LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 932

Introduced by Hunt, B.
Read first time January 10, 2022

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to state wards; to amend section 43-907,
2 Reissue Revised Statutes of Nebraska; to authorize the Department of
3 Health and Human Services to screen children for social security
4 benefit eligibility; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,
Section 1. Section 43-907, Reissue Revised Statutes of Nebraska, is amended to read:

43-907 (1) Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department.

(2) Unless inconsistent with sections 2 to 7 of this act: (a) Children owning assets shall at all times pay for personal items; (b) assets over and above a maximum of two one thousand dollars, including accrued interest, and current income shall be available for reimbursement to the state for the cost of care; (c) assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government; (d) all income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited; and (e) the department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

Sec. 2. For purposes of sections 2 to 7 of this act, social security benefits means benefits from the Social Security Administration, including benefits available pursuant to Title II and Title XVI of the Social Security Act.

Sec. 3. (1)(a) The Department of Health and Human Services shall screen all children under its charge for eligibility of receipt of social security benefits within sixty days after the child enters the department's custody. If the department determines the child is likely eligible for receipt of one or more types of social security benefits, it shall complete and submit an application for such benefits on behalf of the child and maintain and respond to correspondence regarding the application and eligibility determinations with the Social Security Administration in a timely manner.
(b) If, in response to such application, a child is deemed ineligible to receive benefits from the Social Security Administration, the department shall participate in the appeal process on behalf of the child and if necessary, resubmit an application for benefits on behalf of the child upon belief that the reason for the child's ineligibility no longer exists.

(c) If the department determines a child is unlikely to be eligible for receipt of one or more types of social security benefits as a result of its screening process, but subsequently has reason to believe the reason for ineligibility no longer exists, the department shall complete and submit an application for such benefits on behalf of the child in a timely manner.

(2) Prior to reviewing a child's medical records for purposes of determining eligibility for social security benefits, the department shall receive written and informed consent from, or on behalf of, the child in the following manner:

(a) For children under fourteen years of age, written consent from the child's guardian ad litem; and

(b) For children fourteen years of age and older, written consent from the child signed in the presence of the child's guardian ad litem or the child's guardian ad litem.

(3) The department may apply to be, and accept appointment as, a representative payee for a child beneficiary of social security benefits under its charge. Consistent with federal law, when the department serves as the representative payee or in any other fiduciary capacity for such child, the department shall:

(a) Use or conserve the social security benefits for the use and benefit of the child in the child's best interest. This includes using the social security benefits for the child's needs or for services when funding is not otherwise available for the department and conserving the social security benefits for the child's reasonably foreseeable future
needs;

(b) Hold any social security benefits received on behalf of the child separate and apart from the department's funds and in the following manner:

(i) Establish and maintain an interest-bearing trust account on behalf of each child beneficiary, holding such social security benefits or resources below or not subject to, any federal asset or resource limits; and

(ii) For all social security benefits or resources received and maintained above any federal asset or resource limits, including those conserved in accordance with subsection (3)(d) of this section, exercise discretion in accordance with this section and federal law to use and conserve the funds in the child's best interest and in a manner that avoids violating such asset or resource limits, including using the funds for the child's needs or for services when funding is not otherwise available for the department or conserving funds within accounts and programs not subject to such federal asset or resource limits on behalf of the child in accordance with federal law. Such accounts and programs include, but are not limited to: (A) Plans for achieving self-support; (B) achieving a better life experience accounts under sections 77-1401 to 77-1409; (C) individual development accounts; (D) special needs trusts; and (E) dedicated accounts for social security back payments;

(c) Appropriately monitor and maintain all accounts and programs holding any social security benefits in a way that avoids violating any federal asset or resource limits so as to maintain the child's eligibility to receive social security benefits;

(d) Conserve a minimum percentage of social security benefits for each child beneficiary fourteen years of age and older that are not to be used to reimburse the state for the cost of care as follows:

(i) Beginning at fourteen years of age to fifteen years of age, at least forty percent;
(ii) Beginning at sixteen years of age to seventeen years of age, at least eighty percent; and

(iii) Beginning at eighteen years of age to twenty-one years of age, one hundred percent; and

(e) Maintain an itemized and current account record for each child beneficiary and account for the receipt, use, and conservation of such social security benefits on the child's behalf.

Sec. 4. (1) A child beneficiary and any other party to the child's juvenile court case shall have the right to request access to funds kept in the child's interest-bearing trust account, described in section 3 of this act, for the child beneficiary's personal use while under the charge of the Department of Health and Human Services. The department shall grant such requests if the use would be in the child's best interest. If funds from the child's interest-bearing trust account are spent in this manner, the account shall be reimbursed up to the federal asset or resource limits with subsequently received social security benefits and such reimbursed benefits shall not be available to reimburse the department or state for the cost of care.

(2) If the department denies a request from a child beneficiary or any other party for access to such funds for the child beneficiary's personal use, the requestor may appeal the denial. The appeal shall be in accordance with the provisions of the Administrative Procedure Act.

Sec. 5. The Department of Health and Human Services shall immediately notify a child under its charge, in a developmentally appropriate manner, and such child's guardian ad litem, of:

(1) The initiation of a screening process to determine the child's likelihood of eligibility for social security benefits and the results of such screening;

(2) Any application for social security benefits submitted on behalf of the child;

(3) Any decisions or communications from the Social Security
Administration regarding such application for social security benefits on behalf of the child;

(4) Any appeal or other action requested by the department regarding an application for social security benefits on behalf of the child;

(5) Any application by the department to become the child's representative payee for the purposes of receipt of social security benefits; and

(6) The appointment of the department as the child's representative payee for the purposes of receipt of social security benefits and of the child's right to appeal such appointment to the Social Security Administration.

Sec. 6. When the Department of Health and Human Services serves as representative payee or in any fiduciary capacity for a child beneficiary of social security benefits, the department shall provide:

(1) Immediate notice to the child beneficiary, in a developmentally appropriate manner, and the child's guardian ad litem, of (a) the department's receipt of the child's first payment of social security benefits, including the amount received, (b) where the payment was deposited, and (c) of the child's right and the right of any other party to the child's juvenile court case to request access to such social security benefits for the child's personal use in accordance with section 4 of this act:

(2) Notice and accounting to the juvenile court at every review hearing regarding the department's receipt, use, and conservation of the child's social security benefits in accordance with this section including:

(a) The dates and amounts of social security benefits received on behalf of the child since any prior notification;

(b) An accounting of the child's assets and resources relating to the receipt of social security benefits, including all earnings, assets, and other resources, programs, or accounts maintained on behalf of the
child receiving such social security benefits; and

(c) Records of any communication with the Social Security Administration regarding the child beneficiary's receipt of social security benefits since any prior notification; and

(3) All accounting records regarding the department's receipt, use, and conservation of the child's social security benefits, including an accounting of all existing earnings, assets, and other resources, programs, or accounts maintained on behalf of the child receiving such social security benefits, to the child beneficiary, the child's guardian ad litem or attorney, or the child's parent upon:

(a) Request from the child beneficiary, the child's guardian ad litem or attorney, or the child's parent; and

(b) Upon termination of the department's role as the child beneficiary's representative payee.

Sec. 7. On or before October 1, 2022, the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out sections 2 to 6 of this act consistent with federal requirements regarding representative payees for social security beneficiaries.

Sec. 8. Original section 43-907, Reissue Revised Statutes of Nebraska, