A Survival Analysis Examining Maltreatment Experiences Prior to Entry into Care*, Child Abuse & Neglect (2021) Volume 115, 105026 at p. 3 (available at <https://www.sciencedirect.com/science/article/pii/S0145213421000995?via%3Dihub>).

BIPOC children and youth are overrepresented in the foster care system, a concern highlighted by the Children's Defense Fund.<sup>52</sup> Implicit bias and racial inequity persist throughout a child's experience in the child welfare system, affecting everything from maltreatment reports to judicial determinations, to educational outcomes, and foster care placements to family reunification efforts.<sup>53</sup>

Children and youth in foster care are also more likely to experience disabilities, with prevalence rates estimated to be between 30 to 60%, compared to 21% in the general population.<sup>54</sup> Though not all of these disabilities qualify for SSI benefits, many do, and existing data indicating that only about 5% of foster youth are receiving benefits points to a lack of care and attention to address these needs. Studies indicate that Black children are particularly susceptible to underdiagnosis or delayed diagnosis of various disabilities.<sup>55</sup> SSA Survivor Benefits are available to eligible children and youth who have a deceased parent. Some of these children land in foster care due to the loss of a parent. The COVID-19 pandemic, unfortunately, highlighted existing disparities in health care and the issue of early parental death among BIPOC communities, with Black children significantly more likely to lose a parent or caregiver to the virus compared to their white peers. The pandemic starkly illustrated this disproportionate impact.

### C. Poverty, Family Preservation, and Reunification

Research clearly demonstrates that families who are experiencing poverty are far more likely to be reported to child protective services than families with more resources.<sup>56</sup> In fact, poverty is unfortunately often confused with neglect. As a result, most of the children placed in foster care are there due, at least in part, to their parents' economic hardships.<sup>57</sup>

Acknowledging that financial hardships often end up delaying reunification efforts, recent guidance from the Health and Human Services Administration for Children and Families (ACF) encouraged states to end the harmful practice of charging parents for costs associated with their child being in foster care.<sup>58</sup> ACF itself acknowledges that requiring families to reimburse the state

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<sup>52</sup> Children's Defense Fund, *2023 State of America's Children Report (2023)* (available at <https://www.childrensdefense.org/tools-and-resources/the-state-of-americas-children/soac-child-welfare/>).

<sup>53</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2021, April). *Child Welfare Practice to Address Racial Disproportionality and Disparity*. Child Welfare Information Gateway (available at <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>).

<sup>54</sup> Blakeslee, J. E., Quest, A. D., Powers, J., Powers, L. E., Geenen, S., Nelson, M., Dalton, L. D., McHugh, E., & other members of the Research Consortium to Increase the Success of Youth in Foster Care. (2013). Reaching everyone: Promoting the inclusion of youth with disabilities in evaluating foster care outcomes. *Children and Youth Services Review*, 35(11), 1801-1808 (available at <https://www.sciencedirect.com/science/article/pii/S0190740913002661>). See also American Community Survey. U.S. Census Bureau. (2022). American Community Survey 1-Year Estimates. Retrieved on 02/27/2024 (available at <https://data.census.gov/all?q=children%20with%20disabilities%202022>).

<sup>55</sup> Frye, D., *The Children Left Behind: Thousands of kids are being underdiagnosed and undertreated for ADHD — due in large part to their race or ethnicity. Why is this happening, and what needs to be done to fix it?* *ADDitude* (March 31, 2022) (available at <https://www.additudemag.com/race-and-adhd-how-people-of-color-get-left-behind/>).

<sup>56</sup> Child Welfare Information Gateway, U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Separating Poverty from Neglect in Child Welfare* (2023) (available at <https://www.childwelfare.gov/resources/separating-poverty-neglect-child-welfare/>).

<sup>57</sup> Diana Azevedo-McCaffrey, *States Should Use New Guidance to Stop Charging Parents for Foster Care, Prioritize Family Reunification*, Center on Budget and Policy Priorities (Oct. 13, 2022) (available at <https://www.cbpp.org/research/income-security/states-should-use-new-guidance-to-stop-charging-parents-for-foster-care>).

<sup>58</sup> *Id.*

and federal governments for the costs of foster care services is not in anyone’s best interests. “Many parent(s) of children receiving [Title IV-E Foster Care Maintenance Payments] are living in poverty and are too often required to pay child support to the state to offset the cost of their child placed in foster care. This can negatively impact a family that is trying to develop and maintain familial and economic stability to reunify with their child. It is not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation.”<sup>59</sup>



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“I didn’t realize I was basically paying for my own foster care — until some friends were like, guys, they’ve been taking our money.”

**Malerie S.**  
*former foster youth*

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In other words, the federal government is allowing states to end the harmful practice of forcing parents to reimburse the government for the cost of foster care when maintaining the family’s economic stability is key to successful reunifications – and yet they have not similarly acted to stop states from intercepting and using the children’s own benefits to pay for their care, which creates the same barriers to economic stability for youth returning home or aging out of care. Collecting and conserving funds that belong to children in care, and then turning the funds over to their parents when the family is reunified, or to the children themselves if they leave care at age 18 or older, is not only the duty of a responsible government, but is equally critical to ensuring successful and timely reunifications for the families involved (perhaps preventing the families from having further involvement with the child welfare system) and successful transitions from foster care to self-sufficient adulthood for the youth involved.

Further, allowing youth to age out of foster care with their own conserved assets, also benefits society at large. One study explored the economic costs associated with the disparate outcomes for young people who age out of foster care in four areas: education, early parenthood, homelessness and incarceration. It concluded that “with the right resources, 5,290 more young people would graduate from high school each year, leading to \$2.17 billion in economic gains through increased lifetime income. Additionally, 2,866 fewer young women would experience early parenthood by the age of 19, resulting in avoided societal and taxpayer costs of \$295 million for the first 15 years of the child’s life.”<sup>60</sup>

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<sup>59</sup> Aysha E. Schomburg and Tangler Gray, *Joint Letter Regarding Assignment of Rights of Child Support for Children in Foster Care*, Administration for Children & Families, U.S. Department of Health and Human Services (July 29, 2022) (available at [https://www.acf.hhs.gov/sites/default/files/documents/cb/letter\\_regarding\\_assignment\\_rights\\_child\\_support\\_for\\_children\\_foster\\_care.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf)).

<sup>60</sup> Jim Casey Youth Opportunities Initiative, The Annie E. Casey Foundation, *Future Savings: The Economic Potential of Successful Transitions From Foster Care to Adulthood* (2019) at 3 (available at <https://assets.aecf.org/m/resourcedoc/aecf-futuresavings-2019.pdf>).

### III. The Law

As a whole, the patchwork mosaic of Constitutional law, federal law, caselaw and federal regulation and guidance create both clarity and confusion. Many of the constitutional issues at stake have not yet been litigated or decisively ruled upon. Those that have are limited in scope. Federal law seems clear at first blush, but has not yet reconciled contradictory provisions between laws overseen by different agencies. Thus far, most analyses of current law place a strong emphasis on the fiscal impact to states rather than the lifelong implications for the children involved. Similarly, federal regulations, rules, and guidance provide ample opportunity to conclude that this practice is inconsistent with congressional intent and reasonable statutory analysis, but also confers great deference to states who wish to interpret contradictory provisions for their own benefit. New information about transition aged youth, the importance of youth rights and engagement, the injustice of inequities in the child welfare system, the costs of failed transitions to adulthood, and the availability of ABLE accounts demand a fresh analysis focused on achieving positive outcomes. With more than half of states taking steps to advance reform, federal leadership is desperately needed both by federal agencies and from Congress to convey a clear and consistent message that this practice is not allowed and is antithetical to the best interests of these children.

What is undisputable is that youth in foster care have no obligation to pay for the cost of their own care, and that states have an independent legal obligation to provide for all children in foster care.

#### A. Constitutional Law

Any state law, regulation, policy or practice that allows the state to use foster children's SSI and/or OASDI benefits to offset the cost of their foster care violates both the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.<sup>61</sup> The federal benefits at issue are undeniably the property of the foster children beneficiaries and, as such, are constitutionally protected.

With regard to the Equal Protection Clause, these practices single out foster children who are disabled and those who have a deceased parent, and require just that subset of children in foster care to pay for their own care. For the most part, children outside these classes of foster children are allowed to keep their assets and resources intact while in care. Appropriating the foster children's federal benefits confers inferior status due to their disability — and constitutes discrimination that should be assessed rigorously and with heightened scrutiny.

Pursuant to the Due Process Clause, children have a right to notice and opportunity to be heard when a government entity seeks appointment as the children's fiduciary to control their federal benefits, is so appointed, and then spends those benefits. Notice and opportunity to be heard are "central to the Constitution's command of due process."<sup>62</sup> But, as this Report indicates, very few states provide any notice to the child beneficiaries, parents, legal representative, or any caring adult in the child's life prior to applying for the benefits or when applying to be the child's representative payee — nor do they provide notice that the agency will be using the benefits to offset the child's cost of care.<sup>63</sup>

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<sup>61</sup> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

<sup>62</sup> *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993).

<sup>63</sup> Although SSA guidance instructs its employees to provide advance notice about a payee appointment to parents (except where parental rights have been terminated), advocates are not assured such notice routinely takes place. Further, even if such notice is provided, parents of children in foster care may have other more pressing issues to

In addition to failing to affirmatively provide due process to children or the adults who care about them, these agencies are believed to withhold key information from SSA about other potential representative payees who would, in fact, use or conserve the benefits in the child's best interest, and SSA neither presses them for it nor seems to investigate leads of their own. Having a representative payee fiduciary with broad authority to control and siphon the children's federal benefits without ever informing or discussing those benefits with the child does not just violate their general property rights – it effectively strips away the value of those benefits entirely. Because the children (and others who are in a position to understand the implication of the state's actions) are never notified of the existence or use of these benefits, they are not afforded the opportunity to challenge the state's appointment as payee or its use of the benefits. It is no exaggeration to say that the foster children derive essentially no actual benefit from their benefits. This is a complete deprivation in every way except nominal ownership with almost none of the rights and powers normally incident to ownership. A *de facto* loss of almost all attributes of ownership to a state agency is more than ample deprivation to trigger constitutional protection of due process. But, even if a state was not pocketing foster children's funds for its own gain, the children would still have an absolute right to notice and opportunity to be heard regarding the state's appointment as representative payee.<sup>64</sup>

Ultimately, it should not require an in-depth Constitutional analysis to recognize that it is unjust for a state agency to secretly apply for and spend the public benefits of a vulnerable child in its own care and for its own direct benefit, rather than in the child's best interest.

## B. Federal Law

Pursuant to federal law, states are responsible for making foster care maintenance payments on behalf of each child in foster care,<sup>65</sup> and those payments must cover the cost of food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance, and reasonable travel, among other things.<sup>66</sup> This statutory requirement applies equally to all children in foster care without exclusion or exception.

In order to help support the state's costs of running their child welfare system and caring for foster children, federal law permits states to claim partial federal reimbursement through Title IV-E of the Social Security Act<sup>67</sup> (a program separate and distinct from the SSI and OASDI programs) for a portion of foster care expenditures for eligible children or expenses, as discussed below.

Yet for decades, states (and counties, where applicable) have commandeered foster children's federal benefits as a "revenue maximization" strategy (the term many of them actually use<sup>68</sup>) to offset their duty to pay for care. It is shameful and predatory to treat children who have

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deal with, and they might not appreciate the significance of having the state agency act as the child's representative payee (as they may assume that the agency would abide by its legal duty to use or conserve the benefits in the child's best interests). Advocates contend that it would be preferable to also require SSA to provide advance notice to the dependency court and the child's CAPTA-required GAL (who is typically an attorney or court appointed special advocate).

<sup>64</sup> For more information, see *Brief of Amicus Curiae in Support of Appellees Z.C., et al., in State of Alaska v. Z.C.* (Alaska Supreme Court Case No. S-18249/S-18259) (Aug. 23, 2022) (available at [https://drive.google.com/file/d/1fH4R7\\_MDcDgDZZqyPqk5ZtGGrk9nwU9s/view?usp=drive\\_link](https://drive.google.com/file/d/1fH4R7_MDcDgDZZqyPqk5ZtGGrk9nwU9s/view?usp=drive_link)).

<sup>65</sup> 42 U.S.C. § 672(a)(1).

<sup>66</sup> 42 U.S.C. § 675(4)(A).

<sup>67</sup> 42 U.S.C. §§ 671-679b.

<sup>68</sup> Daniel L. Hatcher, *Foster Children Paying for Foster Care*, *Cardozo Law Review*, Vol. 27, pp. 1797-1852 (2006) (available at SSRN: <https://ssrn.com/abstract=942007>).

suffered from abuse or neglect and/or the trauma of family separation as sources of revenue, foisting the state's financial obligation to care for them onto the children themselves. This policy is not the result of evidence-based policy decisions regarding how to best serve children in foster care, but rather a desperate strategy by cash-strapped state agencies to fill out their budgets.

Pursuant to the Title IV-E Foster Care, Prevention, and Permanency program, states are entitled to federal reimbursement for a part of the cost of providing care to some children who are placed in foster care. This federal support, however, has diminished considerably over time due to continued reliance on the so-called "lookback" provision. In short, that provision requires states to look back to certain prior eligibility provisions as they were in effect on July 16, 1996, as part of establishing a child's eligibility for federal foster care support under the Title IV-E program. In sum, a child will only be eligible for federal IV-E support if the child was removed from a family with income that is below the specific state "need standard" that was established by the state under federal law as in effect on July 16, 1996 – without adjustment for inflation and as determined using the income counting rules in effect under that program on that date.<sup>69</sup> Fewer and fewer families meet that outdated standard each year. A 2020 report indicated that just 39% of children in foster care were covered by federal Title IV-E foster care funding<sup>70</sup> – and the percentage is no doubt even lower in 2024.

With ever-shrinking federal IV-E support for children in foster care, states have been forced to bear an increasing share of foster care maintenance costs. However, instead of urging the federal government to end the outdated lookback provision, or allocating more state or local general funds toward foster care support, states began "mining" children in foster care themselves for alternative funding sources for them to tap into in order to balance their books.<sup>71</sup> One regrettable strategy they identified and pursued was to seek and intercept other federal benefits for which some children in care are eligible and to use these funds (which belong to the child beneficiaries, not the state) to offset the child's cost of care. In other words, states are forcing some of our most vulnerable children in foster care – those with disabilities and those who have a deceased parent – to pay for their own care, when this is their most fundamental duty under federal law. This practice became routine across the country, with many agency leaders themselves unaware of the practice, and others weakly defending it by taking a "well, everyone else is doing it" approach. Anemic funding for federal and state child welfare programs is real, pervasive, and critical to address. But we should never turn to the very children these agencies were established to support to foot the bill for their own care.

### C. Federal Executive Branch

Two federal agencies are primarily relevant to this discussion: the Social Security Administration (SSA), which administers SSI and OASDI, and the Administration for Children and Families (ACF), which oversees and administers foster care.<sup>72</sup> In various respects, federal policy

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<sup>69</sup> Emily Stoltzfus, *The Title IV-E Income Test Included in the "Lookback,"* Congressional Research Bureau (Apr. 19, 2019) (available at [https://www.cwla.org/wp-content/uploads/2019/09/CD\\_lookback\\_4\\_2019.pdf](https://www.cwla.org/wp-content/uploads/2019/09/CD_lookback_4_2019.pdf)).

<sup>70</sup> John Sciamanna, *Less Than 2 in 5 Children Now Covered by Federal Foster Care Funding,* Child Welfare League of America (2020) (available at <https://www.cwla.org/less-than-2-in-5-children-now-covered-by-federal-foster-care-funding/#:~:text=In%20the%20federal%20fiscal%20year,foster%20care%20exceeds%2060%20percent>).

<sup>71</sup> In fact, some states contract with and spend tax dollars on for-profit entities that are paid to develop and implement strategies to maximize revenue – such as identifying foster children with a disability or whose parent(s) have passed and who are eligible for SSI and/or OASDI, and helping the state apply for, receive, and divert the benefits away from those children.

<sup>72</sup> Although this Report includes survivor benefits received through the Veteran Administration within the term "federal benefits," the VA's role in this practice is not as significant as the role played by SSA and ACF.

and guidance regarding this practice is lacking, ineffective, inconsistent, and, at times, even contradictory.

SSA is responsible for the proper assignment, disbursement, and use of children's benefits. Both internal and external checks exist to ensure accountability with the law, although serious concerns abound regarding whether those accountability measures are meaningfully applied or enforced. For example, SSA claims in its Program Operations Manual System that "[c]ases involving foster care are among the most sensitive [SSA] encounters. It is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents to do so. It is extremely important that SSA follow all legal requirements, including conducting a complete investigation of the individual or organizational representative payee (payee) applicant, using the payee preference list appropriately to identify when other payee leads should be developed and providing due process to the child's parent and/or legal guardian."<sup>73</sup> And as noted above, SSA lists foster care agencies as preference #7 out of 8 for potential representative payees for minor beneficiaries.<sup>74</sup> And SSA's own guidance instructs its staff to appoint the applicant who will best serve the beneficiary; in the absence of a parent, be sure to consider whether other concerned relatives are a better payee candidate; and while the foster care agency has custody and may be legally responsible for the child, there may be other concerned relatives who would be better choices as payees; relatives with close ties to the child might be better able to make more balanced choices regarding use of the child's benefits.<sup>75</sup> Despite such guidance, SSA has appointed the foster care agency to serve as representative payee for at least 80% of the youth eligible for federal benefits.<sup>76</sup>

Though SSI is intended in most circumstances to support a child's basic needs when they are home, SSA has explicitly articulated that when these needs are provided for elsewhere, as is the case for foster children removed into care, their benefits must be used for unmet current or future needs. As GN 00602.001<sup>77</sup> explains "A payee must use benefits to provide for the beneficiary's current needs such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs. **If not needed for these purposes[...] the payee must conserve or invest benefits on behalf of the beneficiary[...]**". The Social Security Act requires representative payees (the state agency in most cases) to use SSI and OASDI funds for the beneficiary's "use and benefit" and in the beneficiary's best interest. If maintenance costs are provided for already, as required by Title IV-E, use of a child's benefits to reimburse the state would serve only the state's best interest, not the child beneficiary.

The fundamental purpose of child welfare agencies is to protect and serve the best interests of children. ACF is, in fact, the only federal agency created with the purpose and authority to monitor and ensure that the child welfare agencies adhere to that mission. With regard to

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<sup>73</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (Effective Dates: 09/12/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159>).

<sup>74</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.105 Preferred Representative Payee Order of Selection Charts* (Effective Dates: 05/23/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502105#b>).

<sup>75</sup> Social Security Administration, *Program Operations Manual System (POMS) GN 00502.159 Additional Considerations When Foster Care Agency is Involved* (Effective Dates: 09/12/2023 - Present) (available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502159>).

<sup>76</sup> U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) at p. 9 (available at <https://www.gao.gov/assets/720/714798.pdf>).

<sup>77</sup> Social Security Administration, *POMS GN 00602.001 Use of Benefits* (effective dates 8/5/2022-Present) (available at <https://secure.ssa.gov/poms.nsf/lnx/0200602001>) (emphasis added).

children in foster care, ACF's Children's Bureau is primarily responsible for administering federal programs that support state child welfare services. When foster children's federal benefits are pursued and spent by a state agency for its own bottom line, it contravenes the very purpose of child welfare and demonstrates how states are abdicating their duties to children as ACF stands by either facilitating or turning a blind eye to the practice.

For more information on how SSA and ACF have addressed this practice, see Section IV, *infra*.

#### D. Case Law

The U.S. Supreme Court narrowly ruled in a 2003 case that Washington's use of foster children's SSI and OASDI benefits to reimburse itself for foster care costs did not violate the SSA's anti-attachment clause (42 USCS § 407(a)), which protected certain benefits from "execution, levy, attachment, garnishment, or other legal process."<sup>78</sup> However, the Court did not address other relevant and pressing issues, such as the due process or equal protection concerns discussed above. And although the Court found that its interpretation of section 407 is not "antithetical" to the child's best interests, it failed to adequately explain how using a child's funds to reimburse the state for services the state is obligated by law to pay is consistent with the state's fiduciary obligations (as representative payee) to the child, or is in the best interest of the child.<sup>79</sup> In addition, there now exists the option to conserve the SSI benefits of foster children through asset-exempt vehicles such as ABLE accounts, which were not available at the time, and may have significantly impacted the ruling had they been available at that time.

Turning to state court rulings, the Court of Appeals of Maryland has ruled that foster children have a protected property interest in their benefits that requires due process when a state foster-care agency applies to be a foster child's representative payee and again when it receives the benefits ("[b]ecause Ryan, like all OASDI beneficiaries, has a property interest in his benefits, the Department's actions implicate Ryan's due process rights").<sup>80</sup> The court further held that due process requires that the state agency provide notice to the child and/or his or her legal representative that it had applied for and received OASDI benefits on the child's behalf ("we agree with Ryan W. that due process requires that notice be afforded at least to a [child's] attorney when the Department applies to become a payee and as benefits are received").<sup>81</sup>

A New Jersey court opinion held, among other things, that the state agency is responsible for the "maintenance ... of children," which includes but is not limited to money expended for shelter, utilities, food, repairs, essential household equipment, and other expenditures to remedy situations of an emergent nature.<sup>82</sup>

Pursuant to a settlement agreement in Illinois, the state agency enacted policies to manage foster children's benefits consistent with the best interest of the child standard rather than

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<sup>78</sup> *Wash. State Dep't of Soc. & Health Servs. v. Keffeler* (2003) 537 U.S. 371 [123 S. Ct. 1017, 154 L. Ed. 2d 972].

<sup>79</sup> While opining that requiring the state to conserve the child's SSI funds could cause a child to lose benefits entirely, should their resources exceed \$2,000, the Court failed to mention the various types of accounts that can be established that would not jeopardize the children's continued SSI eligibility, nor that the state could be using the child's benefits for additional resources or services to address the child's disability (and thus not exceed the \$2,000 cap), nor that children receiving OASDI benefits have no such resource cap. The Court further tried to find comfort in stating that if the state couldn't pocket the children's money, it might refuse to serve as the children's representative payee at all; this position ignores the fact that SSA would be legally obligated to identify another representative payee should that happen.

<sup>80</sup> See *In re Ryan W.*, 76 A.3d 1049, 1068 (Md. 2013).

<sup>81</sup> *Id.*

<sup>82</sup> *Div. of Child Prot. & Permanency v. K.N.* (2015) 223 N.J. 530, 126 A.3d 1231.

the state's financial interest. While not precluding the state from seeking some reimbursement for the cost of foster care, the agreement required that a beneficiary's special needs be prioritized in determining how benefits will be used.<sup>83</sup>

In currently pending litigation, two related appeals are before the Alaska Supreme Court. One appeal addresses whether the state agency's practice of forcing foster children who are disabled or have a deceased parent (eligible for SSI and/or survivor benefits) to reimburse the state for foster care, while not requiring this of all foster children, violates equal protection. The other appeal focuses on whether the agency's appointment as representative payee with control over the foster children's federal benefits, without providing the foster children any notice and opportunity to be heard, violates their due process rights.<sup>84</sup>

In 2023, the Children's Advocacy Institute, along with pro bono co-counsel Sheppard, Mullin, Richter & Hampton LLP, filed a lawsuit against San Diego County Child Welfare Services (CWS) on behalf of two former foster children who were entitled to \$25,000 in Social Security Survivor benefits after the death of their father. The lawsuit alleges that while serving as representative payee, CWS improperly used the children's benefits in a manner violating federal and state law, in violation of the County's fiduciary duties, and contrary to the children's best interests.<sup>85</sup>

## IV. The Landscape

### A. Federal, State, and Local Activity to Date

The last several years have seen an unprecedented and rapidly increasing variety of reform efforts sprout up across the country. These dynamic responses have been led by legislators, legal services organizations, youth groups, advocates, academics and agency leaders themselves. They are playing out not only in the courts, but have also taken the form of legislative resolutions, bills, voluntary agency reforms, city ordinances, foster youth bills of rights, and orders from state or local leaders.

**Federal Activity.** In 2007, Rep. Pete Stark (D-CA) introduced the Foster Children Self-Support Act,<sup>86</sup> which would have banned the use of Social Security or SSI benefits paid to representative payees on behalf of foster children to reimburse foster care maintenance payments by states; required states to provide for screening of foster children for eligibility for Social Security and SSI benefits and assistance; required written notice to the attorney or GAL appointed to represent a foster child of the initial determination; required a state plan requiring the appropriate state agency to develop a plan for each beneficiary designed to best meet the individual's current and future needs and enable the child to achieve self-support after leaving foster care. This bill, notably co-sponsored by former House member and now DHHS Secretary Xavier Becerra, was not enacted.

Since then, Rep. Danny Davis (D-IL) has championed this effort by introducing similar legislation, the Protecting Foster Youth Resources to Promote Self-Sufficiency Act, in 2016,<sup>87</sup>

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<sup>83</sup> Settlement agreement reached in *Willingham v. McDonald*, No. 96 CO 00120 (Cook County, Ill., Sept. 2000).

<sup>84</sup> *Kaufman v. State of Alaska*, Alaska Supreme Court Case Nos. 18249/18259) (various briefs are available at <https://drive.google.com/drive/folders/1LUY3Y5g7WtxAUjFQt-YFu8kBTmifACQB?usp=sharing>).

<sup>85</sup> See complaint filed in *V.R & B.R. v. County of San Diego Health and Human Services Agency, Child Welfare Services* (San Diego County Sup. Ct.) (Feb. 28, 2023) (available at [http://www.cachildlaw.org/Misc/FY\\_Survivor\\_Benefit\\_Complaint.pdf](http://www.cachildlaw.org/Misc/FY_Survivor_Benefit_Complaint.pdf)).

<sup>86</sup> H.R. 1104 (110th) (available at <https://www.congress.gov/bill/110th-congress/house-bill/1104?s=1&r=2>).

<sup>87</sup> <https://www.congress.gov/bill/114th-congress/house-bill/5737?s=3&r=1>.

2018,<sup>88</sup> and 2022.<sup>89</sup> These bills were not enacted, and a fourth iteration of this measure, which for the first time appears to have bipartisan support, is expected to be introduced in 2024. In addition to including the critical pillars of effective change, the bill will offer states some degree of federal financial support in continuing to appropriately identify children’s needs, securing their benefits, and managing and conserving their benefits.

Although officials at the White House, SSA, and ACF have expressed concern about this practice, shown interest in providing more just experiences and better outcomes for youth, and indicated plans for leadership at the federal level, neither SSA nor ACF have yet to put forth policy, guidance, or rules to clarify that using children’s benefits to supplant the state’s legal duty to pay for care is never in a child’s best interest, and that state representative payees use of a child’s funds to pay for care without ever meeting with or consulting with the child about their needs does not comport with representative payee duties or the most basic requirement to use funds for the child’s, not the payee’s benefit.

For its part, SSA continues to routinely appoint state foster care agencies to serve as representative payees for the vast majority of eligible youth in care without having fully investigated other preferred payees; has not pressed agency representative payees to justify their use of the child’s funds in the child’s individual best interests; has denied requests to provide advance due process to each child beneficiary over age 15 and each child’s CAPTA-required attorney or GAL prior to appointing the state agency to so serve; has declined to remind or demand accountability for agencies serving as representative payees for youth in care of their fiduciary duty to meet with the beneficiary to discuss their needs and solicit input on use of funds in their beneficiary’s best interest; and does not require state agencies serving as representative payees to provide annual accountings to the child beneficiaries or their GALs regarding the use or conservation of the child’s benefits.

Fortunately, SSA has recently indicated a greater interest in and commitment to addressing this issue. When pressed on this issue in a recent Congressional hearing, newly-appointed Commissioner Martin O’Malley vowed, “If I can create a rule, I will, and I look to do so very quickly.”<sup>90</sup> In addition, SSA has agreed to provide technical assistance to states regarding how to conserve children’s federal benefits in accounts that will safeguard their eligibility to receive future benefits, and it has taken steps to launch the data sharing exchange discussed above. Recent meetings with SSA officials demonstrate their intent to advance meaningful guidance and policy to clarify existing rules, ensure full accountability and transparency, and ensure SSA lives up to its acknowledgement that SSA has an elevated duty to protect the rights of foster children, whose cases are among the most sensitive SSA encounters.

For its part, ACF is still considering policy reforms proposed by CAI and others confirming that using a foster child’s federal benefits to offset the state’s obligation to provide foster care is contrary to a child’s best interest; pressing on the fact that foster youth must be engaged regularly in discussions about the status and use of their benefits at case planning and transition meetings; clarifying that screening and applying for children’s benefits upon entry into care and then establishing, monitoring, and accounting for these funds is necessary in order to properly administer the Title IV-E child welfare program and issue policy clarification that IV-E administrative funds may be claimed for these purposes; require that child welfare agencies provide notice to children and their attorneys/GALs at critical junctures; affirm agencies’ legal

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<sup>88</sup> <https://www.congress.gov/bill/115th-congress/house-bill/7296?s=4&r=1>.

<sup>89</sup> <https://www.congress.gov/bill/117th-congress/house-bill/9654?s=5&r=1>.

<sup>90</sup> See Joint Social Security and Work & Welfare Subcommittee Hearing with the Commissioner of Social Security, Martin O’Malley (Mar. 21, 2024) (available at <https://waysandmeans.house.gov/event/joint-social-security-and-work-welfare-subcommittee-hearing-with-the-commissioner-of-social-security-martin-omalley/>).

obligations to follow SSA's rules on representative payee preference, fiduciary duties as organizational representative payees, accounting requirements, and use of funds for the child's benefit; or issue new rules in the Child Welfare Policy Manual, best practices, or guidance to states on establishing, monitoring, and conserving child beneficiary's assets in appropriate accounts.<sup>91</sup> ACF has been providing some guidance to states that have sought technical assistance in implementing new reforms on children's benefits. They have, in addition, organized networking and information sharing between state leaders wishing to address this. Finally, ACS has indicated that they are eager to move forward with additional guidance, which could easily parallel the policy framework of its laudable recent policy discouraging states from pursuing child support claims from parents to reimburse the state for their child's foster care.

In a joint letter released by SSA and ACF on August 17, 2023, after two years of persistent advocacy by CAI, impacted youth, academics, and others, the agencies declined to issue new guidance that would help protect the best interests of foster youth beneficiaries, instead providing a series of reminders to states regarding their current obligations. Among other things, the joint letter states that "[l]ike other payees, title IV-E agency payees may use Social Security benefits to meet the current needs of child beneficiaries, including housing, food, medical care, and personal items"<sup>92</sup>—but did not clarify how such use would be in the best interest of the beneficiaries, given states' independent legal obligation to provide those services to all children in foster care or reconcile how this comports with 20 CFR § 416.645, which provides that if payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary.

The U.S. Government Accountability Office (GAO) and the Congressional Research Service have released a number of reports related to various aspects of this issue.<sup>93</sup> In response to one GAO report, bipartisan Congressional leaders stated: "GAO's report makes it evident we have work to do to make sure all foster youth receive and benefit from all SSA benefits for which they qualify and that benefits follow the child....SSA benefits are not always being used as intended, in the youth's best interest, although there appears to be wide variation among states. We are specifically concerned...about reports that benefits are being used to help state budgets instead of children."<sup>94</sup>

If the U.S. as a whole were to be graded on its federal law in protecting the rights and federal benefits of foster youth with disabilities and those whose parents are deceased, it would receive a resounding F. Across all criteria graded, federal law and policy fail. Although federal law requires agencies to pay for all foster children's care, and for children's benefits to be used only for their individual best interests, there is conflicting policy elsewhere which provides just enough confusion for states to justify continuing to fund their systems off the backs of the very children

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<sup>91</sup> To CAI's knowledge, SSA has held at least one facilitated network meeting of state and local child welfare agency leaders to identify common challenges in advancing reform, share proposed solutions and best practices, and flag areas where federal guidance is needed.

<sup>92</sup> Social Security Administration, Administration for Children & Families, *Subject: Reminders to State and Tribal IV-E agencies about the Social Security Representative Payee Program and the Title IV-E Federal Foster Care Program* (Aug. 17, 2023) available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/ssa-hhs-joint-letter.pdf>.

<sup>93</sup> See, e.g., U.S. Government Accountability Office, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries* (June 3, 2021) (available at <https://www.gao.gov/assets/720/714798.pdf>) and Congressional Research Service, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions* at 1 (November 23, 2021) (available at <https://sgp.fas.org/crs/misc/R46975.pdf>).

<sup>94</sup> Rep. John B Larson, *Larson, Davis, Walorski, Reed Issue Statement on GAO Report on Benefits Paid to Foster Youth by the Social Security Administration* (June 4, 2021) (available at <https://larson.house.gov/media-center/press-releases/larson-davis-walorski-reed-issue-statement-gao-report-benefits-paid>).

they exist to serve. This does not need to be the case. The Social Security Administration can—and has vowed to—issue new rules as possible to better protect these assets of these particularly vulnerable foster children. ACF is empowered to issue new guidance discouraging this practice and clarifying existing support available to states to do so. Congress has expressed bipartisan interest in advancing legislation to address any needed reforms beyond that which these agencies can do on their own. An A grade is in reach with the principled leadership of Congress and the Administration.

**State and Local Activity.** While meaningful reform at the federal level has not been forthcoming, the same is not true at the state and local levels. As of this writing, approximately half of the states have attempted, taken, or are considering, action to ensure proper access and use of foster youth’s federal benefits, to varying degrees. Leading the way are Arizona and Washington D.C., which recently enacted comprehensive legislation covering each of the elements of a model law.<sup>95</sup> To varying degrees, legislative or policy reform has also advanced in California, Connecticut, Hawaii, Illinois, Maine, Maryland, Nebraska, New Jersey, New Mexico, Oregon, and Washington, as well as in New York City, Los Angeles, and Philadelphia. States with prospective or pending legislation include Colorado, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Tennessee, Virginia, and Texas. Although not yet enacted, Oregon and Minnesota proposals went so far as to propose a path to financial restitution for impacted youth, which would establish a new gold standard. More information about all of these efforts can be found on the individual state pages in Part 2 of this Report, *infra*.

## **B. Child Support & Foster Youth Benefits: Parallel Policy Changes**

As noted above, recent guidance from ACF encourages states to end the harmful practice of charging parents for costs associated with their child being in foster care.<sup>96</sup> ACF itself acknowledges that requiring families to reimburse the state and federal governments for the costs of foster care services is not in any child or family’s best interests. “Many parent(s) of children receiving [Title IV-E Foster Care Maintenance Payments] are living in poverty and are too often required to pay child support to the state to offset the cost of their child placed in foster care. This can negatively impact a family that is trying to develop and maintain familial and economic stability to reunify with their child. It is not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation.”<sup>97</sup>

In other words, the federal government has recognized and moved to prevent harms caused by forcing parents to reimburse the government for the cost of foster care – and yet they have not similarly acted to stop states from intercepting and using the children’s own benefits to pay for their care. One might easily find that foster youth have been similarly “whipsawed by economic insecurity, family instability and separation” and have an even more desperate need to access their funds during and after care to bolster their own familial security. Securing and

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<sup>95</sup> For detailed information on Arizona’s passage of first-in-its-kind legislation to protect a foster child’s benefits and implement related reforms, see Center for the Rights of Abused Children, *Preservation of Youth Benefits Toolkit* (available at [https://www.thecenterforchildren.org/wp-content/uploads/2023/12/CFC\\_Preservation\\_Toolkit.pdf](https://www.thecenterforchildren.org/wp-content/uploads/2023/12/CFC_Preservation_Toolkit.pdf)).

<sup>96</sup> Diana Azevedo-McCaffrey, *States Should Use New Guidance to Stop Charging Parents for Foster Care, Prioritize Family Reunification*, Center on Budget and Policy Priorities (Oct. 13, 2022) (available at <https://www.cbpp.org/research/income-security/states-should-use-new-guidance-to-stop-charging-parents-for-foster-care>).

<sup>97</sup> Aysha E. Schomburg and Tangler Gray, *Joint Letter Regarding Assignment of Rights of Child Support for Children in Foster Care*, Administration for Children & Families, U.S. Department of Health and Human Services (July 29, 2022) (available at [https://www.acf.hhs.gov/sites/default/files/documents/cb/letter\\_regarding\\_assignment\\_rights\\_child\\_support\\_for\\_children\\_foster\\_care.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf)).

conserving funds that belong to children in care is not only the duty of a responsible legal parent and competent fiduciary but is equally critical to ensuring timely reunifications for families—perhaps preventing further child welfare involvement and ensuring successful transitions from foster care to self-sufficient adulthood. If ACF can act decisively to discourage offsetting the cost of care by billing poor parents, it can and should, using the same rationale, clearly discourage states from offsetting the child’s cost of care by billing the children themselves.



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“How are you going to make a child pay child support?”

**Alex C.**  
*former foster youth*

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## V. The Call to Action

The landscape at the federal level has changed considerably since Congress or the Administration seriously contemplated change. The widespread availability of ABLE accounts to conserve a child’s SSI benefits without exceeding asset caps has created easily accessible vehicles to help foster reform. In addition, this issue has now been embraced across a wide political spectrum across the nation. States red, blue, and purple are pushing for reforms in their states with the same righteous indignation. The same is true within Congress itself where members from the far-right and far-left agree that this policy is unjust, imprudent, and indefensible. Now is the first time that bipartisan legislation seems possible. In addition, the White House and federal agencies such as SSA and ACF have gradually come to understand their considerable power and authority to issue rules and policy guidance to make it clear to states that they must always act in the best interest of the child, use a child’s money in consultation with the child/their attorney only in the child’s best interests, and abide by all fiduciary duties when handling a child’s benefits. These combined factors have created an exciting moment for leaders at all federal levels to quickly advance the changes needed within their jurisdictions to end this practice once and for all.

### A. Federal Level

#### 1. Congressional Action

Congress must reintroduce and enact the Protecting Foster Youth Resources to Promote Self-Sufficiency Act, which would, among other things:

- Prohibit agencies from taking a foster youth’s assets or benefits to reimburse foster care costs.
- Require agencies to screen foster youth for eligibility for Social Security or Supplemental Security Income benefits, apply for the benefits, and help youth apply for continued benefits prior to leaving care.
- Require child welfare entities to notify the youth and/or their attorney or GAL that the state is the representative payee and provide benefit updates.
- Mandate that the agency, along with the representative payee and the child, develop a child-specific plan to help achieve self-sufficiency after leaving care,

including conserving the funds in an account (e.g., a Chaffee Foster Care Independence Program account, an ABLE account, or an Individual Development Account) for future needs.

- Require agencies to enter into information-sharing agreements with the SSA related to serving as representative payee.

## **2. Executive Branch Action**

The White House must sign the Protecting Foster Youth Resources to Promote Self-Sufficiency Act once passed through Congress.

Advocates have made specific requests for action by SSA at the highest levels, including providing actual language for POMS changes and more. The Supreme Court explicitly identified that SSA has the authority to define the terms of and clarify guidance on this issue in its 2003 decision,<sup>98</sup> and the Social Security Advisory Board has twice called upon SSA leadership to review its policies around this and ensure foster youth's benefits are being properly handled.<sup>99</sup> We call upon SSA to take the following actions to protect foster children eligible for federal benefits:

- Declare that it is contrary to the fiduciary obligation of a state agency serving as representative payee for a child in foster care to use the child's federal benefits to offset the state's obligation to pay for the child's current foster care and/or maintenance costs, as the agency is independently obligated to pay for those costs for all children in foster care.
- Provide notice directly and require states to notify beneficiaries over age 15, the beneficiary's parent if parental rights have not been terminated, and the beneficiary's legal representative (attorney/GAL) of any and all actions taken by the state to apply for federal benefits and/or to apply to serve as representative fee, and any communications received by the agency in relation to those applications.
- Require states serving as representative payee for children in foster care to provide beneficiaries over age 15, the beneficiary's parent if parental rights have not been terminated, and the beneficiary's legal representative (attorney/GAL) of annual accountings showing how the beneficiary's benefits were used and/or conserved.
- Prohibit the automatic appointment or batch approvals of state agencies as representative payee for child beneficiaries in foster care and mandate that SSA staff document the steps taken to identify alternative payees and the reasons for not selecting them, prior to appointing a state agency to so serve.
- As part of the annual accounting, require that state agencies serving as representative payees for children in foster care document how the child's benefits were used and/or conserved for their sole use and best interest, and what benefit they derived from their benefits specific to their disability or loss of parent to address unmet current or projected future needs, beyond the basic needs the agency is already required to and does provide to all other children in care.

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<sup>98</sup> *Wash. State Dep't of Soc. & Health Servs. v. Keffeler* (2003) 537 U.S. 371 [123 S. Ct. 1017, 154 L. Ed. 2d 972].

<sup>99</sup> See, e.g., Social Security Advisory Board, *Recent Developments in the Social Security Administration's Representative Payee Program* (June 19, 2019) (available at <https://www.ssab.gov/research/recent-developments-in-the-social-security-administrations-representative-payee-program/>).

- As part of the annual accounting required of state agencies serving as representative payee for youth in foster care, require that the agencies document that they met with the beneficiary on a regular basis to ascertain their current and foreseeable needs.
- Provide guidance and best practices to state agencies on how to conserve foster youth federal benefits in appropriate accounts that will not impact the youth's eligibility for any federal benefits.

ACF must take the following actions to foster children eligible for federal benefits:

- Declare that it is contrary to the fiduciary obligation of a state agency serving as representative payee for a child in foster care to use the child's federal benefits to offset the state's obligation to pay for the child's current foster care and/or maintenance costs, as the agency is independently obligated to pay for those costs for all children in foster care.
- Clarify that screening and applying for children's benefits upon entry into care is necessary in order to properly administer the Title IV-E child welfare program, and issue policy clarification that IV-E administrative funds may be claimed for these purposes.
- Ensure that notice to children and their attorneys/GALs is provided by the child welfare agency when benefits are applied for and received or upon any material change in benefits.
- Provide guidance to states on how under current federal law and ACF policy,<sup>100</sup> agencies must engage with youth in discussions about their assets as they hold required case review and transition planning meetings.
- Issue guidance that the vital documents required to be provided to foster youth by age 18<sup>101</sup> must include information regarding benefit status and any necessary actions to retain benefits and transfer accounts.
- Affirm agencies' obligations to follow SSA's rules on representative payee preference, fiduciary duties as organizational representative payees, accounting requirements, and use of funds for the child's benefit.
- Issue technical assistance and provide support to states on establishing, monitoring, and conserving children's assets in appropriate accounts.

## **B. State and Local Levels**

The energy and momentum of reforms across states over the last several years is exciting and promising. Efforts to limit or stop this indefensible practice have bubbled up from a wide array of stakeholders including foster youth groups, legislators, academics, foster and adoptive parents, judges, attorneys/CASAs and other advocates, governor's offices, and in several instances from foster care agencies themselves. States and local jurisdictions must enact legislation to ensure that federal benefits belonging to children in foster care are used in a manner that furthers their best interest, and/or are conserved to meet their future unmet needs. The model law elements

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<sup>100</sup> See, e.g., Child Welfare Information Gateway, *Prioritizing youth voice: The importance of authentic youth engagement in case planning*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau (2021) (available at <https://www.childwelfare.gov/pubs/youth-engagement>).

<sup>101</sup> For more information, see Children's Bureau, Vital Documents and Credit Reports Tip Sheet (available at [https://capacity.childwelfare.gov/sites/default/files/media\\_pdf/Vital%20Documents%20and%20Credit%20Reports\\_2023.pdf](https://capacity.childwelfare.gov/sites/default/files/media_pdf/Vital%20Documents%20and%20Credit%20Reports_2023.pdf)).

presented in the chart below would appropriately protect and promote the interests of youth in foster care who are eligible for federal benefits.

Other actions that can be taken at the state and local levels include:

- Enactment of executive orders prohibiting the state agency from taking federal benefits from children in foster care, and requiring that the agency use or conserve the child's benefits in a manner serving the best interest of the child beneficiary.<sup>102</sup>
- Adoption of agency regulations, directives, policies, and guidance prohibiting the use of foster children's federal benefits to offset the state's obligation to provide foster care, and including other elements of the model law, *infra*.

## Elements of a Model Law

The model law elements presented below would appropriately protect and promote the interests of youth in foster care who are eligible for federal benefits.

1

**Screen and Apply for Benefits.** Within 60 days of entry, and annually thereafter, a child welfare agency must screen all children in care for eligibility for benefits. If deemed eligible, the agency must promptly apply for benefits on the child's behalf, including appeals if necessary. Whenever the child is or may be eligible for SSI, the department shall, if necessary for benefits eligibility, forego claiming that child for purposes of any federal IV-E maintenance payments under Section 475(4) of the Social Security Act. Agencies should apply for IV-E administrative dollars to help pay for administrative costs of such.

2

**Provide Notice and Due Process at Every Step.** The agency must immediately notify the child, the child's attorney and/or GAL, the child's caseworker, the child's parents if parental rights have not been terminated, the child's legal guardian or guardians, and the attorney for the parents or legal guardian of any screening/assessment made by the agency on the child's behalf; any efforts to seek and identify a preferred representative payee on the child's behalf, and if none is available, any application by the agency to become representative payee for the child; any decisions or communications between the agency and the Social Security Administration regarding an application or appeal for benefits; and any actions regarding a savings or special account established on behalf of the child.

3

**Use and/or Conserve Benefits Only for the Child's Unmet Current and Future Needs and Provide Annual Accountings of the Child's Benefits.** The agency must be prohibited from using the child's benefits to offset their cost of foster care and must ensure that the child's benefits are used only for the child's current unmet needs or conserved for their foreseeable future needs. The agency must conserve the child's benefits in appropriate accounts that do not subject the child to loss of any future benefits. The agency must be required to provide annual accountings on the use/conservation of funds to the child, the child's attorney and/or GAL, the child's caseworker, the child's parents if parental rights have not been terminated, the child's legal guardian or guardians, and the attorney for the parents or legal guardian. The agency must be required to engage the youth in planning for the use of available and/or conserved funds.

<sup>102</sup> The Center for the Rights of Abused Children has prepared an outstanding Sample Executive Order, available at <https://www.thecenterforchildren.org/wp-content/uploads/2024/04/Model-Executive-Order-Final.pdf>.

4

**Provide Financial Literacy Counseling for Children and Training for Representative Payees and Agency Staff.** The agency must provide financial counseling to youth (e.g., starting at age 14) and train representative payees and agency personnel regarding fiduciary obligations when serving as representative payee. Counseling and training must address how to establish, monitor, and use proper financial vehicles (i.e., ABLE, Special Needs Trusts, etc.) to preserve benefit eligibility; the use of funds only for unmet current needs; planning and budgeting for foreseeable future needs in the transition plan; and the requirement to provide annual accountings as described above.

5

**Refund Youth Their Benefits, with Interest.** The child welfare agency must provide refunds to previously impacted youth (with proportion and lookback period to be determined by the state).

### C. Actions for GALs, CASAs, and Others

Individuals working with and on behalf of children in foster care, such as court-appointed guardians ad litem (GALs), court appointed special advocates (CASAs), caseworkers and others, can take several actions to help protect the youth's interests, even in states that have not yet enacted positive reform. For example,

- Check to see if your client is eligible for or receiving federal benefits, who is serving as representative payee, and how the benefits are being handled and spent.
- Determine whether the agency has used your client's federal benefits in their individual best interest, for unmet needs, or conserved your client's federal benefits for future unmet needs.
- Request an accounting for use of benefits in your client's best interest, and convey your client's stated priorities for the use of their benefits.
- If the agency is serving as representative payee, identify an alternative representative payee who has your client's best interest at heart, apply for a change, and seek to have an exempted account established to conserve federal benefits such as SSI (disability) where strict asset caps apply to the beneficiary.<sup>103</sup>
- Demand fiduciary accountability for agencies serving as payees and consider raising misuse of funds, breach of fiduciary duty, and violations of due process and equal protection.

### D. Youth Rights and Actions: Finding Justice

The first thing a foster youth should do if they learn that their benefits are currently being taken is to work with their attorney/GAL to identify a family member or trusted adult in the child's life who is able and willing to serve as the child's representative payee for their benefits, and have that person apply to SSA to be considered as a preferred representative payee. When the Supreme Court issued its ruling in the *Keffeler* case, one of the important findings was that when a foster child's benefits flow to someone other than the state agency, those assets may not be intercepted or pursued to reimburse the state for their care. Once federal policy and law clarify that state representative payees will be held accountable for their duty to the children as

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<sup>103</sup> Various types of special accounts allow eligible individuals to save and invest additional resources, generally without affecting their continued eligibility for public benefits. See, e.g., ABLE National Resource Center at <https://www.ablencr.org/>.

fiduciaries and are not allowed to use a child's benefits to reimburse their cost of care, it will be less important to address this. In the meantime, it is the most expedient path to stopping these children's benefits from being routinely siphoned by states for their own benefit.<sup>104</sup>

Following their investigation into this practice, NPR and The Marshall Project established resources to assist current and former foster youth in finding out if they are receiving, or had received, federal benefits, and if so, how they are/were used by their representative payee.<sup>105</sup> Although this information might be useful to some, the authors of this Report are aware that many youth have had extreme difficulty getting this information from SSA, and for those that succeeded, some experienced yet further frustration and even additional trauma when they realized that they had little recourse. To date, there is not a clear record of successful claims of misuse to the Social Security Administration, but as this practice becomes increasingly condemned and limited or eliminated in states across the country, these claims may increase in number and success. Current foster youth who are impacted by this practice can also reach out to their attorneys, GALs, CASAs, and others to challenge the use of their funds. Youth and their attorneys should insist that benefit status and use be addressed in case review and transition planning meetings, and formally identify the unmet current needs and specific foreseeable future needs for which their funds should be used or conserved. Former foster youth can seek the assistance of pro bono or low-cost legal service providers to pursue legal action, if appropriate.<sup>106</sup>

The first priority identified by most impacted youth is often to recover the benefits that were taken from them without their knowledge for a service that was provided to their foster care peers at no cost. As stated by one young man at a national training of children's attorneys, "If foster care was a service I knew I was being charged for, I would have asked for a refund." And bills including a path to recover benefits have, in fact, been introduced already in at least two states.<sup>107</sup> Although these efforts have not yet been successful, some legislators are starting to acknowledge the impropriety of this practice and the need to make impacted youth whole.

Another promising key reform vehicle propelled by youth voices involves Foster Youth Bills of Rights, which are being increasingly adopted in states. One state has already incorporated notice provisions regarding benefits into its bill of rights, and another state has proposed to do the same. In addition to notice, provisions could be included requiring youth be heard as to their needs, and to provide them a chance to propose a trusted adult to serve as representative payee.

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<sup>104</sup> To view or read the stories of former foster youth who were impacted by this regrettable practice, visit Children's Advocacy Institute, *Preserving Federal Benefits of Foster Youth: Lived Experience Advisor Voices* (available at <https://www.sandiego.edu/cai/advocacy/youth-benefits/youth-testimony.php>).

<sup>105</sup> See Eli Hager, The Marshall Project, *Were You Ever in Foster Care? Here's How to Find Out if the Government Took Your Money* (Apr. 22, 2021) (available at <https://www.themarshallproject.org/2021/04/22/were-you-ever-in-foster-care-here-s-how-to-find-out-if-the-government-took-your-money>).

<sup>106</sup> To identify such providers in a particular region, visit <https://www.lawhelp.org/>.

<sup>107</sup> For more information, see state pages, *infra*, for Minnesota and Oregon.



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"It's not OK for them to take something that is not theirs."

**Melanie P.**  
*former foster youth*

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## **PART 2: STATE EVALUATIONS**

### **I. The Process**

#### **A. Goals/Intent**

In embarking on the evaluation of state laws and policies regarding the management and protection of federal SSA and veterans benefits for foster youth, our report aims to achieve several objectives: (1) To inform the public, policymakers at both federal and state levels, and stakeholders about this critical issue, which has been perpetuated in large part by the secrecy by which it occurs; (2) To highlight model legislation and recognize states with outstanding laws and policies for protecting these vital resources for foster children and youth, and acknowledge the rapid pace of reform being pursued across the country; (3) To identify and apply public pressure to states requiring improvements in their laws and policies, detailing necessary reforms; (4) To offer a strategic guide for states aiming to improve their legal frameworks and better safeguard the assets and the futures of foster children and youth under their care. This approach is designed to be both educational and actionable, providing a clear path forward for improving the outcomes and well-being of foster youth from coast to coast.

#### **B. Methodology**

The Children's Advocacy Institute conducted an extensive research and outreach process to review each state's laws and policies for our report card. Initially, we established a set of model statute elements, centered on best practices and prioritizing the child's best interests. These elements, simply stated, are described below.

Our initial research questions, derived from these elements, explored specific legal requirements such as mandatory screenings upon entry into care, annual reassessments, application and appeal processes for benefits, notice requirements, training for state agency staff related to administering benefits and providing eligible youth financial literacy training specifically related to their SSA administered benefits.

We conducted an extensive review of state statutes, regulations, and policies to evaluate their implementation of these elements.<sup>108</sup> During our research, we filed numerous public records requests. Responses varied: some states provided information, others cited laws that limited

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<sup>108</sup> Note that CAI's research for past reports has focused exclusively on statutory provisions. For this Report, we expanded our survey to include regulations, policies, directives, and other official mandates. However, our review did not incorporate actual practice into the graded elements; where we found practice to deviate from a state's legal provisions, it is noted in the Additional Information section for the page.

responses to their residents and did not provide additional responsive information, and some states did not respond. We only included information from these public record request responses in our analysis if the information was corroborated by relevant legal citations from the state’s law, regulation, and policies.

Following this research, our team of attorneys and law student interns reviewed the laws, regulations, and policies of each state. The team discussed the findings and prepared a detailed page for each state, reflecting our understanding of state law and policy. These drafts were then sent to a state agency contact, a state advocacy organization contact, or both, allowing a two-week period for review and feedback. We provided an additional two weeks when it was requested, ultimately providing each state with at least a month to respond to our request for expert review.

Following our thorough review of each state, we identified and selected key elements for our report grading analysis. We prioritized elements vital for the administration and proper conservation of foster children’s federal Social Security and veterans benefits. These elements form the basis for ensuring the health, well-being and future financial stability of foster youth eligible for these federal benefits.

Upon receiving responses from the states, we thoroughly reviewed the information provided, integrated relevant responses from state reviewers, and applied this data to the final revised grading template. This template, which assigns point values as outlined in our grading criteria, was meticulously reviewed by our team to ensure consistency across states.

The team conducted a comprehensive review of each state, incorporating insights from state reviewers, additional research, and updates on rapidly developing legislation or policy proposals. We then applied this data to a final grading template. This template, which assigns point values as outlined in our grading criteria, focuses on ensuring fairness and consistency across all states during our assessment. Each state was subsequently scored and assigned a grade. Credit was awarded to states with legally enforceable statutes, regulations, or policies that met our grading criteria. Note that in our review, we considered only laws, regulations and policies that were in effect in states as of October 31, 2023.

Grades do not reflect practice on the ground or fidelity to newly passed reforms. They also do not reflect reform efforts that have been introduced and are still being considered or will require reintroduction or reconsideration. The first state to advance reform, Maryland, required several legislative cycles until it successfully passed legislation. In addition, state grades do not reflect county or local reforms, which may or may not lead to statewide changes, though these reforms are discussed on the state pages.

Grade	Total Points
A	81-100
B	61-80
C	41-60
D	21-40
F	1-20

### C. Grade Criteria Overview

This section comprehensively outlines the seven elements and grading criteria for the state laws, regulations, and policies reviewed for this Report.

There are two issues noted in the methodology section, and we repeat them here for the sake of clarity. First, in our review, we considered only laws, regulations and policies that were in effect in states as of October 31, 2023. Second, in the course of our research, we submitted numerous public records requests to states, seeking information relevant to the subject of this Report. The responses varied: some states provided information, others cited laws that limited responses to their residents and did not provide additional responsive information, and some states did not respond. We only included information from these public record request responses in our analysis if the respondent to our request corroborated the information they provided with relevant legal citations from the state's law, regulation, and/or policies.

### **ELEMENT 1: DOES THE STATE PROHIBIT THE AGENCY FROM USING THE CHILD'S FEDERAL BENEFITS TO OFFSET ITS OBLIGATION TO PAY FOR THE CHILD'S FOSTER CARE?**

Element 1 is a pivotal component of our assessment, as it focuses on whether state law ensures a child's benefits are used for the child's, rather than the state's own benefit. This element is of paramount importance because it reflects the values of the agency, its adherence with the basic premise of acting in the child's best interests, its thoughtfulness in setting children up for success, and its understanding of the awesome obligation that every parent — institutional or individual — has to care for their children's needs. We have assigned it the highest point allocation in our analysis to emphasize its status as the most critical element in our evaluation.

The practice of using a foster child's benefits for foster care expenses is a matter of significant concern. When agencies intercept these benefits, they effectively charge this particularly vulnerable subset of children and youth in foster care for their own care. Shifting the financial burden of providing foster care onto the children themselves is contrary to the intended purpose of these benefits. When a state engages in this practice, it hinders the ability to address a foster child's current unmet needs and to conserve benefits for their future necessities, as intended. As foster youth transition out of foster care, the availability of these funds, when they are appropriately conserved, can be critical in preventing instability and homelessness, making this element the cornerstone of our evaluation.

In fact, if Congress and each state simply prohibited the use of a child's benefits to pay for or offset their cost of care, this problem would effectively be solved.

#### **Possible Answers/Grades:**

- **Yes. (65 Points):** To earn full credit, a state must have a clear, unambiguous law or policy that prohibits the agency charged with administering foster care from using a child's federal benefits as reimbursement for foster care expenses. This element carries the highest weight of 65 points, reflecting its central importance. Properly safeguarding these funds is crucial for the well-being of vulnerable foster youth.
- **To Some Extent (32.5 Points):** A state earns partial credit if, for example, it has a law or policy that restricts the agency from using a child's benefits for reimbursement, but the restriction applies only to certain groups of children or only to a portion of the child's benefits.
- **No (0 Points):** A state receives no credit if, for example, it has a law or policy that permits agencies to use a child's federal benefits to pay for the child's foster care; it prohibits the agency from using a portion of the child's benefits, but uses permissive rather than mandatory language; or it lacks any law or policy that

explicitly prohibits the agency from using a child's federal benefits to pay for the child's foster care. This element relates to the use and conservation of monthly federal benefit payments, not lump sum payments (e.g., SSI lump sum payments).

Examples of policies that received 0 points:

-- A law or policy that authorizes – but does not require – the state to conserve federal benefits (e.g., Massachusetts)

-- A law or policy requiring the conservation of lump sum benefits (this Report is not looking at the treatment of lump sum benefits, just monthly federal benefit payments).

**Model Law Language:** Arizona's law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at B.1:** "If the department of child safety is appointed to serve as the representative payee, the department...[m]ay not use the child's federal benefits, other benefits, savings or assets to pay for or to reimburse the department of child safety or this state for any of the costs of the child's care."

## **ELEMENT 2: DOES THE STATE REQUIRE THE AGENCY TO NOTIFY THE CHILD, CHILD'S PARENTS/LEGAL GUARDIAN, AND/OR CHILD'S GUARDIAN AD LITEM (GAL)/ATTORNEY WHEN THE AGENCY APPLIES TO BECOME THE CHILD'S FEDERAL BENEFITS REPRESENTATIVE PAYEE?**

Element 2 assesses state law and policy regarding the notification requirement when a child welfare agency applies to become the representative payee for a child's federal benefits. This notification is vital to protect the child's due process rights, to ensure transparency and accountability, and to safeguard the interests of children in foster care regarding their federal Social Security benefits. Federal law and regulations already require a Representative Payee to meet regularly with a beneficiary, and for child welfare agencies to involve youth directly in case reviews and transition planning – including discussing available assets to meet their needs. Yet youth, their attorneys/GALs and their responsible adults are rarely, if ever, informed. Federal law requires that a child's benefits be used or conserved only in the child's best interests, thus it is critical to have the opportunity to weigh in early on the appointment of a representative payee who will abide by that requirement. If neither children nor their attorneys are informed of the application, this opportunity is foreclosed.

### **Possible Answers/Grades**

- **Yes (10 Points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires the agency to notify at least one of the following parties: the child, the child's parents/legal guardian, or the child's GAL/attorney, when the agency applies to become the child's federal benefits representative payee. This level of compliance signifies a state's commitment to transparency and the protection of the child's rights.
- **To Some Extent (5 Points):** A state earns partial credit if it has a law or policy that requires notification, but only under specific circumstances, or if the notification process is limited in scope. It indicates a state's effort to involve

relevant parties, though the policy might not be as comprehensive as necessary to ensure transparency and the protection of the child's rights.

- **No (0 Points):** States without any law or policy requiring notification to the relevant parties upon applying to become a representative payee for the child's federal benefits receive no credit. This lack of requirement indicates a lack of transparency and a significant gap in promoting the child's welfare and protecting their rights.

**Model Law Language:** Both Washington DC's and Arizona's laws serve as models for other states seeking to draft clear policies on this matter.

**From D.C. Law 24-309, Section 312(b)(2):** "The Agency shall immediately notify the child, the child's guardian ad litem, and the child's parents or guardians of...[a]ny application by the Agency to become the child's Social Security benefits representative payee."

**From Arizona A.R.S. § 8-468, at B:** "If a child is already receiving benefits before entering the department's care or if the department applies for benefits on behalf of the child, the department shall identify, in consultation with the child and the child's attorney, a representative payee...and shall apply to become the representative payee only if no other suitable candidate is available."

### **ELEMENT 3: DOES THE STATE REQUIRE THE AGENCY TO SCREEN ALL CHILDREN FOR POTENTIAL FEDERAL BENEFITS ELIGIBILITY WITHIN 60 DAYS OF ENTERING CARE?**

Element 3 assesses the effectiveness of state laws in promptly determining the eligibility of children in foster care for federal benefits. This element is critical because it focuses on the timely identification of eligible youth, ensuring they receive necessary treatments, supports, and other assistance as soon as possible after entering care.

This element does not assess whether states screen children for a child's disability, rather it relates to screening for (1) whether a child is receiving benefits upon entry into care and (2) whether the child is eligible to receive federal benefits based on a disability that may not have yet resulted in an application.

Timely screening within 60 days of a child's entry into foster care is essential. This timeframe is crucial for early identification and assistance, enabling eligible children to access vital benefits such as Social Security or Veterans benefits without undue delay. The promptness of this process can significantly impact the well-being and stability of the most vulnerable children both in the short and long term. In the short term, it ensures that a child taken into state care is screened for potential federal benefits eligibility, which if put in place could have a significant positive impact on their care and well-being. Early intervention can be a game changer in addressing many physical and developmental issues. For children who may have entered care after the death of a parent, it may represent the only remaining support a parent passes along to their child. In the long term, when benefits are properly administered and conserved, it ensures foster youth have resources in place to promote stability when they return home or leave care.

#### **Possible Answers/Grades**

- **Yes (5 points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires screening of all children for potential federal benefits eligibility within 60 days of entering foster care. Language such as "upon entry" or

“when a child enters care” are interpreted as within 60 days due to their implication of immediacy. Broader language, such as “when a foster youth is in care,” does not imply immediacy and thus does not receive credit for timely screening.

- **To Some Extent (2.5 points):** A state earns partial credit if it has a law or policy that meets only one component of the sub-elements. For example, a law or policy that requires screening for all children, but does not specify the 60-day timeframe, or vice versa, a law or policy that specifies a timeframe of 60-days or less, but does not require all children to be screened. “To some extent” reflects a state's commitment to screening but highlights a gap in either the inclusivity of all children or the urgency of the process.
- **No (0 points):** A state receives no credit if, for example, the law or policy is overly vague; the screening provision uses language that is permissive rather than mandatory; the law or policy does not require screening of all children (i.e. only youth over a certain age); or if a state lacks any law or policy that requires screening children for federal benefits eligibility. Note: Some states have entered into contracts for screening services, however if we could not identify a state law or policy explicitly requiring the state to have such a contract for screening, no credit was awarded.

**Model Law Language:** Arizona’s law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at A:** “For all children in the care of the department of child safety, the department of child safety shall determine whether each child is receiving or eligible for benefits administered by the social security administration or the veterans administration within sixty days after the child enters the department's care.”

#### **ELEMENT 4: DOES THE STATE REQUIRE THE AGENCY TO RESCREEN ALL CHILDREN FOR POTENTIAL FEDERAL BENEFITS ELIGIBILITY ON AT LEAST AN ANNUAL BASIS?**

Element 4 evaluates whether states annually rescreen children in foster care for potential federal benefit eligibility. This element is critical because it addresses the evolving nature of a foster child's health and life circumstances, which may impact their eligibility for various benefits.

Regular rescreening is vital in the foster care system due to the fluctuating nature of a child's eligibility for federal benefits. A child's situation can change – for example, the onset of a disability or the loss of a parent – potentially qualifying them for benefits like SSI at different stages during their time in foster care. Regular assessment guarantees that no eligible child misses out on crucial financial support which can significantly contribute to their well-being, help meet ongoing needs not addressed by the agency, and prepare them for successful transitions out of foster care.

#### **Possible Answers/Grades**

- **Yes (5 points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires the rescreening of all foster children for potential federal

benefits eligibility on at least an annual basis. This grade reflects a comprehensive approach, ensuring that every child's potential eligibility is reviewed regularly.

- **No (0 Points):** A state receives no credit if, for example, the rescreen provision uses language that is permissive rather than mandatory or if a state lacks any law or policy that requires rescreening children for federal benefits eligibility. To receive credit, the law or policy must require the agency to rescreen ALL children to determine whether any child may have become eligible after the initial assessment, not simply to rescreen children who are already receiving federal benefits for continued eligibility.

**Model Law Language:** Arizona's law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at D:** "The department shall annually review cases of children in the department's care to determine whether a child may have become eligible for benefits after the department's initial assessment."

## **ELEMENT 5: DOES THE STATE REQUIRE THE AGENCY TO APPLY FOR FEDERAL BENEFITS WHEN A CHILD IS DEEMED POTENTIALLY ELIGIBLE?**

This element focuses on whether state policies require state child welfare agencies to apply for federal benefits on behalf of a foster child deemed potentially eligible. This element is crucial in ensuring that foster children gain access to vital financial resources, particularly in cases of disability or Survivor benefits, which provide substantial assistance. Existing data strongly suggest that exponentially more children in care may be eligible for benefits than are receiving them.<sup>109</sup>

The obligation for agencies to apply for and safeguard federal benefits when a child is potentially eligible is a cornerstone in preparing for successful reunifications or transitions out of care. This ensures that no eligible child is left without critical resources due to bureaucratic inertia or oversight.

### **Possible Answers/Grades**

- **Yes (5 Points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires child welfare agencies to apply for federal benefits on behalf of foster children identified as potentially eligible.
- **To Some Extent (2.5 Points):** A state earns partial credit if it has an application requirement, but only under specific circumstances, or if the application is limited in scope.

Examples of state laws/policies that received credit for "To Some Extent":

- Oklahoma: Application is only made when DHS is paying the total cost of care.

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<sup>109</sup> See, e.g., Emilie Stoltzfus, Evelyne P. Baumrucker, Adrienne L. Fernandes-Alcantara, Bernadette Fernandez, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, Congressional Research Service (Nov. 19, 2014) (available at <https://crsreports.congress.gov/product/pdf/R/R42378>).

- New Mexico: Distinguishes between Level 2 Disability (application is discretionary) & Level 3 Disability (must submit application)
- **No (0 Points):** A state receives no credit if, for example, the application provision uses language that is permissive rather than mandatory or if the state lacks any law or policy that requires the agency to apply for federal benefits when a child is deemed potentially eligible. Note: Some states have entered into contracts for screening and application services, however if we could not identify a state law or policy explicitly requiring the state to have such a contract for screening and application, no credit was awarded.

**Model Law Language:** Arizona's law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at A:** "If the department of child safety determines that a child is eligible or may be eligible for federal benefits, the department of child safety shall apply for the benefits on behalf of the child."

## **ELEMENT 6: DOES THE STATE REQUIRE THE AGENCY TO FILE AN APPEAL ON THE CHILD'S BEHALF?**

This element examines whether states require child welfare agencies to file appeals for foster children when their initial applications for federal benefits are denied. This element is an important step in ensuring that children and youth in foster care have access to the vital benefits to which they are entitled, minimizing bureaucratic hurdles that might otherwise impede timely access.

The process of securing federal benefits can be complex and challenging, especially for children in foster care. When initial applications for benefits are denied, or when benefits are terminated, an appeal can often be critical to obtaining necessary assistance. This element assesses the state's commitment to advocating for the child's rights and needs throughout the entire process.

### **Possible Answers/Grades**

- **Yes (5 Points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires child welfare agencies to file appeals on behalf of foster children whose federal benefit applications are denied. Additionally, states receive full credit when they have clear policies requiring the review of benefit denials, with established standards for transparency and reasonableness in determining whether to pursue an appeal. Such policies demonstrate a proactive, thoughtful and thorough approach in advocating for the child's rights and benefits.
- **To Some Extent (2.5 Points):** A state earns partial credit if it has an appeals requirement, but only under specific circumstances. For example, New Mexico's state law/policy provides that with regard to a Level 2 Disability, the state may appeal, and for a Level 3 Disability the state must appeal.

- **No (0 Points):** A state receives no credit if, for example, the appeal provision uses language that is permissive rather than mandatory; if the law or policy focuses only on notifying relevant parties about an appeal without requiring the agency to file one; or if the state lacks any law or policy that requires the agency to file an appeal on the child's behalf.

**Model Law Language:** Arizona's law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at C:** "In providing notice of any denial of benefits, the department shall consult with the child's attorney and appeal the denial if it is in the child's best interests."

### **ELEMENT 7: DOES THE STATE REQUIRE THE AGENCY TO SHARE THE SSA-REQUIRED ANNUAL ACCOUNTING ON THE USE / CONSERVATION OF THE CHILD'S BENEFITS WITH THE CHILD, CHILD'S PARENTS/LEGAL GUARDIAN, AND/OR CHILD'S GUARDIAN AD LITEM (GAL)/ATTORNEY?**

This element assesses whether states mandate their child welfare agencies to share the SSA-required annual accounting on the use/conservation of a foster child's federal benefits with the child, the child's parents/legal guardian, and/or the child's guardian ad litem (GAL)/attorney. This element is essential for ensuring transparency and accountability in the management of a child's benefits.

The requirement for agencies to share detailed accounting of how a child's benefits are used and conserved is crucial for several reasons. It allows the child and their advocates to monitor expenditures of the child's money and ensure that the funds are being used in the child's best interests, for their current unmet needs, and are being appropriately conserved for future needs. It allows an opportunity to challenge the use of funds. And, if it is revealed that the Representative Payee may not be using the child's benefits in a manner that benefits the child or addresses ongoing unmet needs, it can help inform a decision to request a change in who serves as Representative Payee. This transparency is essential for purposes of accountability, and for safeguarding the current and future financial well-being of the child.

#### **Possible Answers/Grades**

- **Yes (5 Points):** To earn full credit, a state must have a clear, unambiguous law or policy that requires child welfare agencies to monitor the use of a child's federal benefits and share this accounting annually with the child, their parents/legal guardian, and/or their GAL/attorney. This reflects a policy that prioritizes transparency and accountability and will benefit the child.
- **To Some Extent (2.5 Points):** A state earns partial credit if the requirement to share accounting information is conditional, such as being required only "upon request" from the child, their parents/legal guardian, or their GAL/attorney. While this demonstrates a level of transparency, it falls short of full mandatory disclosure.

- **No (0 Points):** A state receives no credit if, for example, the accounting provision uses language that is permissive rather than mandatory; the law or policy requires the agency to monitor accounting, but does not require the agency to share it with the relevant parties; or if the state lacks any law or policy that requires the agency to share the SSA-required accounting. This indicates a lack of mandated transparency in the management of the child’s benefits.

**Model Law Language:** Arizona’s law serves as a model for other states seeking to draft clear policies on this matter.

**From Arizona A.R.S. § 8-468, at B.4:** “If the department of child safety is appointed to serve as the representative payee, the department...shall provide an annual accounting as to the use, application or conservation of the child’s federal benefits to the child, the child’s attorney and the child’s parents or guardians.”

## ADDITIONAL INFORMATION

Where applicable, a state’s grade page includes additional information that provides supplementary context to the state grade, and sheds light on various statutes and/or policies that, while not directly influencing the state’s grade, offer valuable insights into each state’s broader approach to administering the federal benefits of children in foster care.

### Key features of this section include:

**Pending Legislation:** We highlight states that have introduced, or currently have pending legislative initiatives which reflect a call within the state for needed reform, and show meaningful steps to limit or end the practice. These initiatives, although not yet enacted, reflect meaningful commitments to child well-being and improved outcomes for these foster youth. It is important to acknowledge that although many state efforts have impressively gained traction and sailed through their legislatures, reforms such as these do not generally occur quickly, and often occur incrementally and over time.

**Commendable Laws and Policies:** This part also showcases noteworthy laws and policies that, despite not being directly linked to the grading criteria, merit recognition for their positive impact on child welfare. These examples illustrate a state’s broader commitment to the well-being of foster children and can serve as best practice models for other states. This section does not encompass every relevant law and policy in place within the state. The aim of this Report is to highlight specific laws and policies that stand out for their potential impact on child welfare, providing a snapshot of each state’s legislative landscape in this domain.

## II. The Findings

### A. Overview

With regard to Element #1, the research revealed that the vast majority of states do not prohibit the child welfare agency from using the child's federal benefits to offset its obligation to pay for the child's foster care:

- Four jurisdictions—Arizona, District of Columbia, New Mexico, and Oregon—earned full credit by having a clear, unambiguous law or policy that prohibits the child welfare agency from using a child's federal benefits as reimbursement for foster care expenses.<sup>110</sup>
- Three states—Illinois, Maryland, and Washington—earned partial credit for having a law or policy that restricts the agency from using a child's benefits for reimbursement, but the restriction applies only to certain groups of children or only to a portion of the child's benefits.
- The rest of the states had no laws or policies prohibiting the agency from using a foster child's federal benefits (as defined in this Report) to pay for the cost of care.

With regard to Element #2, the research revealed that the vast majority of states do not require the child welfare agency to notify the child, child's parents/legal guardian, and/or the child's GAL/attorney when the agency applies to become the child's representative payee:

- Six jurisdictions—Arizona, District of Columbia, Florida, Illinois, Maryland, and Nebraska—earned full credit by having a clear, unambiguous law or policy requiring the agency to notify at least one of those individuals when the agency applies to become the child's representative payee.
- Two jurisdictions—Massachusetts and New Hampshire—earned partial credit for having a law or policy that requires notification but only under specific circumstances or if the notification process is limited in scope.
- The rest of the states had no laws or policies requiring any type of notice to these individuals when the agency applies to become the child's representative payee.

With regard to Element #3, although research indicates that the vast majority of states engage in this practice, our findings revealed that over half of states explicitly require the child welfare agency to screen children for potential federal benefits eligibility to some extent, but not necessarily (1) all children and (2) not always within 60 days of entering care.

- Twelve jurisdictions—Arizona, District of Columbia, Florida, Illinois, Iowa, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, Oklahoma, and Wisconsin—earned full credit by having a clear, unambiguous law or policy that requires screening of all children for potential federal benefits eligibility upon entry or within 60 days of entering foster care.
- Eighteen jurisdictions—Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Michigan, New Jersey, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming—earned partial credit for having a law or policy that meets only one component of the two elements noted above.

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<sup>110</sup> This was the case in New Mexico as of Oct. 31, 2023 (the cut-off date for the research related to this Report). However, the New Mexico directive that prohibited such use of the children's foster care benefits was set to expire on Mar. 1, 2024, and it is unclear if it has been extended.

- The rest of the states had no laws or policies requiring the agency to either screen all children or screen certain children within 60 days of entering care.

With regard to Element #4, the research revealed that the vast majority of states do not require the child welfare agency to rescreen all children for potential federal benefits eligibility on at least an annual basis in order to reassess emerging disabilities or reflect changed life circumstances:

- Two jurisdictions—Arizona and Louisiana—earned full credit by having a clear, unambiguous law or policy that requires the rescreening of all foster children for potential federal benefits eligibility on at least an annual basis.
- The rest of the jurisdictions had no laws or policies requiring the agency to rescreen all children in care for federal benefits eligibility on an annual basis (this includes states with laws or policies that use permissive rather than mandatory language, or that only pertained to rescreening children who are already receiving federal benefits for continued eligibility).

With regard to Element #5, the research revealed that the majority of states require the child welfare agency to apply for federal benefits when a child is deemed potentially eligible:

- Twenty-nine jurisdictions—Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin—earned full credit by having a clear, unambiguous law or policy that requires the agency to apply for federal benefits on behalf of foster children identified as potentially eligible.
- Two jurisdictions—New Mexico and Oklahoma—received partial credit by having a law or policy requiring the agency to apply but only under certain circumstances or if the requirement is limited in scope.
- The rest of the jurisdictions had no laws or policies requiring the agency to apply for federal benefits when a child is deemed potentially eligible.

With regard to Element #6, the research revealed that the vast majority of states do not require the child welfare agency to file an appeal on the child's benefits when an application for benefits is denied:

- Nine jurisdictions—Arizona, California, Kansas, Louisiana, Maryland, Massachusetts, Missouri, and Montana—earned full credit by having a clear, unambiguous law or policy that requires the foster care agency to file appeals on behalf of foster children whose federal benefit applications are denied. Additionally, states receive full credit when they have clear policies requiring the review of benefit denials, with established standards for transparency and reasonableness in determining whether to pursue an appeal.
- One jurisdiction—New Mexico—earned partial credit for having a law or policy that requires the agency to appeal only under specific circumstances.
- The rest of the jurisdictions had no laws or policies requiring the agency to file an appeal on the child's behalf when an application for benefits is denied.

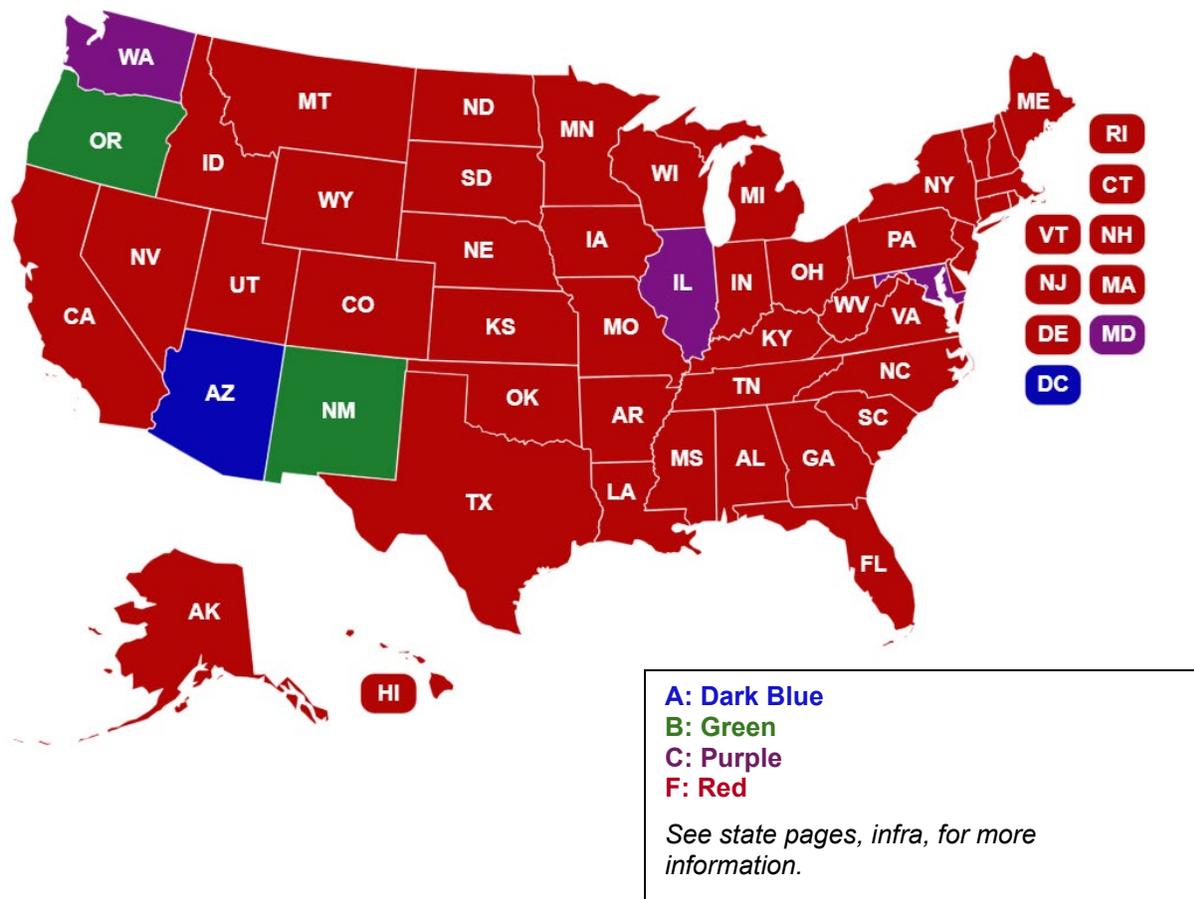
With regard to Element #7, the research revealed that the vast majority of states do not require the child welfare agency to provide the SSA-required annual accounting on the use or

conservation of the child’s federal benefits with the child, the child’s parents/legal guardian, and/or the child’s GAL/attorney:

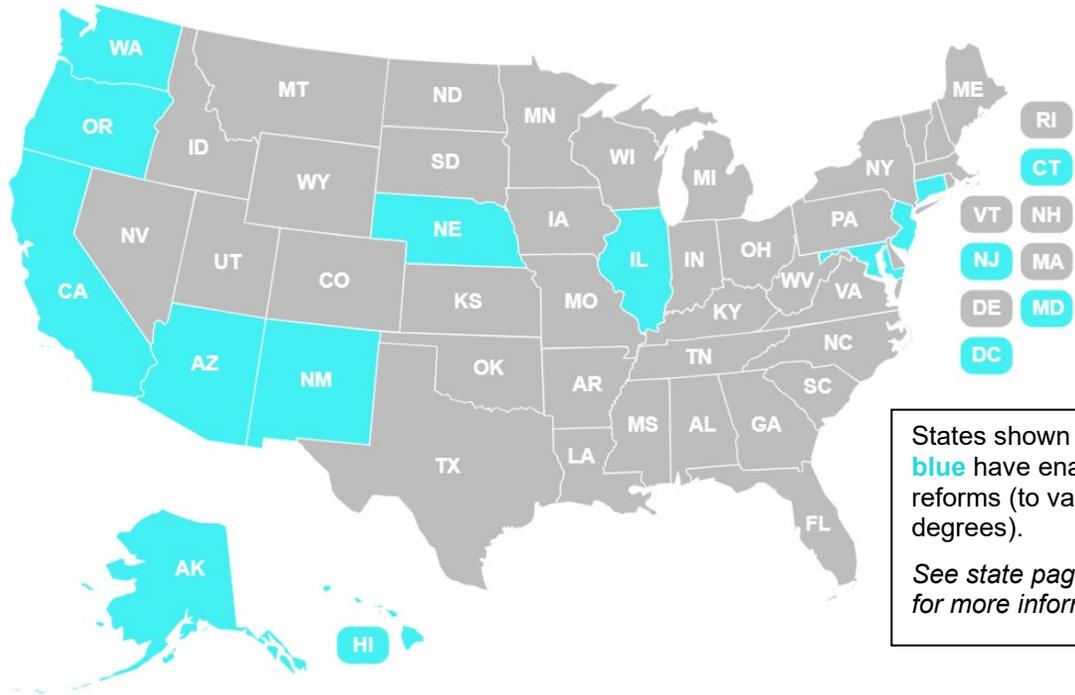
- Six jurisdictions—Arizona, District of Columbia, Florida, Illinois, Maryland, and Missouri—earned full credit by having a clear, unambiguous law or policy that requires the child welfare agency to monitor the use of a child’s federal benefits and share this accounting annually with the child, their parents/legal guardian, and/or their GAL/attorney.
- Two jurisdictions—Nebraska and Tennessee—earned partial credit by having a law or policy that is conditional, such as requiring the agency to provide the accounting only “upon request” from the child, their parents/legal guardian, or their GAL/attorney.
- The rest of the jurisdictions had no laws or policies requiring the agency to provide the SSA-required annual accounting on the use or conservation of the child’s federal benefits with the child, the child’s parents/legal guardian, and/or the child’s GAL/attorney.

The research also indicated that eleven jurisdictions—California, Colorado, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Tennessee, and Virginia—are currently considering reforms (to varying degrees). For more information on those proposals, see the specific state pages, *infra*.

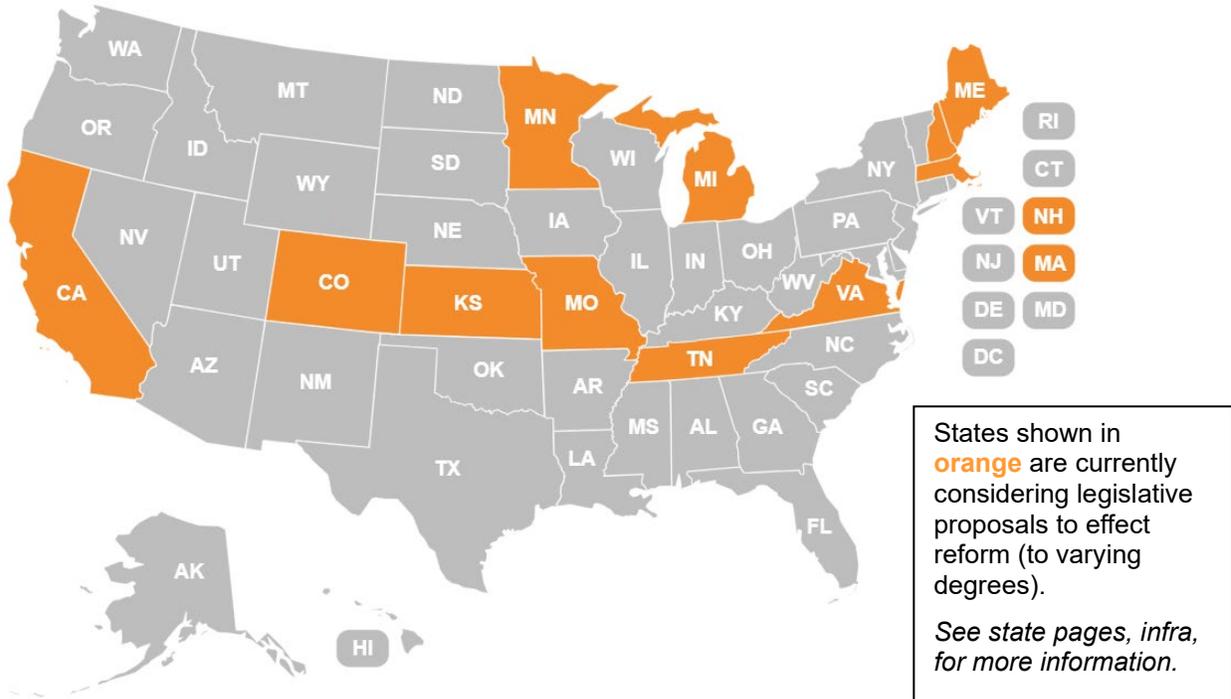
**FIG. 1: State Grades (as of Oct. 31, 2023)**



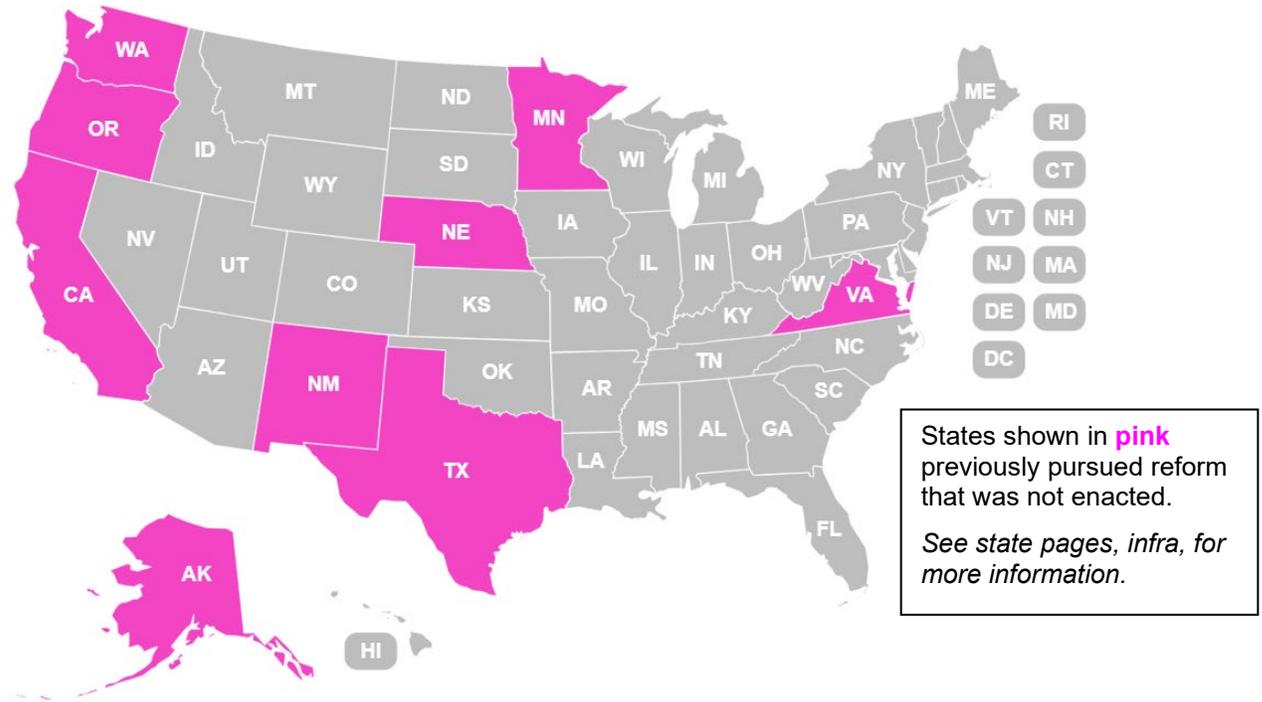
**Fig. 2. States that have enacted reform (to varying degrees), as of Oct. 31, 2023**



**Fig. 3. States with pending legislative reform proposals (to varying degrees), as of Apr. 15, 2024**



**Fig. 4. States that previously pursued reform (to varying degrees) that was not enacted, as of Apr. 15, 2024**



**B. Grade Distribution Charts**

Grade	Points	Jurisdictions
A	81 - 100	Arizona, District of Columbia
B	61 - 80	New Mexico, Oregon
C	41 - 60	Illinois, Maryland, Washington
D	21 - 40	
F	0 - 20	Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming

	Element #1	Element #2	Element #3	Element #4	Element #5	Element #6	Element #7	Total Points
Alabama	0	0	0	0	0	0	0	0
Alaska	0	0	0	0	0	0	0	0
Arizona	65	10	5	5	5	5	5	100
Arkansas	0	0	2.5	0	5	0	0	7.5
California	0	0	0	0	5	5	0	10
Colorado	0	0	0	0	5	0	0	5
Connecticut	0	0	2.5	0	5	0	0	7.5
Delaware	0	0	2.5	0	5	0	0	7.5
District of Columbia	65	10	5	0	5	0	5	90
Florida	0	10	5	0	0	0	5	20
Georgia	0	0	0	0	5	0	0	5
Hawaii	0	0	2.5	0	5	0	0	7.5
Idaho	0	0	2.5	0	5	0	0	7.5
Illinois	32.5	10	5	0	5	0	5	57.5
Indiana	0	0	2.5	0	5	0	0	7.5
Iowa	0	0	5	0	5	0	0	10
Kansas	0	0	2.5	0	5	5	0	12.5
Kentucky	0	0	0	0	0	0	0	0
Louisiana	0	0	2.5	5	5	5	0	17.5
Maine	0	0	0	0	0	0	0	0
Maryland	32.5	10	2.5	0	5	5	5	60
Massachusetts	0	5	5	0	0	5	0	15
Michigan	0	0	2.5	0	5	0	0	7.5
Minnesota	0	0	0	0	0	0	0	0
Mississippi	0	0	0	0	5	0	0	5
Missouri	0	0	5	0	5	0	5	15
Montana	0	0	5	0	0	5	0	10
Nebraska	0	10	0	0	0	0	2.5	12.5
Nevada	0	0	0	0	0	0	0	0
New Hampshire	0	5	5	0	5	0	0	15
New Jersey	0	0	2.5	0	5	0	0	7.5
New Mexico	65	0	5	0	2.5	2.5	0	75
New York	0	0	0	0	0	0	0	0
North Carolina	0	0	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0	0
Ohio	0	0	0	0	0	0	0	0
Oklahoma	0	0	5	0	2.5	0	0	7.5
Oregon	65	0	0	0	5	0	0	70
Pennsylvania	0	0	0	0	0	0	0	0

Rhode Island	0	0	2.5	0	5	0	0	7.5
South Carolina	0	0	0	0	0	0	0	0
South Dakota	0	0	0	0	0	0	0	0
Tennessee	0	0	0	0	5	5	2.5	12.5
Texas	0	0	2.5	0	5	0	0	7.5
Utah	0	0	2.5	0	5	0	0	7.5
Vermont	0	0	0	0	0	0	0	0
Virginia	0	0	2.5	0	0	0	0	2.5
Washington	32.5	0	2.5	0	5	5	0	45
West Virginia	0	0	2.5	0	5	0	0	7.5
Wisconsin	0	0	5	0	5	0	0	10
Wyoming	0	0	2.5	0	5	0	0	7.5

	Points	Grade
Arizona	100	A
District of Columbia	90	A
New Mexico	75	B
Oregon	70	B
Maryland	60	C
Illinois	57.5	C
Washington	45	C
Florida	20	F
Louisiana	17.5	F
Massachusetts	15	F
Missouri	15	F
New Hampshire	15	F
Kansas	12.5	F
Nebraska	12.5	F
Tennessee	12.5	F
California	10	F
Iowa	10	F
Montana	10	F
Wisconsin	10	F
Arkansas	7.5	F
Connecticut	7.5	F
Delaware	7.5	F
Hawaii	7.5	F
Idaho	7.5	F
Indiana	7.5	F
Michigan	7.5	F

New Jersey	7.5	F
Oklahoma	7.5	F
Rhode Island	7.5	F
Texas	7.5	F
Utah	7.5	F
West Virginia	7.5	F
Wyoming	7.5	F
Colorado	5	F
Georgia	5	F
Mississippi	5	F
Virginia	2.5	F
Alabama	0	F
Alaska	0	F
Kentucky	0	F
Maine	0	F
Minnesota	0	F
Nevada	0	F
New York	0	F
North Carolina	0	F
North Dakota	0	F
Ohio	0	F
Pennsylvania	0	F
South Carolina	0	F
South Dakota	0	F
Vermont	0	F

C. Individual State Pages

Alabama

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No.</b>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.</b>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.</b>	<b>0 out of 5*</b>
<b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.</b>	<b>0 out of 5*</b>
<b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? No.</b>	<b>0 out of 5*</b>
<b>6. Does the state require the agency to file an appeal on the child’s behalf? No.</b>	<b>0 out of 5*</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.</b>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](https://www.childrensadvocacyinstitute.org/) website for information on more recent developments.

# Alaska

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Alaska CPS Manual, Section 6.2.1.1.A</a>, “[w]hen a child is in a placement where the Office of Children’s Services (OCS) is making cost of care payments, and that child receives or is eligible for Social Security benefits, OCS will apply to have those benefits paid to the State.” See also <a href="#">Brief of the State of Alaska before the Alaska Supreme Court in Alaska v. Z.C., Supreme Court No. S-18249, at Page 15</a> which indicates OCS’ practice is to apply Social Security benefits to offset foster care stipends.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- Alaska’s policies are currently being challenged in court. In *Z.C. v. State of Alaska*, the Alaska Supreme Court is considering whether the state is violating foster youth’s rights by applying to be the representative payee for their benefits without notifying them, and by using their benefits to reimburse the state. These practices deny foster youth due process by appointing the state as representative payee in lieu of qualified family members or other trustworthy adults involved in the youths’ lives, and by using their money for self-reimbursement without giving them notice and a chance to object. It further abridges equal protection by requiring disabled and orphaned foster youth to pay for their own care through their benefits, when other youth in state custody do not

have a similar obligation. CAI submitted amicus briefs and split the argument in the Supreme Court in support of the plaintiffs.

- In question 2 in the “notice and due process” section of the report, although the ruling is currently on appeal (as noted above), the Alaska Superior Court (the trial court) has ruled that OCS must notify all children in its custody—whether or not they are Social Security beneficiaries—of the fact that, if the child is eligible for SSI or survivor benefits, it will apply to be the representative payee for the beneficiary child; that the child or another on his/her behalf may propose an alternative representative payee to SSA; and the potential financial distinction between having the SSA choose the state instead of a private representative payee (who might use the benefits to supplement, rather than offset, the State-provided care all Alaska foster children receive). See [Order in Z.C. v. Alaska, Case No. 3AN-14-07961 CI, dated Oct. 22, 2021, at Page 14](#).
- [House Bill 266 at \(a\)\(11\)\(D\)](#), which was introduced February 2020 and died in committee, had the following provision regarding notice: "The legislature finds that a child who is in the custody of the Department of Health and Social Services under AS 47.10 has the following rights....the right to economic stability, including (D) to receive advance notice if the department applies to be the representative payee for social security benefits on behalf of the child."

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? Yes, per <a href="#">A.R.S. § 8-468, at B.1.</a>	65 out of 65
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? Yes, per <a href="#">A.R.S. § 8-468, at B</a> and <a href="#">A.R.S. § 8-468, at C.</a>	10 out of 10
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? Yes, per <a href="#">A.R.S. § 8-468, at A.</a>	5 out of 5
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? Yes, per <a href="#">A.R.S. § 8-468, at D.</a>	5 out of 5
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes, per <a href="#">A.R.S. § 8-468, at A.</a>	5 out of 5
6. Does the state require the agency to file an appeal on the child’s behalf? Yes, per <a href="#">A.R.S. § 8-468, at C.</a>	5 out of 5
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? Yes, per <a href="#">A.R.S. § 8-468, at B.4.</a>	5 out of 5
<b>Total Points:</b>	<b>100 points</b>

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.*

## Additional Information

- **Commendable Policy:** [A.R.S. § 8-468, at B.3.](#), provides for the establishment of “an appropriate account to use and conserve the child’s benefits in the child’s best interest for current unmet needs and future needs in a manner consistent with federal and state asset and resource limits”, including a special needs trust, a pooled special needs trust, an achieving a better life experience (ABLE) account, or any other trust account determined not to interfere with social security or asset limitations for any other benefit program.
- **Commendable Policy:** [A.R.S. § 8-468, at B.5.](#), provides that the Department “[s]hall periodically review if someone other than the department is available to apply to assume the role of representative payee and could better serve in that role in the child’s best interest.”

# Arkansas

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Arkansas Department of Human Services, Division of Children and Family Services, Policy &amp; Procedure Manual, Policy V I-J: Trust Accounts for Children in Foster Care, at Page 225</a>, “benefits will automatically be used to pay for the child’s foster care expenses, which include the monthly board payments and contract payments.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Arkansas Department of Human Services, Division of Children and Family Services, Policy &amp; Procedure Manual, Policy V I-J: Trust Accounts for Children in Foster Care, at Page 225</a>, “[t]he IV-E/Medicaid Eligibility Unit will screen all DCFS clients for potential SSI and SSA eligibility”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Arkansas Department of Human Services, Division of Children and Family Services, Policy &amp; Procedure Manual, Policy V I-J: Trust Accounts for Children in Foster Care, at Page 225</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">Arkansas Department of Human Services, Division of Children and Family Services, Policy &amp; Procedure Manual, Policy V I-J: Trust Accounts for Children in Foster Care, at Page 225</a>, “DHS must monitor accounting for all children in foster care”, however there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney. Per <a href="#">A.C.A § 9-28-114(g)</a>, “the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled”, however this occurs only after the juvenile leaves foster care.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# California

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<b>1. Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care? No.</b>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<b>2. Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee? No.</b>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No. Per <a href="#">California Welf. &amp; Inst. Code §13757(a)(1) &amp; (a)(2)</a>, counties are only required to screen foster youth for eligibility when the foster youth is at least 16 years of age and not older than 17 years of age. While counties are not precluded from screening youth for eligibility prior to age 16, it is not required. Thus, this provision does not explicitly require the agency to screen all children, nor does it require the agency to screen within 60 days of entering care.</b>	<b>0 out of 5*</b>
<b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.</b>	<b>0 out of 5*</b>
<b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes. Per <a href="#">California Welf. &amp; Inst. Code §13757(a)(2)</a> "[a]n 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 federal Supplemental Security Income benefits."</b>	<b>5 out of 5</b>
<b>6. Does the state require the agency to file an appeal on the child's behalf? Yes. Per <a href="#">California Welf. &amp; Inst. Code §13757(c)</a>, for foster youth whose SSI applications are denied, the county placing agency shall file a request for reconsideration with the federal Social Security Administration and, if the request for reconsideration is denied, then the county shall subsequently file an appeal. 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.</b>	<b>5 out of 5</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.</b>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>10 points</b>

\*See elements of a model law in Appendix A

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.*

## Additional Information

- In 2023, Assembly Member Isaac Bryan introduced [AB 1512](#), which would have benefited children and youth in foster care and would have impacted California's grade positively if it had been signed into law. The legislation passed in both the Assembly and the Senate; however, the bill was vetoed by Governor Gavin Newsom. Among other things, this bill would have: (1) ensured that the child's benefits are not used to pay for, or to reimburse the placing agency for, any costs of the child's care and supervision; (2) provided, 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; and (3) notified the child, the child's attorney, and the child's parents or guardians of (a) any application for benefits administered by the federal Social Security Administration made by the agency (b) any application by the placing agency to become a representative payee for benefits (c) any decisions or communications from the federal Social Security Administration regarding an application for benefits, and (d) any action taken by the agency regarding an application for benefits pursuant to Welfare and Institutions Code section 13757(c).
- California is the only state in the country in which foster youth federal benefit reform legislation passed in both the Assembly and the Senate without a single 'no' vote, only to be vetoed by the Governor.
- As introduced Feb. 15, 2024, [AB 2906](#) (Bryan) would, among other things, provide that before applying to be appointed representative payee on behalf of a child beneficiary, the county shall send a written notice of the intent to be appointed to the child's counsel and parents or legal guardians. The bill would also 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, 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.
- According to [CalMatters](#), in 2021 the Los Angeles County Department of Children and Families Services reported using \$5.4 million in disability and survivor benefits of about 600 foster children to pay the cost of their own care.
- In 2023, the Children's Advocacy Institute, along with pro bono co-counsel Sheppard, Mullin, Richter & Hampton LLP, filed a lawsuit against San Diego County Child Welfare Services (CWS) on behalf of two former foster children who were entitled to \$25,000 in Social Security Survivor benefits after the death of their father. The lawsuit alleges that while serving as representative payee, CWS improperly used the children's benefits in a manner violating federal and state law, in violation of the County's fiduciary duties, and contrary to the children's best interests. See [V.R. & B.R. v. County of San Diego Health and Human Services Agency, Child Welfare Services](#).
- California developed best practice guidelines for foster children with disabilities who are eligible for federal benefits. These best practice guidelines are contained in All County Letters. However, All County Letters are generally considered to be interpretative guidance, not binding or enforceable.
  - [All County Letter 07-10, at Page 7](#) provides that "[a]ll children who enter a foster care (FC) placement should receive an initial disability and financial screening for SSI eligibility...[c]hildren should be screened using an appropriate screening guide within three months of entering custody... [a]nswers to the screening guide...should help evaluate the child's physical or mental impairments which might make the child eligible for SSI benefits

as well as the case plan objectives for the child. This portion of the guide should be completed by a social worker or other individual familiar with the child."

- [All-County Letter 20-17, at Page 2](#) provides that "[a]t a minimum, every child should be screened for RSDI benefits at intake."
- [All County Letter 07-10, at Page 9](#) provides that "[c]hildren who were initially screened and NOT referred for an SSI application should be rescreened at LEAST annually or whenever there is a change in circumstances, e.g., change of placement (to a lower placement rate), change of physical and/or emotional condition, which might make the child eligible for SSI."
- [All-County Letter 07-10, at Page 9](#), provides that "[t]he county designated SSI Liaison should also coordinate all appeals."
- [All-County Letter 07-10, at Page 17](#) provides that "[t]he county-designated SSI liaison should manage the appeal and reconsideration process for each youth still in care and should familiarize themselves with the process and timeframes."
- **Commendable Policy:** Per [California Welf. & Inst. Code §13757\(a\)\(4\)](#): "[a]n 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 Supplemental Security Income benefits and consents to the application."

# Colorado

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. <a href="#">Colorado Office of Children, Youth &amp; Families Operation Memo OM-CW-2023-0001</a>, regarding Dedicated Trust Accounts for Children in Foster Care, provides only that “[t]he monies in trust accounts received from SSA/SSI/SSDI can only be used to pay for expenses for the child in placement.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Colorado does not require screening beyond that which is federally required for purposes of Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services for initial and ongoing well-child visits per <a href="#">Colorado Department of Human Services Operation Memo OM-CW-2021-0009</a>.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Colorado Department of Human Services, Social Services Rules, 12 CCR 2509-7:7.601.72</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">Colorado Office of Children, Youth &amp; Families Operation Memo OM-CW-2023-0001</a>, a subsidiary ledger must be kept tracking deposits, disbursements, and interest earned, however there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>5 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- In 2024, Colorado introduced [House Bill 24-1017](#). As introduced, this bill would: provide for written notification of who is serving as representative payee; provide for accounting on use of payments

"when requested by the child or youth and on an annual basis"; and provide assistance to youth transitioning into adulthood in applying for benefits the youth is eligible for or currently receiving to ensure that benefits continue once the youth turns 18 or transitions out of care. However, it would also require DHS, when acting as representative payee, to "use any benefits the child or youth receives to meet the child's or youth's individual needs after the representative payee meets with the child or youth to ascertain the child's or youth's current and foreseeable needs." Thus, it would not explicitly prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care.

- **Commendable Practice:** Colorado's Office of the Child Representative – the entity which represents most dependent children in Colorado – featured training for their attorneys in 2023 to promote awareness and client advocacy to preserve foster youth federal benefits until the state enacts comprehensive legislative reform.

# Connecticut

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Chapter 319, Department of Children and Families, Sec. 17a-15d(c)</a>, “[n]o Social Security disability insurance benefit received by a child or youth in the care and custody of the Commissioner of Children and Families shall be utilized by the Department of Children and Families to offset the cost of such child or youth's care.” While <a href="#">17a-15d</a> prohibits the agency from using a child's SSDI benefits to offset the cost of care, SSDI benefits are not likely to be available to children, and were not considered as "federal benefits" for purposes of this Report and thus no credit was given.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Chapter 319, Department of Children and Families, Sec. 17a-15b(a)</a>, “[t]he permanency plan of a child in the care and custody of the Commissioner of Children and Families shall include documentation whether the child is eligible for benefits from the Social Security Administration”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Chapter 319, Department of Children and Families, Sec. 17a-15b(b)</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No. While a reviewer indicated that <a href="#">Connecticut State Department of Children and Families Policy Manual, Office of the Deputy Commissioner for Administration, 2-2-1.6 PG, at Page 5</a> discusses appeals, that section pertains explicitly to SSDI benefits, not SSI benefits.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

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## Additional Information

- **Commendable Policy:** Per [Chapter 319, Department of Children and Families, Sec. 17a-15b\(c\)](#), “For any child who has reached the age of seventeen and is receiving Social Security benefits, the department shall: if the child does not require a representative payee, provide the following assistance to the child which may include, but is not limited to, educating the child about (A) maintaining their eligibility with the Social Security Administration, and (B) maintaining a bank account for purposes of electronic direct deposit of Social Security payments.”
- Per [Connecticut State Department of Children and Families Policy Manual, Office of the Deputy Commissioner for Administration, Social Security Benefits, 2-2-1.6](#), a distinction is made between typical Social Security benefits available to children (Title II Social Security benefits and Supplemental Security Income) and non-typical Social Security benefits that “may, but are not likely to be available to children” (Social Security Disability Insurance). For Title II Social Security & SSI benefits, “DCF shall use the benefits to offset the cost of care for the child” and if the benefit exceeds the cost of care, the Fiscal Unit shall return the excess amount to SSA. For SSDI, “DCF shall not use SSDI benefits to offset cost of care for the child” and “[p]ermissible withdrawals made to support the youth outside of standard cost of care must be approved by program managers.”

# Delaware

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">State of Delaware Department of Services For Children, Youth and Their Families, Division of Family Services Policy Manual, at D-1 Page 41</a>, “[t]he Division will investigate and pursue all resources that may be available to be used for a child’s care. These resources may include Social Security benefits...”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">State of Delaware Department of Services For Children, Youth and Their Families, Division of Family Services User Manual, at E-10 Page 88-89</a>, “[t]he caseworker will review any medical, psychological, and educational history on a child to determine whether he may be a candidate for SSI”, however it does not specify whether or not the children are screened within 60 days of entering care. See also <a href="#">State of Delaware Department of Services For Children, Youth and Their Families, Division of Family Services User Manual, at E-8 and E-9 Page 88</a>.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Delaware Department of Services For Children, Youth and Their Families, Division of Family Services User Manual, at E-10, Page 88-89</a>, “[i]f the DFS caseworker feels the child may be eligible, the caseworker will Complete and [sic] SSA/SSI Advocacy referral form found on the DSCYF intranet website. This will notify the contractor to review the child’s file and determine if the contractor needs to file for Social Security benefits.”</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

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<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? Yes, per <a href="#">D.C. Law 24-309, Section 312(c)(1) and (c)(2)</a> .	65 out of 65
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? Yes, per <a href="#">D.C. Law 24-309, Section 312(b)(2)</a> .	10 out of 10
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? Yes. Per <a href="#">D.C. Law 24-309, Section 312(a)</a> , “[u]pon a child’s removal” the agency shall ascertain whether the child may be eligible for benefits.	5 out of 5
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes, per <a href="#">D.C. Law 24-309, Section 312(a)</a> .	5 out of 5
6. Does the state require the agency to file an appeal on the child’s behalf? No. <a href="#">D.C. Law 24-309, Section 312(b)(4)</a> requires the agency to “immediately notify the child, the child’s guardian ad litem, and the child’s parents or guardians of” any appeal by the agency regarding the child’s benefits application, however there is no provision requiring the agency to file an appeal on the child’s behalf.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? Yes, per <a href="#">D.C. Law 24-309, Section 312(c)(3)</a> .	5 out of 5
<b>Total Points:</b>	<b>90 points</b>

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**Additional Information**

- **Commendable Policy:** [D.C. Code Section 4-1303.12\(i\)](#) provides that “the Mayor shall submit a report to the Council on the Agency’s efforts to conserve the Social Security benefits of children under its care, which shall include: (1) The number of children receiving Social Security benefits; (2) Without divulging identifiable information, for each child receiving benefits, the type of benefits, the amount conserved, and the type of account in which the benefits are being conserved; (3) The total amount of federal benefits being conserved by the Agency; (4) The total number of accounts established each month; and (5) A summary of the Agency’s efforts to educate children, their parents or guardians, and their guardians ad litem on financial literacy and the requirements of this section.”

# Florida

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>		
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">CF Operating Procedure 175-59, at Paragraph 11</a>, if appointed as representative payee, the department will be receiving the child’s SSA/SSI/VA monthly checks and after setting aside a personal allowance for the child, the balance will be used to repay the state for the costs of room and board for the child. See also <a href="#">65C-17.002(8)</a> and <a href="#">65C-17.003</a> and <a href="#">CF Operating Procedure 175-59, at Paragraph 6(a)(1) and Paragraph 8</a> and <a href="#">Florida Statute 402.17(2)(c)</a>.</p>		<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>		
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> Yes, per <a href="#">CF Operating Procedure No. 175-59, at Paragraph 11</a>.</p>		<b>10 out of 10</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>		
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">State of Florida Department of Children and Families CF Operating Procedure No. 175-59, at Paragraph 7</a>, "[w]hen a child enters the care and custody of the department, the assigned case manager for the child must determine if the child has or will receive income or property." See also <a href="#">CF Operating Procedure No. 175-59, at Paragraph 7 Note</a>.</p>		<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>		<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No. Per <a href="#">Florida Statute 402.33(3)</a>, "the department may actively assist a client in obtaining financial benefits", however this language is permissive rather than explicitly required. See also <a href="#">CF Operating Procedure No. 175-59, at Paragraph 7 Note</a>.</p>		<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>		<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> Yes, per <a href="#">CF Operating Procedure No. 175-59, at Paragraph 8j</a> and <a href="#">65C-17.003(1)</a>.</p>		<b>5 out of 5</b>
<b>Total Points:</b>		<b>20 points</b>

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## Additional Information

- **Commendable Practice:** Although Florida law authorizes the agency to use a child's federal benefits to repay the state for the costs of room and board for the child, they have a long-standing process for allowing a child or a child's attorney to request use of a child's benefits for a specified purpose while in care, in effect diverting those dollars for the child's use rather than the state's use (see ["Forms and Tools"](#) on Florida Department of Children and Families website). According to a Florida Master Trust overview document by [Florida's Children First](#), advocates have been successful in recouping money for children in a variety of circumstances: when notice was not provided and when the cost of care was improperly deducted (e.g. child was incarcerated or on runaway and DCF was not paying cost of care; actual cost of care was lower than what was deducted). Advocates report that requests for waiver of assessments are usually granted except in situations where the request fails to specify what the money is needed for.

# Georgia

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No. Per <a href="#">Georgia Division of Family and Children Services Child Welfare Policy Manual, Chapter (9) Eligibility, Policy Number 9.3 (Applying for Initial Funding), at Page 3</a> , “[w]hile in care the SSI benefits help to offset the cost to care for the child.”	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.	0 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes, per <a href="#">Georgia Division of Family and Children Services Child Welfare Policy Manual, Chapter (9) Eligibility, Policy Number 9.3 (Applying for Initial Funding), at Procedure #5</a> .	5 out of 5
6. Does the state require the agency to file an appeal on the child’s behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>5 points</b>

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## Additional Information

- **Commendable Policy:** Per [Georgia Division of Family and Children Services Child Welfare Policy Manual, Chapter \(13\), Independent Living Program, Policy Number 13.4 \(Transition From Foster Care\), at Requirement #8](#), the Division of Family and Children Services shall apply for SSI for the youth if not already completed to ensure continuity of services into adulthood. Further, it notes that the SSI application approval generally takes several months, therefore early planning and action is essential.
- Per [Georgia Division of Family and Children Services Child Welfare Policy Manual, Chapter \(9\) Eligibility, Policy Number 9.3 \(Applying for Initial Funding\), at Procedure #12](#), “[t]he Social Services Case Manager will...reapply for SSI for any child denied, within five business days of knowledge of a new or changed mental, physical or emotional condition”, however it does not require the agency to rescreen on at least an annual basis.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. <a href="#">DHS Procedures Manual, Part V, Section 2.8.1, at C</a> provides guidance on “[h]ow to apply SSI benefits to the board payments” indicating “[t]hese payments will be put into a refund plan (see sub-section 2.8.2) and used to offset payments made by the department on behalf of the child.” See <i>also</i> <a href="#">Haw. Code R. 17-1617-17(a)</a> which provides “[u]rneared income resources of the child in foster care, such as social security benefits, trust fund accounts, and military personnel’s or veterans’ dependency benefits, shall be considered and shall apply as reimbursement towards the child’s foster care maintenance payments.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">DHS Procedures Manual, Part V, Section 2.8.1, at A</a>, “[f]or ALL children placed in substitute care, under the placement responsibility of the Department, the CWS social worker is to make a referral to the Social Security Administration to determine whether the child is eligible for Supplemental Security Income (SSI) benefits”, however it does not require screening within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">DHS Procedures Manual, Part V, Section 2.8.1, at A.2. through A.4.</a>, “CWS staff is to inform [the Social Security Administration] that they are applying for a child in foster care”; “[a]n application for SSI will then be sent to the CWS staff which will set up a telephone interview” and “[a]nswer all questions during the during the phone interview, fill out the application form and submit the application form and all relevant documents and consents.”</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.*

## Additional Information

- Hawaii passed two Resolutions, [HR 117](#) in April 2022 and [SCR 51](#) in March 2023, requesting the Department of Human Services to immediately cease intercepting Social Security payments for children in foster care. In March 2023, Cathy Betts, Director of the Department of Human Services, submitted [testimony](#) indicating that DHS had immediately ceased intercepting Social Security payments for children in foster care in response to HR 117 and asked lawmakers for \$500,000 to make up for the money it is losing from no longer intercepting children's Social Security benefits. However, an [investigation by Hawaii News Now](#) confirmed that these statements were not accurate and that Social Security benefits were still being used for foster board reimbursement. DHS subsequently indicated that the testimony submitted was an incorrect version and that what the Department had actually done is immediately start discussions to consider how to cease using Social Security payments for foster board reimbursements.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">IDAPA 16.06.01.441</a>, the Department “will secure assignment of any support due to the child while in alternate care. Social Security and Supplemental Security Income benefits are specifically aimed at meeting the child’s needs and therefore will follow the child in placement and the Department must request to be named payee for all funds for placements extending over thirty (30) days.” Although one reviewer indicated that this provision may warrant a Yes, the researchers of this Report could not identify an explicit statement in law or policy prohibiting Idaho from using the child’s benefits to offset its obligation to pay for the child’s foster care.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">IDAPA 16.06.01.433</a>, “[o]n behalf of the child and with the assistance of CWFT staff, family services workers are required to identify and apply for income or benefits from (one (1) or) every available source including Social Security, tribal benefits, or estates of deceased parents”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">IDAPA 16.06.01.433</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">IDAPA 16.06.01.437</a>, “the Department’s Division of Family and Community Services, Child Welfare Funding Team must account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized”, however there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> To some extent. Per <a href="#">20 ILCS 505/5.46(d)(1) &amp; (d)(2)</a>, the Department shall “ensure that when the youth attains the age of 14 years and until the Department no longer serves as the representative payee, a minimum percentage of the youth’s benefits are conserved... as follows: (A) From the age of 14 through age 15, at least 40%. (B) from the age of 16 through age 17, at least 80%. (C) From the age of 18 through 20, 100%, when a court order has been entered expressly” allowing the Department to have the authority to establish and serve as an authorized agent of the youth over the age of 18. Thus, these provisions only prohibit the agency from using a portion of the child’s benefits. See also <a href="#">Administrative Code, Title 89, Chapter 3, Subchapter c, Section 352.8(b)</a>.</p>	<b>32.5 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> Yes, per <a href="#">20 ILCS 505/5.46(c)(1)</a>.</p>	<b>10 out of 10</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">20 ILCS 505/5.46(b)(1)</a>, “[u]pon receiving temporary custody or guardianship of a youth in care, the Department shall assess the youth to determine whether the youth may be eligible for benefits.”</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Although <a href="#">20 ILCS 505/5.46(b)(1)</a> requires the Department to “prescribe by rule how it will review cases of youth in care at regular intervals to determine whether the youth may have become eligible for benefits after the initial assessment”, no such rule could be identified.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">20 ILCS 505/5.46(b)(1)</a>. See also <a href="#">Administrative Code, Title 89, Chapter 3, Subchapter c, Section 351.4(a)</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No. <a href="#">20 ILCS 505/5.46(c)(3)</a> requires the Department to immediately “notify” a youth over the age of 16, the youth’s attorney and guardian ad litem, and the youth’s parent or legal guardian or another responsible adult of “any appeal or other action requested by the Department regarding an application for benefits.” However, there is no provision requiring the agency to file an appeal on the child’s behalf.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> Yes, per <a href="#">20 ILCS 505/5.46(f)</a>.</p>	<b>5 out of 5</b>
<b>Total Points:</b>	<b>57.5 points</b>

*\*See elements of a model law in Appendix A*

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.*

## Additional Information

- In November 2023, the Illinois General Assembly passed [HB 3641](#), which amended certain provisions of [20 ILCS 505/5.46](#). The cut off for information included in this report was October 31, 2023, thus the amendments to this statute are not reflected in the grade. The particular amendments to this statute, however, would not have impacted the state grade if the changes had been made prior to the October 31, 2023 cut off. The statutory references above reflect the law as it existed on October 31, 2023.
- **Commendable Policy:** [20 ILCS 505/5.46\(g\)](#): The Department shall provide the youth with financial literacy training and support, including specific information regarding the existence, availability, and use of funds conserved for the youth, beginning by age 14. The literacy program and support services shall be developed in consultation with input from the Department's Statewide Youth Advisory Board.
- Representative Danny Davis (D-IL) has secured tremendous policy wins to make children, families, and communities stronger during his 26 years in Congress. As the top Democrat on the Worker and Family Subcommittee within the Committee on Ways and Means, Rep. Davis fights to strengthen children and families to prevent children from entering foster care, support those involved in the child welfare system, and help foster youth thrive. Rep. Davis successfully led the creation of special tax benefits during 2021 for working foster and homeless youth and helped address trauma by expanding substance abuse prevention and services for children and families exposed to trauma. During the pandemic, he secured \$485 million in emergency supports and flexibilities for older foster youth, kinship caregivers, and foster care prevention services as well as \$1 billion for emergency assistance for low-income families needing cash assistance. He works to improve both k-12 and higher education for foster and homeless youth and to ensure that older foster youth gain independence by obtaining their driver's license. For nearly a decade, Rep. Davis has led Congressional efforts to protect the rights of foster children to their Social Security benefits and assets, introducing 3 bills to date, and working with allies across the aisle to push agency improvements to better protect these youth and their resources. Rep. Davis continues to fight to make children, families, and communities stronger, with many more policy achievements on the horizon.

# Indiana

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No.</b>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.</b>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? To some extent. Per <a href="#">Indiana Department of Child Services Child Welfare Policy 15.12, Version 3</a>, the Family Case Manager will identify any children on their caseload with a diagnosed medical or mental health disorder, or whose biological parents are retired, deceased, or disabled; email the SSU about potential referrals for children who may be eligible for RSDI; and complete the SSI Referral Form for potentially eligible children on their caseload. However, it does not require screening within 60 days of entering care. See also <a href="#">Indiana Department of Child Services Child Welfare Policy 4.28, Version 12, at 22</a>.</b>	<b>2.5 out of 5*</b>
<b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.</b>	<b>0 out of 5*</b>
<b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes. Per <a href="#">Indiana Department of Child Services Child Welfare Policy 15.12, Version 3</a>, the Social Security Unit will review the SSI Referral documentation provided by the Family Case Manager to confirm all necessary forms were received and complete the associated SSA forms and submit the application to SSA.</b>	<b>5 out of 5</b>
<b>6. Does the state require the agency to file an appeal on the child’s behalf? No.</b>	<b>0 out of 5*</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.</b>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care?</b> No. Per <a href="#">441 IAC 156.2(234), at 156.2(1)</a>, funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source: unearned income of the child; parental liability of the noncustodial parent; parental liability of custodial parent(s). See also <a href="#">Iowa Department of Health and Human Services Employees' Manual, Title 18, Chapter D(1), at Page 70</a>, which provides "[t]he Department shall become payee for any unearned income the child receives and use it to offset the cost of foster care"; <a href="#">Iowa Code Section 234.37</a>; and <a href="#">Iowa Code Section 234.39</a>, which provides "that an individual receiving foster care services and the individual's parents or guardians shall have primary responsibility for paying the cost of the care and services."</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">Iowa Department of Health and Human Services Employees' Manual, Title 18, Chapter D(1), at Page 70 and 71</a>, "when a child is placed in foster care", the Department works with the child's parents to ascertain whether there are any benefits or financial resources potentially available for the child, and if a child has a disability or the child's parent is deceased or disabled and is receiving benefits for the child, the Department makes a referral to the SSI Advocacy contractor to determine eligibility for Supplemental Security Income (SSI) or Social Security Disability Income on the child's behalf.</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Iowa Department of Health and Human Services Employees' Manual, Title 18, Chapter D(1), at Page 71</a>, when a child is placed in foster care, the Department encourages the child's parents to apply for benefits and cooperate in obtaining financial resources available for the child and the Department proceeds to apply on behalf of the child if the parents fail to do so in a timely manner. Further, the policy indicates that "prompt action is necessary to prevent loss of benefits for which the child may be eligible." See also <a href="#">441 IAC 156.2(234), at 156.2(2)</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child's behalf?</b> No.</p>	<b>0 out of 5*</b>

<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.</b></p>	<p><b>0 out of 5*</b></p>
<p style="text-align: right;"><b>Total Points:</b></p>	<p><b>10 points</b></p>

*\*See elements of a model law in Appendix A*

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### Additional Information

- Uniquely Concerning Provisions:** [Iowa Code Section 234.39](#) and [441 IAC 156.2\(234\)](#), at [156.2\(1\)](#) are uniquely concerning provisions as they lay the financial burden of the child's foster care explicitly on the child.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>		
<b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 549</a> , “[b]enefits are...used to offset the client’s cost of care.” See also <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 559</a> , which provides “[a]ny personal item the beneficiary needs can be purchased with money in a WARDS account once the client’s cost of care has been paid.”		<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>		
<b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.		<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>		
<b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 294</a> , “[a]n assessment of the family’s financial resources is completed prior to the DCF paying for services. The assessment will determine the eligibility or potential eligibility for a specific funding source, regardless of whether or not there is an immediate plan to use them to pay for specific services”, however it does not require screening within 60 days of entering care.		<b>2.5 out of 5*</b>
<b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.		<b>0 out of 5*</b>
<b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 549</a> . See also <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Pages 417 and 534</a> .		<b>5 out of 5</b>
<b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 550</a> , appeals for denied SSI applications are managed by KLS. If KLS determines it is not prudent to pursue an appeal, KLS will notify the PPS Eligibility Specialist and the PPS Eligibility Specialist will reply within 30 days as to whether PPS accepts the determination not to pursue an appeal or would prefer KLS continues with an appeal, giving justification for that preference.		<b>5 out of 5</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.		<b>0 out of 5*</b>
<b>Total Points:</b>		<b>12.5 points</b>

*\*See elements of a model law in Appendix A*

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## Additional Information

- **Commendable Policy:** Per [Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, at Page 339](#), “[i]f the youth receives SSI as a child, referrals to the Social Security Administration, through the current contractor, for adult SSI shall be made 90 days prior to the youth’s 18th birthday.”
- As introduced on January 18, 2024, Kansas Committee on Child Welfare and Foster Care introduced [House Bill 2552](#), which prohibits the secretary for children and families from using federal benefits received by a child to pay or reimburse for the care and custody of the child. Additionally, this bill requires the secretary to: determine whether a child is eligible for benefits and, if eligible, apply for benefits; establish an account and credit the benefits to such account for the child’s best interests for current unmet needs beyond the care and custody of the child provided by the secretary and future need; provide an annual accounting of the account to the child, child’s parent, if parental rights have not been terminated, the child’s guardian or legal representative. If signed into law, the provisions in this bill will benefit youth in foster care and positively impact Kansas’ grade.

# Kentucky

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No.	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.	0 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? No.	0 out of 5*
6. Does the state require the agency to file an appeal on the child’s behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](https://www.childrensadvocacyinstitute.org/) website for information on more recent developments.

# Louisiana

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 16, Document 6-1600, at I.A.</a>, “if a foster child has income and/or resources of his own, these funds can be used to help defray the cost of care.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at II.B.</a>, the SSI Screening Form “must be completed on all children within six months of foster care entry”, however it does not require screening within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> Yes, per <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at II.B.1.</a> See also <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at I.</a></p>	<b>5 out of 5</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at II.B.2.</a> See also <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at II.C</a> pertaining to the application process.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes, per <a href="#">Department of Children &amp; Family Services, Child Welfare, Chapter No. 6, Part No. 7, Document 6-720, at II.E.1.</a></p>	<b>5 out of 5</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>17.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# Maine

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No.	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.	0 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? No.	0 out of 5*
6. Does the state require the agency to file an appeal on the child’s behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- **Commendable Policy:** Per the [Office of Child and Family Services V.T. Youth Transition Policy](#), “[i]f the youth has not applied for benefits for which they might be eligible, the Department’s caseworker and their supervisor will assist the youth with applying for the necessary benefits prior to their 18th birthday.” Further, the policy provides that “[p]lanning for the youth’s transition to adult services should begin at age 17. The caseworker will also apply on behalf of the youth for other sources of possible financial support such as Supplemental Security Income, TANF, Medical Assistance program, and other local resources. These youth may be maintained on the V9 Agreement until an effective transition is made to the appropriate adult support resources.”
- In December 2023, Maine’s Legislative Council introduced [LD2078](#). As introduced, this bill would prohibit the use of a child’s federal benefits to pay for or reimburse the department or the State for any of the costs of the child’s care. If signed into law, the provisions in this bill would benefit youth in foster care and positively impact Maine’s grade. Further, this bill would require the department

to: determine whether a child in the custody of the department is eligible for a federal benefit; apply for the federal benefit on behalf of the child; establish a special-needs trust to use and conserve the child's federal benefit; and provide an annual accounting of the child's federal benefit to the child, the child's attorney or guardian ad litem and the child's parents or legal guardians; periodically provide the child with financial literacy training and support; provide financial training to department staff.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> To some extent. Per <a href="#">Md. Code, Fam. Law § 5-527.1(c)</a>, the Department shall “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 as follows: from age 14 through age 15, at least 40%; from age 16 through age 17, at least 80%; and from age 18 through age 20, 100%”. Further, the policy provides that the Department shall “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,” and indicates options for establishing accounts to conserve, including a PASS account, 529A plan, individual development account, and special needs trust.</p>	<b>32.5 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> Yes, per <a href="#">Md. Code, Fam. Law § 5-527.1(d)(1)(i)</a>. See also <a href="#">Md. Code, Fam. Law § 5-527.1(b)</a>.</p>	<b>10 out of 10</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Maryland Department of Human Resources; Disability Benefits Advocacy Program, Social Services Administration Policy CW #17-7</a>, the Local Departments of Social Services (LDSS) “will be responsible for” identifying children that are potentially eligible for SSI and OASDI benefits, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Maryland Department of Human Resources; Disability Benefits Advocacy Program, Social Services Administration Policy CW #17-7, at Page 3</a>, “the Vendor will be responsible for managing the benefit application, acquisition, and adjustment process for all children in the custody of LDSS” and the core functions of the Vendor include “[c]ompleting and filing Social Security applications”.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">Maryland Department of Human Resources; Disability Benefits Advocacy Program, Social Services Administration Policy CW #17-7</a>, the Vendor will review all denied cases, and will pursue all appropriate reconsiderations and appeals (excluding federal court appeals) including preparing and filing required information and presenting materials to the</p>	<b>5 out of 5</b>

Social Security Administration no later than 30 calendar days from the date of the denial decision, or within the timeframe required by law, whichever period is shorter.	
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? Yes, per <a href="#">Md. Code, Fam. Law § 5-527.1(c)(5)</a>.</b>	<b>5 out of 5</b>
<b>Total Points:</b>	<b>60 points</b>

*\*See elements of a model law in Appendix A*

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### Additional Information

- Maryland is to be commended for being the first state in the nation to pass legislation in 2018 to curb the practice of taking federal benefits away from children and using them to offset the state's obligation to pay for foster care. Although Maryland's bill provides only incremental relief for foster youth beneficiaries and falls far short of a policy solution, the state's willingness to move forward in acknowledging and beginning to address this injustice is praise-worthy. Maryland's pioneering effort has led the way for many other state reforms.
- However, the progress required by Maryland law has been compromised by the failure of local agencies to implement the requirements for notice, accountings, involvement of children's attorneys in identifying representative payees, and other important protections.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">DCF Policy #84-007(I)</a>, “[t]he Department uses the monthly benefit to cover the cost paid to the child’s placement provider for the child’s care and maintenance and to cover the costs of other needs of the child allowable by SSA that are not covered by the payments to the placement provider.” Per <a href="#">110 CMR 4.05(2)</a>, “the Department may retain 90% of the child’s benefits as reimbursement for the cost of the child’s care. The Department may set aside 10% of the child’s benefits in a Personal Needs Account (PNA) to be used only for the child’s personal needs. The PNA shall not exceed an aggregate amount of \$2,000 (100% of the benefits may be used to reimburse the Department whenever the PNA reaches \$2,000).” While 110 CMR 4.05(2) authorizes the Department to set aside a portion of the child’s benefits, this language is permissive rather than explicitly required. See also <a href="#">DCF Policy #84-007(II)(E)(2)</a>.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> To some extent. Per <a href="#">DCF Policy #84-007(II)(D)(2)</a>, prior to applying for benefits and/or representative payee status with SSA, the social worker must take the following actions under special circumstances: for Voluntary Placement and Child Requiring Assistance Custody cases, the Social Worker shall obtain the parent(s)/guardian(s) written consent prior to application; for young adults: the Social Worker shall seek consent from and provides written notification to the young adult; and for a child whose parent/guardian is representative payee: when the Social Worker, in consultation with the Supervisor, determines that it is in the best interest of the child for the child’s parent(s)/guardian(s) to be (or remain) the representative payee, the Social Worker notifies and supports the parent(s)/guardian(s) to complete and file the necessary applications with SSA, if needed, and documents that the parent will remain the payee in the electronic case record. See also <a href="#">DCF Policy #84-007(I)</a>.</p>	<b>5 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes, per <a href="#">DCF Policy #84-007(II)(D)(1)</a>.</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Per <a href="#">DCF Policy #84-007(II)(D)(1)</a>, “[t]he identification of a potentially eligible child may occur at a later time if the child’s circumstances change or new information is obtained”, however this language is permissive and does not explicitly require the agency to rescreen on at least an annual basis.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No. Per <a href="#">100 CMR 4.05(1)</a>, “[w]hen a child is placed in substitute care pursuant to a Voluntary Placement Agreement or due to court-ordered custody, the Department may apply for</p>	<b>0 out of 5*</b>

benefits on behalf of the child”, however this language is permissive rather than explicitly required. Per <a href="#">DCF Policy #84-007(II)(D)(2)</a> , when potential eligibility is identified, “[t]he Social Worker completes and files the necessary applications for benefits and/or representative payee status with SSA.”	
<b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">DCF Policy #84-007(II)(D)(4)</a> , “[u]pon receipt of a notice of denial of benefits via the RMU, the Social Worker, in consultation with the Supervisor and Area SSI/RSDI Liaison, determines whether or not to file an appeal; if yes, the Social Worker files the appeal with SSA. If an SSA hearing is required, the Social Worker attends the hearing.”	<b>5 out of 5</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>15 points</b>

\*See elements of a model law in Appendix A

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### Additional Information

- The Massachusetts Legislature is currently considering [Senate Bill 65](#) and [House Bill 157](#), which would significantly impact the state’s conduct in relation to federal benefits belonging to youth in foster care. As introduced, this bill would require SSA benefits to be conserved; address screening of children in the foster care system for benefit eligibility; provide transparency and appropriate notice to youth and their representatives; and provide financial empowerment training and other services for youth under DCF custody. At this writing, neither bill has been enacted.
- In addition to the pending legislation, the Massachusetts Department of Children & Families appears to have embraced the call to address this practice and is engaged in internal reform efforts at the agency level.

# Michigan

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">FOM 902-12, at Page 1</a>, “any other income or funds available to the child are to be secured and used to reimburse the public funds providing payment for the child’s care” and “[i]f the child’s total income exceeds the cost of care, the excess is to be saved for the child.” Per <a href="#">FOM 902-12, at Page 9</a>, “[w]henever payments...received by the department for children are in excess of the amount expended for the child’s care, the funds will be placed in an account for the child. Money in the child’s account may be used for the child’s benefit and can be withdrawn at the request of the local office director or his/her designee.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">FOM 902-12, at Page 2</a>, “youth who are in a foster care or delinquency placement who appear to meet the definition of disability are to be screened by the assigned worker for SSI eligibility”, however it does not require screening within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Per <a href="#">FOM 902-12, at Page 1</a>, the Central Office, Accounts Receivable Unit - Government Benefits is to be notified “of any change in circumstances after acceptance that might qualify a child in...care, for governmental or insurance benefits, such as a change in placement, a parent dies, becomes disabled, retires, or the child becomes disabled, etc.”, however it does not explicitly require the agency to rescreen on at least an annual basis.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">FOM 902-12, at Page 3-4</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No. Per <a href="#">FOM 902-12, at Page 4</a>, “if the application is denied by the Social Security Administration, the Accounts Receivable Unit - Government Benefits area will not appeal their decision. The local office can appeal the decision on behalf of the child”, however this language is permissive rather than explicitly required.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

*\*See elements of a model law in Appendix A*

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## Additional Information

- **Commendable Policy:** Per [FOM 902-12, at Page 7](#), “At age 18, SSA will review eligibility for continued SSI benefits based on disability rules for adults. This age 18 redetermination is conducted within a year of the youth’s 18th birthday.”
- In June 2023, Rep. Kathy Schmaltz introduced [House Bill 4694](#) to make sure youth who age out of Michigan’s foster care system have the resources they need to start building successful lives. Currently, any federal benefits the state collects on behalf of children in the foster care system are used to reimburse the state for the cost of their care. This includes income such as Veterans Administration benefits, Supplemental Security Income, and Social Security benefits. As introduced, this bill would change that policy, instead setting aside a portion of these federal benefits for the child’s future needs. For children aged 14 and 15, at least 40 percent of these benefits must be set aside; children aged 16 and 17 would have at least 80 percent set aside; and foster youth aged 18 to 20 would have 100 percent set aside. The plan also provides foster youth with financial literacy training and ensures they are notified about all the federal benefits the state applies for and collects on their behalf.

# Minnesota

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Minn. Stat. §252.27, Subd. 2b</a>, “[r]esponsibility of the child for the cost of care shall be up to the maximum amount of the total income and resources attributed to the child.” Per <a href="#">Minn. Stat. §256N.26, Subd. 11c</a>, “Supplemental Security Income (SSI), retirement survivor’s disability insurance (RSDI), veteran’s benefits... are considered income and resources attributable to the child.” See also <a href="#">Minn. Stat. §260C.331(b)</a>.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- As introduced on February 15, 2024, [HF 3856](#) and [SF 3614](#) would provide that if a financially responsible agency applies to be the payee for a child who receives certain federal benefits, including SSI and survivor’s benefits, or receives the benefits on behalf of a child, the financially responsible agency must provide written notice by certified mail, return receipt requested to the child, if the child is 13 years of age or older; the child’s next of kin; the guardian ad litem; the legally responsible agency; and the counsel appointed for the child. If a financially responsible agency receives benefits on behalf of a child 13 years of age or older, the legally responsible agency and the guardian ad litem must disclose this information to the child in person in a manner that best helps the child understand the information (however, this would not apply in circumstances where

the child is living outside of Minnesota). If a financially responsible agency receives the benefits on behalf of a child, it cannot use those funds for any other purpose than the care of that child, and the financially responsible agency must not commingle any benefits received and must not put the benefits received on behalf of a child into a general fund. If a financially responsible agency receives any benefits, it must keep a record of the total dollar amount it received on behalf of all children it receives benefits for; the total number of children it applied to be a payee for; and the total number of children it received benefits for. By January 1 of each year, each financially responsible agency must submit a report to the Commissioner of Human Services that includes this information, and by January 31 of each year, the Commissioner must submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over child protection that compiles the information provided to the Commissioner by each financially responsible agency.

- In 2023, the Minnesota Legislature introduced [H.F. 2467](#) and [S.F. 2464](#), which would have, among other things, required the establishment of trusts for current and recent foster children receiving benefits and other income, provided that all assets of the trusts are held in trust for the exclusive benefit of beneficiaries, and required that once a beneficiary has reached 18 years of age, the Office of the Foster Youth Ombudsperson shall disburse \$10,000 or the total amount remaining in the beneficiary's account, whichever is greater, every year to the beneficiary until the beneficiary's account is depleted. At this writing, neither bill was enacted. Instead, an alternative proposal was passed. [The Health and Human Services Omnibus bill, at Line 649.28](#) includes a 2-year, mandated study of the current practice in Minnesota. As part of this study, by December 15, 2023, each county was to provide the following data for fiscal years 2018 to 2022: (1) the nonduplicated number of children in foster care in the county who received income and resources attributable to a child; (2) the nonduplicated number of children for whom the county was the representative payee for income and resources attributable to a child; (3) the amount of money that the county received from income and resources attributable to children in out-of-home placement for whom the county served as the representative payee; (4) the county's policies and standards regarding collection and use of this money; and (5) to the extent available, demographic information on the children in out-of-home placement for whom the county serves as the representative payee. Further, the Commissioner of Human Services must develop a plan and recommendations to preserve and make these funds available to meet the child's best interest. The final report and recommendations are due by January 15, 2025.
- Minnesota is the first and only state where legislative reform has been driven by former foster youth themselves. Foster Advocates is the only organization in Minnesota focused on systems change directed by and for Fosters. The ambitious bills introduced in 2023, [S.F. 2464](#) and [H.F. 2467](#), not only address prospective relief, but contain the most ambitious effort to date to provide retroactive benefits to youth whose benefits were taken.
- In 2022, the Minnesota legislature considered [S.F. No. 4410](#), a bill that would have addressed this practice in two phases: first planning and data, then benefit conservation. That bill did not make it out of conference.
- In March 2022, the Minnesota legislature considered [HF 4579](#), which would have required the commissioner of human services to "develop a plan to implement procedures and policies necessary to cease allowing a financially responsible agency to use the federal cash assistance benefits of a child in foster care to pay for out-of-home placement costs for the child."
- In February 2022, the Minnesota legislature considered [HF 3211](#). As introduced, this bill would have, among other things, required that: "[a] financially responsible agency must assess whether each child the agency is responsible for is eligible to receive benefits through SSI" and "[f]or each beneficiary between the ages of 14 and 18, the commissioner must, by February 1 each year, notify the beneficiary of the amount of SSI benefits received on the beneficiary's behalf."

# Mississippi

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Mississippi Department of Human Services, Division of Family and Children’s Services, Section D: Foster Care Policy, Part VIII(C)</a>, “[s]ome foster children may have funds available to them such as Social Security, Veterans Administration, SSI, or parental contributions. These funds may be used to reimburse DFCS for the foster board payment, but the funds must have been received in the county prior to being considered for reimbursement purposes. If the child receives less than the board payment, the full amount of the child’s benefit shall be applied to the reimbursement. If the child receives more than the board payment, only the amount of the board payment shall be reimbursed.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Per <a href="#">Mississippi Department of Human Services, Division of Family and Children’s Services, Section D: Foster Care Policy, Part V</a>, “[u]pon a child entering custody, DFCS shall engage in a thorough screening of the child”, however the screening does not explicitly include federal benefits eligibility.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">Mississippi Department of Human Services, Division of Family and Children’s Services, Section D: Foster Care Policy, Part VIII(C)(2)</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# Missouri

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Missouri Department of Social Services Child Welfare Manual, Section 12.8.4</a>, “[a] child who is placed in Alternative Care and has an independent source of income (i.e., Social Security Income (SSI), Old Age Survivor Disability Income (OASDI), Veterans Affairs benefits (VA)...will have these funds deposited into the KIDS account and these funds must be applied toward the care of the child prior to authorizing payment from State or Federal funds”. See also <a href="#">13 CSR 35-34.080</a>; <a href="#">Mo. Rev. Stat. §219.095(9)</a>; <a href="#">Mo. Rev. Stat. §210.560</a>; <a href="#">Missouri Department of Social Services Child Welfare Manual, Section 12.1.3</a>; <a href="#">Missouri Department of Social Services Child Welfare Manual, Attachment D, Children’s Income Disbursement System (KIDS)</a>.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">Missouri Department of Social Services Child Welfare Manual, Section 12.1.3</a>, “[t]he Children’s Service Worker must make a referral to the Eligibility Analyst via the CS-IV-E/FFP-1 within ten (10) working days from the child’s entry into Out-Of-Home Care to determine eligibility for Title IV-E...” Per <a href="#">Form CS-IV-E/FFP-1, at Question #20</a>, the Children’s Service Worker must indicate potential eligibility for SSI. See also <a href="#">Missouri Department of Social Services Child Welfare Manual, Section 4, Chapter 12 (Financial Considerations), Subsection 6 – Supplemental Security Income</a>, which provides the Department will “[d]etermine if the child’s condition indicates possible eligibility.”</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. <a href="#">Missouri Department of Social Services Child Welfare Manual, Section 4, Chapter 12 (Financial Considerations), Subsection 6 – Supplemental Security Income</a> provides that the Children’s Division submit a referral to the Social Security Specialist, with the required information needed by SSA; furnish sufficient and appropriate documentation of child’s disability to Social Security Specialist in a timely manner; arrange transportation for the child for consulting exam, if required by the Disability Determinations; receive notification from the Social Security Specialist of child’s social security eligibility determination and, if approved, the amount of benefit; immediately notify Social Security</p>	<b>5 out of 5</b>

Specialist by phone or E-mail, of changes that affect the child's eligibility for SSI.	
<b>6. Does the state require the agency to file an appeal on the child's behalf? No.</b>	<b>0 out of 5*</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? Yes.</b> Per <a href="#">Missouri Department of Social Services Child Welfare Manual, Attachment D, Children's Income Disbursement System (KIDS), Maintaining and Utilizing the KIDS Account, at 7</a> , "[e]ach child for whose benefit funds have been received by the division and the guardian ad litem of such child shall be furnished annually with a statement listing all transactions involving the funds which have been deposited on the child's behalf, to include each receipt and disbursement."	<b>5 out of 5</b>
<b>Total Points:</b>	<b>15 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- Pending in 2024, [SB 862](#) and [HB 2227](#) would provide that the Children's Division shall determine whether a child coming into the custody of the Division is eligible for or receiving U.S. Railroad Retirement Board, Social Security, or Veterans Administration benefits within 60 days of entering the Division's legal custody. The Division shall apply for such benefits on the child's behalf if he or she is eligible and shall only serve as a representative payee if no other candidate is suitable. Further, the bills would provide that money in the child's accounts shall not be used by the Children's Division to pay for care or services for the child. However, U.S. Railroad Retirement Board, Social Security, or Veterans Administration benefits may be used by the Division for the child's unmet needs beyond what the Division is otherwise obligated to pay. Finally, the accounts in which the child's benefits shall be placed shall be established in a manner consistent with federal and state asset and resource limits.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Montana Child and Family Services Policy Manual, Substitute Care for Children Trust Accounts, 403-2</a>, “[m]oney received on behalf of the client is considered income for the trust account. Income includes, but is not limited to, Social Security Benefits, Social Security Disability Income, child support, bank accounts, trusts in which the applicant or their representative has unrestricted access, parental contributions, state supplement, veteran’s benefits, and railroad retirement...[t]rust accounts are a funding source...[t]he first use of the funds is to offset the cost of care being paid for using federal and state funding sources. After the placement cost is offset, the Department can use the funding against supplemental services such as clothing and other personal or medical needs.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">Montana Child and Family Services Division, Income Resources Payee Procedure</a>, confirming a child’s eligibility for benefits and ensuring that those benefits are managed in the best interest of the child “becomes the responsibility” of the CFSD staff “upon the child’s removal.” See <i>also</i> <a href="#">Child and Family Services Policy Manual 406-1, Substitute Care for Children Specialized Foster Care, at Page 2</a>, which provides “[t]he child protection specialist will...assess the child’s needs and eligibility for specialized foster care and enter the special needs on SPND...obtain supporting documentation (including SSI referral).”</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No. Per <a href="#">Montana Child and Family Services Policy Manual 405-2, Substitute Care for Children SSI</a>, “[i]t is in the best interests of all children in the care of CFSD to make an application for SSI if they have special needs such as AIDS, premature or low birth weight, developmental disabilities (e.g. Downs Syndrome), psychiatric impairments that affect daily functioning, and or physical (i.e. blind, deaf) handicaps”, however this language does not explicitly require the agency to apply for federal benefits.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">Montana Child and Family Services Policy Manual 403-1, Substitute Care for Children Foster Child – Income or Resources</a>, “[i]f the</p>	<b>5 out of 5</b>

child is denied benefits in the future, it is the department's responsibility to appeal the decision on behalf of the child."	
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.</b>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>10 points</b>

*\*See elements of a model law in Appendix A*

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# Nebraska

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. <a href="#">Nebraska Revised Statute 43-907(1)</a> provides that “[a]ssets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care.” Once the \$1,000 threshold is met, Nebraska law allows 100% of a child’s federal benefits to be used to offset its obligation to pay for the child’s foster care.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> Yes, per <a href="#">Nebraska Revised Statute 43-907(2)(a)</a>.</p>	<b>10 out of 10</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> To some extent. Per <a href="#">Nebraska Revised Statute 43-907(2)(c)</a>, the department shall provide all accounting records regarding the department’s receipt, use, and conservation of the child’s social security benefits, to the child beneficiary, the child’s guardian ad litem or attorney, or the child’s parent, but only “upon request”.</p>	<b>2.5 out of 5*</b>
<b>Total Points:</b>	<b>12.5 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- [LB 1173](#), enacted in April 2022, amended [Nebraska Revised Statute 43-907](#), by requiring notice to child and child’s guardian ad litem that the department is acting as the child’s representative payee, as well as regular accounting for benefits, and requiring the Department of Health & Human Services to adopt rules to comply with Social Security Administration representative payee

requirements. However, the measure also retained state law requiring that a foster child's assets over \$1,000 and current income be available for reimbursement to the state for the cost of care, and contained no provision about screening, application, or conservation of benefits.

- Unsuccessful legislative efforts to address this issue include (1) [LR 198](#), which would have called for an examination of Nebraska practices regarding use of Social Security benefits, and (2) [LB 932](#), which, as introduced in January 2022, would have amended [Nebraska Revised Statute 43-907](#) to require both screening of children in foster care for Social Security benefit eligibility within 60 days of entering care and require application for Social Security benefits. Although [LB 932](#) was indefinitely postponed, portions of that bill were amended into [LB 1173](#), discussed above.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">NRS 432.037</a>, all benefits for survivors or other awards payable to children receiving child welfare services in a county whose population is less than 100,000 must be deposited in the State Treasury for credit to the Fund. The Division shall keep a separate account for each child who receives money; deduct from the account any services to the child provided by public money; and any surplus remaining may be expended for extraordinary items deemed beneficial to the child. Further, all benefits for survivors or other awards payable to children receiving child welfare services in a county whose population is 100,000 or more must be deposited in the trust fund for child welfare established in the county treasury. A disbursement from the benefits for survivors or other awards of a child which is deposited in the fund may be made to the agency which provides child welfare services for any child welfare services provided to the child with public money.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# New Hampshire

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">DCYF Standard Operating Procedure 1676.3 Revolving Funds, at I</a>, “[m]onies in a Revolving Fund account are prioritized to meet the child’s current needs including food, shelter, medical care, and other items for their comfort.” See also <a href="#">DCYF Policy 1676 Social Security Benefits for Children in Placement, at VI.E</a>, which provides “Revolving Fund monies may only be used to: reimburse DCYF for services (e.g. board and care) paid on behalf of the child... and to purchase items to benefit the child.” Per <a href="#">DCYF Standard Operating Procedure 1676.4 Dedicated Accounts, at I.A. and IV</a>, a child’s Dedicated Account, which contains an eligible child’s past-due (lump sum) SSI benefits, may only be used for the specific and limited expenses for the disabled child, as set forth in federal law, with required prior written approval from SSA.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> To some extent. Per <a href="#">DCYF Standard Operating Procedure 1676.2 Establishing Benefits and Representative Payees, at I.D</a>, DCYF will notify the custodial parent(s)/legal guardian that DCYF is applying to be the Representative Payee, but only if the child already receives benefits. Further, “[y]oung adults in care through the HOPE program will be notified of any changes in their representative payee.” Per <a href="#">DCYF Standard Operating Procedure 1676.5 Reporting Representative Payee Changes, at III</a>, “FSU ensures all individuals and agencies have been notified of changes in representative payee status”, however the policy does not explicitly indicate whether notice is given to the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney.</p>	<b>5 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes, per <a href="#">DCYF Standard Operating Procedure 1676.1 CPSW and JPPO Responsibilities, at I and II</a>. See also <a href="#">DCYF Standard Operating Procedure 1676.2 Establishing Benefits and Representative Payees, at I.B</a>.</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">DCYF Policy 1676 Social Security Benefits for Children in Placement, at II</a>. See also <a href="#">DCYF Standard Operating Procedure 1676.2 Establishing Benefits and Representative Payees, at I.E</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>

<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.</b></p>	<p><b>0 out of 5*</b></p>
<p style="text-align: right;"><b>Total Points:</b></p>	<p><b>15 points</b></p>

*\*See elements of a model law in Appendix A*

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.*

### **Additional Information**

- As introduced in January 2024, [HB1598](#) would prohibit the department as representative payee from using the child's federal benefits to pay for or to reimburse the department for any of the costs of the child's care. Further, it would require, among other things, the department to: determine whether each child is receiving or eligible for benefits within 60 days after the child enters care; apply for the benefits on behalf of the eligible child; establish an appropriate account to use and conserve the child's benefits in the child's best interest for current unmet needs and future needs; provide an annual accounting as to the use, application or conservation of the child's federal benefits to the child, the child's representative, and the child's parents or guardians; periodically review if someone other than the department is available to apply to assume the role of representative payee; notify the child, the child's parents, unless parental rights have been terminated, the child's guardian, the child's current placement and the child's attorney of any application, decision, or appeal related to a child's federal benefits; consult with the child's representative and appeal the denial if it is in the child's best interests; annually review cases of children in the department's care to determine whether a child may have become eligible for benefits after the department's initial assessment.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 1</a>, DCF “applies the benefits toward the child’s maintenance expenses. Any excess monies are held on the child’s behalf in an interest bearing trust fund account.” Per <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 15 and 16</a>, trust fund monies, which are capped at \$2,000, can be used “for the personal needs of the child beneficiary.” See also <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 8</a>, which provides “[t]he primary obligation of the appointed representative payee is to see that the benefit payments are applied to meet the child’s current needs (i.e., food, clothing, and shelter) or saved, if the payments exceed the cost of these needs.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No. Please refer to "Additional Information" below for notice provisions that were enacted after our report cut off date of October 31, 2023.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 5</a>, “[t]he Local Office Title IV-E Liaison has the following responsibilities which include, but may not be limited to...[i]dentifying children in out-of-home placement through CP&amp;P who may potentially be eligible for SSI or other Federal benefits”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 12</a>, “Once it has been determined that an application for SSI benefits should be pursued for a child in out-of-home placement through CP&amp;P, the Local Office Title IV-E Liaison meets with the Worker to ascertain what documentation of the child’s disability is in the case record, and what additional information/documentation may be required by the Social Security Administration (SSA) to make a claims determination....The Title IV-E Liaison completes the benefit application, retains a copy, and forwards the original to the ORFR&amp;IV-EO...The ORFR &amp; IV-EO reviews the application packet, for completeness and accuracy, prior to forwarding it to the SSA...”</p>	<b>5 out of 5</b>

<p><b>6. Does the state require the agency to file an appeal on the child's behalf?</b> No. Per <a href="#">New Jersey Department of Children and Families Policy Manual Issuance 250 (Federal Benefits), at Page 14</a>, “[i]f the child is determined ineligible for benefits and DCF disagrees with the decision, the ORFR &amp; IV-EO, in consultation with Local and/or Area Office staff, may request a review and/or appeal of the SSA decision”, however this language is permissive rather than explicitly required.</p>	<p><b>0 out of 5*</b></p>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney?</b> No.</p>	<p><b>0 out of 5*</b></p>
<p style="text-align: right;"><b>Total Points:</b></p>	<p><b>7.5 points</b></p>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- On January 16, 2024, New Jersey enacted [A3980](#), which revises the foster youth bill of rights to, among other things, provide that a child in foster care has the right to be notified of property and benefits to which the child is the owner or beneficiary at the time of the child's placement outside of the child's home, if known by the Department of Children and Families at the time of the child's placement, or to be promptly notified upon the Department of Children and Families becoming aware of such property and benefits, including but not limited to federal Social Security benefits; to be informed of the department's intent to file for federal benefits on the child's behalf; and to have an opportunity to review the contents of any application form for federal benefits filed on the child's behalf prior to submission. The cut off for information included in this report was October 31, 2023, thus the amendments to the foster youth bill of rights are not reflected in the grade. The grades reflect the law as it existed on October 31, 2023.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> Yes. On July 21, 2023, Teresa Casados, Acting Cabinet Secretary, issued <a href="#">Directive 2023-014</a>, stating that the Children, Youth &amp; Families Department “will not use Social Security Administration (SSA) Title II benefits (Retirement, Survivors, Disability Insurance) and Title XVI benefits (Supplemental Security Income) received on behalf of children in state custody to pay for foster care maintenance and/or child incidentals payments. Any SSA benefits to which CYFD is the representative payee will be held in a trust for each individual child or youth entitled to that benefit.” <a href="#">Directive 2023-014</a> further indicated that: these changes were effective immediately; implementation policies and procedures would be distributed by September 1, 2023; and the Directive would expire on March 1, 2024. Prior to that action, per <a href="#">Social Services Child Protective Services Permanency Planning Procedures, PR 8.10.8, at PR 28(11)</a>, “[r]esources received on behalf of the child are used to reimburse PSD for the child’s care and to meet the needs of the child.”</p>	<b>65 out of 65</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">Social Services Child Protective Services Permanency Planning Procedures, PR 8.10.8, at PR 28(7.1)</a>, “upon the child entering custody”, the agency will determine “if the child has or may have a physical or mental disability, or is not functioning in an age-appropriate manner in the activities of daily living” for the purposes of filling out “an application to the SSA for SSI benefits.”</p>	<b>5 out of 5</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> To some extent. Per <a href="#">Social Services Child Protective Services Permanency Planning Procedures, PR 8.10.8, at PR 28(7.1)</a>, for children determined to be “level 2” by the foster care needs assessment, it is at the COM’s discretion whether or not the application is submitted to SSA. For children determined to be “level 3,” the PSD submits the completed application to SSA.</p>	<b>2.5 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> To some extent. Per <a href="#">Social Services Child Protective Services Permanency Planning Procedures, PR 8.10.8, at PR 28(7.1)</a>, for children in “level 2” placements, the agency may appeal SSA’s denial. For children in “level 3” placements, the agency must appeal SSA’s denial.</p>	<b>2.5 out of 5*</b>

<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.</b></p>	<p><b>0 out of 5*</b></p>
<p><b>Total Points:</b></p>	<p><b>75 points</b></p>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.

### Additional Information

- As introduced January 25, 2024, [HB 254](#) would, among other things, require that within sixty days after a child enters the Department's legal custody, and annually thereafter, the Department shall determine whether the child is currently receiving or is eligible to receive federal benefits; in consultation with specified individuals, the Department shall either identify the child's representative payee or apply to become the child's representative payee provided that no other candidate is available; if the Department becomes the representative payee of a child in its legal custody, it shall establish an appropriate account to use and conserve the child's federal benefits, in the child's best interest, for current unmet needs and future needs pursuant to the requirements of the funding source and any applicable asset and resource limits, annually determine whether a person, other than the Department, is available to assume the role of representative payee and could better serve in that role, in the child's best interest, and notify the child and specified individuals of any application, decision or appeal related to a child's federal benefits; provide an annual accounting as to the use, application or conservation of the child's federal benefits to the child and specified individuals; and provide that if the Department is the child's representative payee, it shall not use a child's federal benefits to pay for or reimburse the department for any of the costs of the child's care (however, it may use those benefits to pay for the child's unmet needs beyond what it is obligated or required or has agreed to pay).
- [Directive 2023-014](#), which directed that CYFD would no longer use a child's SSA or SSI benefits to pay for foster care maintenance, was set to expire on March 1, 2024. The grades in this report reflect the law and policy as it existed on October 31, 2023, thus New Mexico received credit since Directive 2023-14 was in place as of this date. However, if Directive 2023-14 is not extended and [HB 254](#) does not pass, New Mexico's score would drop substantially.

# New York

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">18 NYCRR § 628.3(h)(2)</a>, “[w]hen a child is receiving foster care from an authorized voluntary childcaring agency, the SSI benefit and the regular State supplemental SSI benefit paid to the child shall be considered available to meet the cost of care and maintenance including administration and services provided as part of a comprehensive plan of care by such agency. When a child is receiving foster care from a family and placement was made by the local social services district, the SSI benefit and the regular State supplemental SSI benefit paid to the child shall be considered available to meet the cost of care and maintenance.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- Commendable Policy:** Per [OCFS Administrative Directive 10-OCFS-ADM-04](#), “[n]inety days prior to the youth’s scheduled discharge date, a worker must complete Transition Plan forms. Completion of a youth’s transition plan and the filing of a youth’s application for SSI both must occur at least 90 days prior to the youth’s scheduled date of discharge from foster care.”

- **New York City Plan:** On December 30, 2021, the New York City Administration for Children's Services (ACS) announced the launch of its "[Child-Centric Social Security Benefits Plan](#)," which would be rolled out in two phases. The first phase, which was expected to launch in early 2022, is to ensure children in care who may be eligible for SSI or RSDI benefits have those benefits in place when they leave care. That phase was also to offer training to older youth, or their families/personal representatives, to ensure they understand the Social Security Administration requirements to maintain benefits. As part of the second phase, which was expected to be implemented in summer of 2022, ACS was scheduled to establish individual SSA compliant accounts for SSI and RSDI eligible children, up to the legal limit where applicable. ACS was lauded by [NPR](#) and others for its moral clarity and leadership: "Child welfare officials in New York City say they will stop collecting all of the Social Security checks from children in foster care and using that money to cover the costs of their care."
- Despite its promise, and anecdotal reports that the agency has indeed begun to conserve survivor benefits, ACS has yet to release any formal policy changes regarding implementation of the reforms announced in 2021. In April 2024, after ACS released draft policy language for comment, [media reports](#) quickly flagged that since 2022, ACS has "been telling the U.S. Social Security Administration to suspend [SSI] benefits for those kids for the duration of their stays in the city foster care system....The agency does so because if it allowed those children to receive SSI, the city would be ineligible under a federal restriction to receive a separate form of funding that helps it cover overall foster care costs...." This policy betrays the values and commitments announced over two years ago, and thwarts the intended purpose of the announcement, which was to collect and conserve the benefits of eligible children while in care, so they may utilize them when they leave care to pay for basics like rent and tuition.

# North Carolina

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">North Carolina Department of Social Services, Foster Care Funding, Appendix 3.5, at Page 29</a>, “SSI benefits for a child must be applied to the maintenance payments which currently includes an allowance for personal expenses. Any costs above the SSI rate must be claimed for State funding.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Per <a href="#">North Carolina Department of Social Services, Foster Care Funding, Appendix 3.5, at Page 54</a>, “[t]he local child welfare agencies must be aware of all resources available to a child, which may include a child’s unearned income from sources such as Supplemental Security Income (SSI), Social Security Survivor’s benefits, trust funds, endowments, or child support paid directly to the agency.” While this policy appears to require the agency to screen for benefits the child is already receiving, it does not explicitly require the agency to screen to determine potential eligibility within 60 days of entering care.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# North Dakota

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">DHS Policy Manual 447-10-20-20-20 Agency Stewardship as the SSI/Social Security Organizational Representative Payee</a>, “[i]n general, SSI/Social Security funds for the child are to be applied to the cost of the child’s care, including irregular care costs, and meeting the personal needs of the child.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No. Per <a href="#">DHS Policy Manual 447-10-20-20-20 Agency Stewardship as the SSI/Social Security Organizational Representative Payee</a>, when “[t]he agency has applied to become the ORP and the request is denied by the Social Security Administration... the agency must send a written request to the representative payee notifying them of the agency’s custody and request their involvement and cooperation in the case planning of the child.” The policy further provides “[t]he custodian must make the child aware they receive Social Security benefits.” However, notice is not required at the time the agency applies to become the representative payee.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Per <a href="#">DHS Policy Manual 447-10-20-20-15 Foster Children Becoming SSI Recipients, at Page 46</a>, the “social services staff shall encourage and assist all children entering or in foster care, their families and their caretakers, to be aware of children’s right to apply for SSI benefits, and to encourage and assist them in doing so as appropriate.” However, it does not explicitly require the agency to screen or to do so within 60 days of entering care.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No. Per <a href="#">DHS Policy Manual 447-10-20-20-15 Foster Children Becoming SSI Recipients, at Page 46</a>, “any child who is known to have a physical or mental impairment, including severe emotional disorders, should be encouraged and assisted to apply for SSI benefits as soon as possible”, however this language is permissive rather than explicitly required.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. While <a href="#">DHS Policy Manual 447-10-20-20-20 Agency Stewardship as the SSI/Social Security Organizational Representative</a></p>	<b>0 out of 5*</b>

<p><a href="#">Payee</a>, requires “[t]he representative payee to keep records of how the dollars are use [sic]” and “to report out annually to Social Security Administration how the dollars were spent”, there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney. Although the policy also provides that “[i]f age appropriate, the child should be included in the planning, budgeting, and decisions for spending or saving their SS benefits”, this language is permissive rather than explicitly required.</p>	
<b>Total Points:</b>	<b>0 points</b>

*\*See elements of a model law in Appendix A*

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### Additional Information

- Uniquely Concerning Provisions:** Certain provisions of [DHS Policy Manual 447-10-20-20-20 Agency Stewardship as the SSI/Social Security Organizational Representative Payee](#) regarding agency application to become organizational representative payee are uniquely concerning. Specifically, the policy provides that (1) “the custodial agency should only become the organizational representative payee (ORP) if the current RP refuses to participate in the planning for the child and is not willing to make the child’s social security benefits available to the child/agency for expenditures” and (2) if the current representative payee refuses or fails to participate and cooperate with the custodial agency, the agency must “contact Social Security Administration and notify them of the representative payee’s failure to cooperate.”

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care? No.	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.	0 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? No. Per <a href="#">5101:2-47-08 Required Application/Update for Title IV-D (Child Support) Services and Referrals to Title IV-A (Public Assistance); Healthchek; Third Party Insurance; and Supplemental Security Income (SSI), at (E)(4)</a> , the Title IV-E agency is to "consider making an application to the regional office of the social security administration (SSA) for supplemental security income (SSI) benefits for every child", however this language is permissive rather than explicitly required.	0 out of 5*
6. Does the state require the agency to file an appeal on the child's behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

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# Oklahoma

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>		
<b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Oklahoma Human Services Library: Policy 340:75-13-25(b)(1) Exploration of resources</a> , “[b]enefits received are used by OKDHS to defray the cost of the child’s care.”		<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>		
<b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.		<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>		
<b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> Yes. Per <a href="#">Oklahoma Human Services Library: Policy 340:75-13-29(b)(2)(A)</a> , “child welfare (CW) specialist completes and emails the FBO Social Security specialist, within 10–business days after the child’s placement or as soon as the child’s disabling condition is identified, Report of Social Security and Veterans Benefits for Children in Out-of-Home Placement, to request an initial eligibility determination.”		<b>5 out of 5</b>
<b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Per <a href="#">Oklahoma Human Services Library: Policy 340:15-3-1(d)</a> , “[t]he AFS worker completes a service plan prior to providing SSI-DCP services to the child...[t]he AFS worker interviews the parent, guardian, or caretaker...to complete...SSI-DCP Service Plan...[t]he service plan is reviewed yearly” and when the child receives SSP, the AFS worker completes the SSI-DCP Service Plan “in conjunction with the eligibility renewal.” However, this policy does not require the agency to rescreen all children to determine potential eligibility.		<b>0 out of 5*</b>
<b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> To some extent. Per <a href="#">Oklahoma Human Services Library: Policy 340:75-13-29(b)(1)(A)</a> , “the initial application is made by Child Welfare (CW) Services Finance and Business Operations (FBO) for a child who receives, or may be eligible to receive, SSI when the child: is in DHS custody and DHS is paying the total cost of the child’s care; and appears eligible for SSI based on disability”, however application is only made when DHS is paying the total cost of care.		<b>2.5 out of 5*</b>
<b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.		<b>0 out of 5*</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.		<b>0 out of 5*</b>
<b>Total Points:</b>		<b>7.5 points</b>

\*See elements of a model law in Appendix A

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<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> Yes. Per <a href="#">ORS 409.265(2)</a>, “[e]xcept for moneys received pursuant to a child support order or as otherwise specifically required by federal or state law, court order or other legal instrument, the department may not use any funds, benefits, payments, proceeds, settlements, awards, inheritances, wages or any other moneys received by the department on behalf of a child for the purpose of maintenance costs.”</p>	<b>65 out of 65</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Although state law requires the agency to determine if a child is eligible for IV-E and related programs, it does not require the agency to screen all incoming children to determine potential SSI or survivor benefits.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Although state law requires the agency to determine if a child is eligible for IV-E and related programs, it does not require the agency to rescreen all children to determine potential eligibility for SSI or survivor benefits.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes, per <a href="#">ORS 419B.373(6)</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">ORS 418.708(7)</a>, “[t]he Department of Human Services is entitled to monitor use of moneys in a child’s savings account when required to ensure continuation of receipt of state and federal benefits received by or on behalf of the child”, however there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>70 points</b>

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## Additional Information

- On July 31, 2023, the Oregon Governor signed [SB 556](#), which prohibits public bodies from seizing certain benefits and resources intended for persons in the custody of the Department of Human Services (DHS). A companion bill, [SB 557](#), was not enacted, but that measure would have directed DHS to establish and administer Youth Support and Repayment Grant Program, to provide financial support to specified persons from whom, while in care or custody of DHS, resources to which persons were entitled were seized and used to pay for certain services provided. The measures were introduced at the request of an impacted former foster youth.
- While [SB 557](#) was not enacted, Oregon was the first state to introduce legislation to reimburse youth for funds taken by the state. Efforts are currently underway to reintroduce SB 557 in 2024.

# Pennsylvania

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">55 Pa. Code §3140.135</a>, “[t]he county agency shall calculate the amount of placement maintenance for which each child is eligible. This amount shall be calculated after subtracting child-specific income, such as Social Security payments and child support payments, from the total cost of substitute care.” See also <a href="#">55 Pa. Code §3140.46</a>; <a href="#">62 P.S. 704.1</a>; <a href="#">62 P.S. 704.2</a>.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- In September 2022, the Philadelphia City Council enacted [Bill No. 220239](#), to add new provisions related to screening and application for benefits for foster youth; limiting the use of Social Security, Supplemental Security Income, Veterans or other various benefits; and providing notice to the foster child for certain actions taken with respect to Social Security and other benefits; all under certain terms and conditions. The ordinance took effect without the mayor’s signature. However, as of the latest information available, the city has not yet implemented these measures.

# Rhode Island

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure C</a>, “[t]he benefits are applied toward the cost of care for the child in placement in accordance with Social Security Administration policy and procedures.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure H.2</a>, only when a child in placement returns home will the primary worker advise the parent to make an application with the Social Security Administration to become representative payee.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3</a>, “[s]taff identify children who may be eligible in accordance with procedure to maximize the benefits available. It is essential that staff seek evaluation of every child who may be eligible due to a disability or blindness to ensure the child enjoys all of the current benefits to which he/she is entitled as well as to preserve the possibility of securing future benefits.” Further, per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at B.1</a> “[t]he primary worker identifying a child as a candidate for SSI prepares the information and documentation identified below and forwards it to the Management and Budget Office.” However, the policy does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure E</a>, “[c]ontinued eligibility is re-determined annually”, however it does not require the agency to rescreen all children to determine potential eligibility.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure B.2</a>, “[t]he Management and Budget Office prepares the SSI forms and submits these together with a copy of the Certified Birth Certificate and updated documentation for review by the Social Security Administration.”</p>	<b>5 out of 5</b>

<p><b>6. Does the state require the agency to file an appeal on the child's behalf?</b> No. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure D</a>, the Management and Budget Office sends a copy of the denial of SSI eligibility to the primary worker and "[i]f the primary worker wishes" to file an appeal, the Management and Budget Office is notified, however this language is permissive rather than explicitly required.</p>	<p><b>0 out of 5*</b></p>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">Rhode Island Department of Children, Youth and Families, Supplemental Security Income, Policy: 1000.0005, Version 3, at Procedure F</a>, "[t]he Management and Budget Office updates the balance in the child's Social Security Trust Account as deposits are made and benefits are paid toward the cost of care", however there is no requirement that the agency share the accounting with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney.</p>	<p><b>0 out of 5*</b></p>
<p style="text-align: right;"><b>Total Points:</b></p>	<p><b>7.5 points</b></p>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children's Advocacy Institute](#) website for information on more recent developments.

# South Carolina

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care? No.	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? No.	0 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? No.	0 out of 5*
6. Does the state require the agency to file an appeal on the child's behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children's Advocacy Institute](https://www.childrensadvocacyinstitute.org/) website for information on more recent developments.

# South Dakota

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">South Dakota Administrative Rule 67:14:31:33</a> “[a] child's own funds shall be used before the allocation of state or federal funds to finance the child’s foster care. The child’s own funds may include contributions from the child’s family, child support, social security, supplemental security income, veterans benefits, or inheritances.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children’s Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- Uniquely Concerning Provision:** Per [South Dakota Administrative Rule 67:14:31:33](#), “[a] child's own funds shall be used before the allocation of state or federal funds to finance the child’s foster care.”

# Tennessee

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Tenn. Comp. R. &amp; Regs. R. 0250-7-10-03</a>, “[t]he State will maintain funds on behalf of the beneficiary and expend the funds for authorized expenditures the State has incurred for the care of the beneficiary during the time period that the Commissioner has been designated as the representative payee by the funding source or court order. The funds may be used for personal spending on behalf of the beneficiary, but they may not be used for educational expenditures which are guaranteed by the State’s Constitution. Funds which are governed by federal grants, state statutes, or federal regulations or policies will be administered according to those guidelines.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No. Per <a href="#">Department of Children’s Services, Administrative Policies and Procedures: 16.50, at A.1</a>, “the FSW assists in identifying custodial children with disabilities. If the FSW is unsure if a child/youth they are working with has a disability, they should consult with their supervision and CWBC to determine next steps”, however this language is permissive rather than explicitly required.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No. Per <a href="#">Department of Children’s Services, Administrative Policies and Procedures: 16.50, at E: SSI Redeterminations</a>, “[t]he Social Security Administration periodically sends the Department of Children’s Services a Redetermination form to determine if the child/youth continues to meet the disability criteria. The FSW completes the form, obtains all medical records/documentation information, and submits it to the CWBC within fifteen (15) calendar days”, however it does not require the agency to rescreen all children to determine potential eligibility.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Department of Children’s Services, Administrative Policies and Procedures: 16.50, at A.4</a>, “[i]f it is determined that applying for SSI is appropriate, the CWBC requests an application be initiated for the child/youth online by the FSW and provides instructions for the completion of the process. The FSW assists in applying for Social Security by completing the following steps…”</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">Department of Children’s Services, Administrative Policies and Procedures: 16.50, at B.7</a>, “[i]f a SSI case is denied, the CWBC contacts the FSW in regards to filing a Request for Reconsideration. If a Request for</p>	<b>5 out of 5</b>

Reconsideration... is needed, the CWBC files this information with SSA within sixty (60) days from the date of the denied SSA Award Letter.”	
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> To some extent. Per <a href="#">Tenn. Comp. R. &amp; Regs. R. 0250-7-10-.11(2)</a>, “DCS will send an annual accounting by category for monthly expenditures of the use of the child’s funds to the committing court, the child’s attorney or guardian ad litem, or the child, if age 17 or over”, but only “[u]pon written request”. Further, “[a]ccountings will be sent to a child’s parent or guardian only if such release of information is approved by the DCS and does not violate federal or state law” and “[r]equests can be made only once a year on behalf of each child beneficiary. The child in custody for less than a year is entitled to an annual accounting by category as well.”</p>	<b>2.5 out of 5*</b>
<b>Total Points:</b>	<b>12.5 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- **Uniquely Concerning Provision:** Per [Tenn. Code 37-1-172](#) Use and disposition of federal funds: (a) The court shall not direct the department of children’s services’ or its contractors’ or agents’ use or disposition of any federal funds for which any child or person in the care of the department is eligible or may receive and for which the department may be payee on behalf of such child or person including, but not limited to, Social Security survivors benefits under Title II of the federal Social Security Act, compiled in 42 U.S.C. § 401 et seq., and supplemental security income benefits under Title XVI of the federal Social Security Act, compiled in 42 U.S.C. § 1381 et seq., foster care or adoption assistance benefits received pursuant to Title IV-E of the Adoption Assistance Act of 1980 of the federal Social Security Act, compiled in 42 U.S.C. § 670 et seq., or veteran’s benefits, railroad retirement benefits or black lung benefits or any successor entitlements that are provided by federal law. (b) Funds received under any federal benefits programs shall be processed, utilized and accounted for by the department pursuant only to federal regulations or federal court orders governing those programs.
- As introduced on Jan. 31, 2023, [SB 1262](#) would amend [Tenn. Code 37-1-172](#) to add new subsection (c), providing that (1) notwithstanding § 37-1-172(a) and (b) or another law to the contrary, the Department of Children’s Services shall not collect or expend moneys that are received as survivor benefits, disability benefits, or otherwise from the Social Security Administration or the Department of Veterans Affairs on behalf of a child in the custody of the Department; and (2) the Department shall receive and hold such moneys in a trust account for the child to be released to the child without condition upon the child’s eighteenth birthday. The state shall maintain a trust account established pursuant to subsection (c).

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Texas Department of Family and Protective Services, Child Protective Services Handbook, 1570 Supplemental Security Income (SSI) for Children in Foster Care</a>, “DFPS generally uses the benefit to offset the cost of the child’s foster care payment.” See also <a href="#">Texas Department of Family and Protective Services, Child Protective Services Handbook, 1572 Effect of SSI Eligibility on State-Paid Foster Care</a>, which provides “DFPS elects to receive the SSI benefits for a child who is eligible for state-paid foster care assistance and uses the SSI to offset the child’s monthly foster care payments” and <a href="#">Tex. Fam. Code Section 264.101(e)</a>.</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Texas Department of Family Services, Child Protective Services Handbook, 1585.1 SSI Tracking Report</a>, “[t]o ensure that children receive SSI benefits, DFPS uses a tracking system to provide the names of all potentially eligible children who meet the necessary criteria and to track the status of the children’s SSI applications...[t]he regional SSI coordinator manages the regional SSI tracking report and makes updates continually. Quarterly, the state office SSI program specialist sends the regional SSI coordinators an electronic list of potentially eligible state-paid and Title IV-E foster care recipients targeted for SSI benefits. The SSI coordinator screens the children on the list...”, however it does not require screening within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Texas Department of Family and Protective Services, Child Protective Services Handbook, 1570 Supplemental Security Income (SSI) for Children in Foster Care</a>, “the regional CPS SSI coordinator applies for SSI benefits from the Social Security Administration (SSA) on behalf of a child who appears to meet the necessary criteria for SSI eligibility.” See also <a href="#">Texas Department of Family Services, Child Protective Services Handbook, 1585.1 SSI Tracking Report</a>, which provides that “[s]ome children in DFPS conservatorship may be eligible to receive SSI benefits based on their disabilities. Regional SSI coordinators are responsible for applying for these benefits from the Social Security Administration (SSA) on behalf of these children.” A report reviewer indicated “DFPS conservatorship refers to youth in out of home care for whom DFPS has legal responsibility (managing conservatorship). A subset</p>	<b>5 out of 5</b>

of these children are in Foster Care which refers to a child placed in a licensed foster home or facility. The general public often uses these terms interchangeably.”	
<b>6. Does the state require the agency to file an appeal on the child’s behalf? No.</b>	<b>0 out of 5*</b>
<b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.</b>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- **Commendable Policy:** Per [Texas Department of Family and Protective Services, Child Protective Services Handbook, 10341.2 Ensuring Funding and Eligibility for Services](#), DFPS pursues Supplemental Security Income (SSI) eligibility, through the Social Security Administration (SSA), for youth before the youth ages out of care at age 18, regardless of the youth’s eligibility for Title IV-E assistance. By establishing SSI disability benefits for youth before their 18th birthday, DFPS ensures that youth will have monthly SSI benefits and Medicaid to support their transition out of foster care.
- As introduced in April 2023, [H. B. No. 336](#), would have provided that if a foster child is eligible to receive benefits or services for which a representative payee or fiduciary is required, the Department of Family and Protective Services shall immediately provide notice to the child through the child’s legal representative regarding (1) any application for specified federal benefits made on the child’s behalf; (2) if the Department serves as the representative payee or in any other fiduciary capacity for the child, any application to become representative payee for the child’s federal benefits; (3) any decisions or communications from specified federal agencies regarding an application; and (4) any appeal or other action requested by the Department regarding an application for benefits. The bill would also have provided that if the Department serves as the representative payee or otherwise receives specified federal benefits on a child’s behalf, it shall provide the following information to the child through the child’s legal representative before each placement review hearing: (1) the amount of benefit funds received on the child’s behalf since the most recent notification to the child’s legal representative and the date the benefits were received; (2) information regarding the child’s assets and resources, including the child’s benefits, insurance, cash assets, trust accounts, earnings, and other resources; (3) an accounting of the disbursement of benefit funds, including the date, amount, and identification of the payee; and (4) information regarding each request by the court appointed special advocate for the child, the child’s legal representative, or the child’s caregiver for disbursement of funds and a statement regarding the Department’s reason for not granting the request if the request was not granted. H.B. 336 was passed by the House on April 4, 2023, but was not heard by the Texas Senate and is now dead. Texas is expected to consider a new measure in its next session.

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Utah Department of Health and Human Services Out-Of-Home-Care Policy 303.16 Foster Child Representative Payee Accounts, at Major Objectives A and B</a>, “DHHS and Child and Family Services will act as representative payee for each foster child receiving unearned income, such as Social Security Dependent (SSD) Benefits, Supplemental Security Income (SSI), and other income sources while the child is in agency custody” and “[u]nearned income from a foster child will be used to offset costs of care.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Utah Department of Health and Human Services Out-Of-Home-Care Policy 303.9 Federal Benefits And Eligibility, at Major Objectives</a>, “[t]he caseworker will be responsible to identify and secure financial resources or benefits for which a child in the custody of Child and Family Services may qualify”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Utah Department of Health and Human Services Out-Of-Home-Care Policy 303.9 Federal Benefits And Eligibility, at E.3</a>, “[t]he caseworker is responsible to apply for benefits for a child who may qualify but is not receiving them.” See also <a href="#">Utah Department of Health and Human Services Out-Of-Home-Care Policy 301.1 Engaging, Teaming, And Assessing, at Practice Guideline F</a>.</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">Utah Department of Health and Human Services Out-Of-Home-Care Policy 303.16 Foster Child Representative Payee Accounts, at 8.A</a>, “[t]he regional account custodian must keep a record of all actions taken with the representative payee account, including income received, authorization for payments, checks issued, cost of care monthly records, correspondence, reports, internal audits, and monthly and final</p>	<b>0 out of 5*</b>

<p>account reconciliation”, however there is no requirement that the agency share the accounting with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney.</p>	
<p style="text-align: right;"><b>Total Points:</b></p>	<p style="text-align: center;"><b>7.5 points</b></p>

*\*See elements of a model law in Appendix A*

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.*

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Vermont Department for Children and Families, Family Service Policy Manual, Policy 82, at Page 10</a>, “[t]he division may apply to receive any financial benefits for which the child is or may be eligible, including child support, based on the best interests of the child and the circumstances of the family. The division will treat income received on behalf of the child as recovery of expenses incurred by the division in caring for the child.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> No.</p>	<b>0 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>0 points</b>

\*See elements of a model law in Appendix A

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# Virginia

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">Virginia Department of Social Services, Child and Family Services Manual, 4.11.4 Lump sum retroactive SSI payments</a>, “ongoing monthly SSI payments may be used to reimburse maintenance costs.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Virginia Department of Social Services, Child and Family Services Manual, 4.11 SSI and other potential benefits</a>, “[t]he service worker is responsible for determining all financial resources available to the child, including SSI, other governmental benefits, and private resources” and “for assessing whether a child in care may be eligible for other benefits and referring that child for eligibility determinations. These referrals should be made within the first two (2) weeks of placement (e.g., title IV-E, Medicaid) or when the information gathered through the ongoing assessments indicates that the child may need, and qualify for, other benefits (e.g., SSI)”, however it does not require screening for SSI within 60 days of entering care. See also <a href="#">Virginia Administrative Code 22VAC40-201-50(B) Initial foster care placement activities</a>.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> No. Per <a href="#">Virginia Department of Social Services, Child and Family Services Manual, 4.11.1 Eligibility for Supplemental Security Income (SSI) for children</a>, “[a]n application for SSI should be considered if a child shows significant deficits for his or her age in cognition, communication, motor skills, social skills, personal/behavioral development, or concentration in combination with any of the following...” However, this language is permissive rather than explicitly required.</p>	<b>0 out of 5*</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>2.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.

## Additional Information

- As originally introduced on December 18, 2023, [Senate Bill No. 40](#) would have directed the State Board of Social Services to amend its regulations by January 1, 2025, to (i) require local departments of social services to apply for federal benefits on behalf of children in foster care that they may be eligible for, (ii) prohibit the use of federal benefits to pay for the care and support of children in foster care that the Commonwealth is otherwise obligated to pay for, and (iii) require local departments of social services that are representative payees for children in foster care to conserve such federal benefits in an appropriate trust instrument or protected account that is exempt from federal asset and resource limits. However, [substituted language made on Feb. 8, 2024](#) removed the original language, and the bill would now direct the Department of Social Services to establish a task force to assess the feasibility of (i) requiring local departments of social services to apply for benefits administered by the Social Security Administration or the Department of Veterans Affairs on behalf of children in foster care that they may be eligible for, (ii) prohibiting the use of federal benefits to pay for the care and support of children in foster care that the Commonwealth is otherwise obligated to pay for, and (iii) requiring local departments of social services that are representative payees for children in foster care to conserve such federal benefits in an appropriate trust instrument or protected account that is exempt from federal asset and resource limits, such as an Achieving a Better Life Experience account. The Department would be required to report its findings to the Chairmen of the Senate Committees on Finance and Appropriations and Rehabilitation and Social Services and the Chairmen of the House Committees on Appropriations and Health and Human Services by November 1, 2024. On February 12, 2024, the Senate passed the revised version of SB 40.
- [House Bill 75](#), as introduced on Dec. 26, 2023, includes the language that SB 40 had when it was introduced (see above); however, on Feb. 2, 2024, a House Subcommittee voted to lay HB 75 on the table.

# Washington

# Grade: C

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> To some extent. Per <a href="#">Washington State Department of Children, Youth &amp; Families; 6650. Trust Funds for Children in Out-of-Home Placement, at 4(b)(vii)</a>, regional federal funding coordinators must “[a]pprove plans to protect the child’s assets or forego reimbursement on foster care expenditures. Examples of potential assets include, but are not limited to...SSA benefits.”</p>	<b>32.5 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">Washington State Department of Children, Youth &amp; Families; 6660. Social Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) Benefits for Children in Out-of-Home Placements, at 1(a) and 2(a)</a>, “[c]aseworkers must...[r]efer all children who meet one of the following criteria to local SSI facilitators...” and “SSI facilitators must...[a]ssess all children and youth in out-of-home placement in FamLink to determine if they are eligible for SSI or SSA benefits”, however it does not specify whether or not the children are screened within 60 days of entering care.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">Washington State Department of Children, Youth &amp; Families; 6660. Social Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) Benefits for Children in Out-of-Home Placements, at 2(b)(i)</a>, “SSI facilitators must...[c]omplete and submit the...SSI application packet for children who meet the eligibility criteria, per the SSI Desk Guide.”</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> Yes. Per <a href="#">Washington State Department of Children, Youth &amp; Families; 6660. Social Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) Benefits for Children in Out-of-Home Placements, at 3(b)</a>, “SSI program managers must...[r]e-examine denied applications from SSA to determine if an appeal needs to be filed.”</p>	<b>5 out of 5</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No. Per <a href="#">RCW 74.13.060</a>, “[w]hen the conditions of placement no longer exist and public assistance is no longer being provided for such person, the secretary shall deliver to such person, or the parent,</p>	<b>0 out of 5*</b>

person, or agency legally responsible for such person, all funds belonging to the person remaining in his or her possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom”, however this occurs only after the child leaves foster care.	
<b>Total Points:</b>	<b>45 points</b>

*\*See elements of a model law in Appendix A*

*\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to Additional Information, below, and to the [Children's Advocacy Institute](#) website for information on more recent developments.*

## Additional Information

- Although not enacting [SB5397/HB1405](#) during 2023, which had strong bipartisan and agency support, Washington policymakers approved a [proviso](#) (see section 29 starting on page 399) to require DCYF to report on a plan to discontinue the practice of using any benefits, payments, funds, or accrual paid to or on behalf of a child or youth to reimburse itself for cost of care by the earliest date feasible. The report must include an implementation plan to conserve funds for the future needs of the child in a manner in which the funds will not count against eligibility for federal or state means tested programs. The report must include a strategy for developing the financial literacy and capability of youth and young adults exiting foster care and juvenile rehabilitation. The report is due to the Legislature and Governor by Oct. 1, 2024. On January 8, 2024, these bills were, by Resolution, reintroduced and retained in present status.

# West Virginia

Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
<p><b>1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care?</b> No. Per <a href="#">West Virginia Department of Health and Human Resources, Foster Care Policy, 5.12 Financial Responsibilities, at (a)(3)</a>, “[t]he child’s worker shall apply for any unearned benefits the child may be eligible for including Social Security, Black Lung, Veteran’s or Railroad Retirement. These benefits shall be accepted by the Department and applied toward the cost of providing boarding care and other expenses for the eligible child.”</p>	<b>0 out of 65*</b>
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
<p><b>2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee?</b> No.</p>	<b>0 out of 10*</b>
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
<p><b>3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care?</b> To some extent. Per <a href="#">West Virginia Department of Health and Human Resources, Foster Care Policy, 5.12 Financial Responsibilities, at (a)(1)</a>, “[t]he following steps must be taken when a child enters custody...[t]he worker will discuss with the parents all financial resources available to meet the child’s needs (i.e., Social Security, SSI, Veterans Benefits, endowments, trust funds, assets, etc.). If benefits are being paid by one of the above, the worker will contact the appropriate office to initiate having the representative payee changed from the parent to the Department. The information obtained on financial resources will be documented in FACTS”, however there is no indication that the agency is required to screen children for potential federal benefits eligibility beyond a discussion with the parents.</p>	<b>2.5 out of 5*</b>
<p><b>4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis?</b> No.</p>	<b>0 out of 5*</b>
<p><b>5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible?</b> Yes. Per <a href="#">West Virginia Department of Health and Human Resources, Foster Care Policy, 5.12 Financial Responsibilities, at (a)(3)</a>, “[t]he child’s worker shall apply for any unearned benefits the child may be eligible for including Social Security, Black Lung, Veterans or Railroad Retirement.”</p>	<b>5 out of 5</b>
<p><b>6. Does the state require the agency to file an appeal on the child’s behalf?</b> No.</p>	<b>0 out of 5*</b>
<p><b>7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney?</b> No.</p>	<b>0 out of 5*</b>
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children’s Advocacy Institute](#) website for information on more recent developments.

# Wisconsin

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child’s benefits to offset its obligation to pay for the child’s foster care? No. Per <a href="#">Policy No. OCM 36.00 Securing SSI and SSA Benefits, at Page 3</a> , “Child Protective Services receives SSI payments, which are placed into trust accounts and used to offset the cost of care of the child” and “[a]t times the trust may accumulate funds that can be used to meet other special needs of the child.”	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney when the agency applies to become the child’s federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? Yes. Per <a href="#">Policy No. OCM 36.00 Securing SSI and SSA Benefits, at Page 1, Procedures 1 and 2</a> , “[o]n an ongoing basis, the SSI Advocate manager will review cases entering OHC to identify children in OHC who may be eligible for SSI and SSA” and “[i]f the CM determines a child may be eligible for SSI/SSA a referral must be sent to Maximus.”	5 out of 5
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes. Per <a href="#">Policy No. OCM 36.00 Securing SSI and SSA Benefits, at Page 2, Procedure 4</a> , “[t]he CM is responsible for assisting the SSI advocate in gathering information in a timely manner (90 days) for the completion of the SSI claim.”	5 out of 5
6. Does the state require the agency to file an appeal on the child’s behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child’s benefits with the child, child’s parents/legal guardian, and/or child’s guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>10 points</b>

\*See elements of a model law in Appendix A

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## Additional Information

- **Note:** Wisconsin has a county-operated, state-supervised child welfare system. Milwaukee County is the most populous county in the state. When in doubt about a policy or practice statewide, our

review focuses on Milwaukee County's practices because they would impact the largest population of children and youth. In response to our request per the Wisconsin Open Records Law, a state representative indicated: It is important to note that Wisconsin has a county-operated, state-supervised child welfare system (with the exception of Milwaukee County, which is state-run).

# Wyoming

# Grade: F

<b>Element #1 Grading: Yes = 65; To some extent = 32.5; No = 0</b>	
1. Does the state prohibit the agency from using the child's benefits to offset its obligation to pay for the child's foster care? No.	0 out of 65*
<b>Element #2 Grading: Yes = 10; To some extent = 5; No = 0</b>	
2. Does the state require the agency to notify the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney when the agency applies to become the child's federal benefits representative payee? No.	0 out of 10*
<b>Element #3-7 Grading: Yes = 5; To some extent = 2.5; No = 0</b>	
3. Does the state require the agency to screen all children for potential federal benefits eligibility within 60 days of entering care? To some extent. Per <a href="#">Wyoming Department of Family Services, IV-E Foster Care Policy Manual, Chapter 15, Policy Number IV-E-11-001, at II.B.7</a> , caseworker responsibilities include "[a]ttest[ing] to the following for children in DFS custody...[a]pplication has been made, or the foster child is not eligible, for other income such as, but not limited to, Social Security, Veterans Benefits, etc., and the income is being submitted to DFS." However, the policy does not specify whether or not the children are screened within 60 days of entering care.	2.5 out of 5*
4. Does the state require the agency to rescreen all children for potential federal benefits eligibility on at least an annual basis? No.	0 out of 5*
5. Does the state require the agency to apply for federal benefits when a child is deemed potentially eligible? Yes. Per <a href="#">Wyoming Department of Family Services, IV-E Foster Care Policy Manual, Chapter 15, Policy Number IV-E-11-001, at II.B.7</a> , caseworker responsibilities include "[a]ttest[ing] to the following for children in DFS custody...[a]pplication has been made."	5 out of 5
6. Does the state require the agency to file an appeal on the child's behalf? No.	0 out of 5*
7. Does the state require the agency to share the SSA-required annual accounting on the use/conservation of the child's benefits with the child, child's parents/legal guardian, and/or child's guardian ad litem (GAL)/attorney? No.	0 out of 5*
<b>Total Points:</b>	<b>7.5 points</b>

\*See elements of a model law in Appendix A

\*\*The cut off for information included in the above chart was October 31, 2023. Thus, the grade reflects the law and policy as it existed on October 31, 2023. Please refer to the [Children's Advocacy Institute](#) website for information on more recent developments.

## APPENDIX A

### Elements of a Model Law

The model law elements presented below would appropriately protect and promote the interests of youth in foster care who are eligible for federal benefits.

1

**Screen and Apply for Benefits.** Within 60 days of entry, and annually thereafter, a child welfare agency must screen all children in care for eligibility for benefits. If deemed eligible, the agency must promptly apply for benefits on the child's behalf, including appeals if necessary. Whenever the child is or may be eligible for SSI, the department shall, if necessary for benefits eligibility, forego claiming that child for purposes of any federal IV-E maintenance payments under Section 475(4) of the Social Security Act. Agencies should apply for IV-E administrative dollars to help pay for administrative costs of such.

2

**Provide Notice and Due Process at Every Step.** The agency must immediately notify the child, the child's attorney and/or GAL, the child's caseworker, the child's parents if parental rights have not been terminated, the child's legal guardian or guardians, and the attorney for the parents or legal guardian of any screening/assessment made by the agency on the child's behalf; any efforts to seek and identify a preferred representative payee on the child's behalf, and if none is available, any application by the agency to become representative payee for the child; any decisions or communications between the agency and the Social Security Administration regarding an application or appeal for benefits; and any actions regarding a savings or special account established on behalf of the child.

3

**Use and/or Conserve Benefits Only for the Child's Unmet Current and Future Needs and Provide Annual Accountings of the Child's Benefits.** The agency must be prohibited from using the child's benefits to offset their cost of foster care and must ensure that the child's benefits are used only for the child's current unmet needs or conserved for their foreseeable future needs. The agency must conserve the child's benefits in appropriate accounts that do not subject the child to loss of any future benefits. The agency must be required to provide annual accountings on the use/conservation of funds to the child, the child's attorney and/or GAL, the child's caseworker, the child's parents if parental rights have not been terminated, the child's legal guardian or guardians, and the attorney for the parents or legal guardian. The agency must be required to engage the youth in planning for the use of available and/or conserved funds.

4

**Provide Financial Literacy Counseling for Children and Training for Representative Payees and Agency Staff.** The agency must provide financial counseling to youth (e.g., starting at age 14) and train representative payees and agency personnel regarding fiduciary obligations when serving as representative payee. Counseling and training must address how to establish, monitor, and use proper financial vehicles (i.e., ABLE, Special Needs Trusts, etc.) to preserve benefit eligibility; the use of funds only for unmet current needs; planning and budgeting for foreseeable future needs in the transition plan; and the requirement to provide annual accountings as described above.

5

**Refund Youth Their Benefits, with Interest.** The child welfare agency must provide refunds to previously impacted youth (with proportion and lookback period to be determined by the state).

# APPENDIX B

## Links to Resources

- [Listen to Lived Experience Advisors Tell Their Stories](#)
- **Key Reports & Research on Preserving Federal Benefits of Foster Youth**
  - [The Marshall Project / NPR: These States Take Money Meant for Foster Children](#)
  - [Federal Reports](#)
  - [Academia, Research and Publications](#)
  - [Information on Federal Benefits and Additional Resources](#)
- **[Federal Law and Policy on Preserving Federal Benefits of Foster Youth](#)**
  - Statutes
  - Social Security Administration (SSA) Regulations & Policies
  - Administration for Children and Families (ACF) Regulations & Policies
- **[Litigation on Preserving Federal Benefits of Foster Youth](#)**
  - Case Law & Unreported Cases
  - Active Cases
  - Case Planning
- **Helpful Tips for Foster Youth & Their Advocates**
  - [How to Find Out if the Government Took Your or Your Client's Money](#)
  - [5 Steps to Protect Children's Rights and Benefits](#)
  - [Learn About Account Options to Save or Conserve Benefits](#)
- **Policy Advocacy Tools**
  - [Toolkit for Protecting and Preserving Children's Federal Benefits](#)
    - Sample Op Ed
    - One-Pager for Policymakers
    - Sample Legislative Testimony
    - Sample Letter to Legislators
    - Sample Press Release
    - Sample Social Media Posts
  - [Sample Letters/Motions](#)
  - [Sample FOIA Request](#)
  - [Contact Your Representative or Senator](#)
- **Relevant Social Security Administration Forms**
  - Request to Be Selected as Representative Payee: [Form SSA-11-BK](#)
  - Representative Payee Report (Child): [Form SSA-6230](#)
  - Representative Payee Report: [Form SSA-623-F6](#)
  - Representative Payee Report of Benefits and Dedicated Account: [Form SSA-6233-BK](#)
- **Reform Efforts / Calls for Reform**
  - [Federal Policy Reform](#)
  - [State Policy Reform](#)
  - [Local Policy Reform](#)
- [List of State Status in Implementing 2018 Data Sharing Law](#)
- **[Up To Date Media Coverage](#)**
- **Contacts:** [National Disability Rights Network Member Organizations / P&A Network](#)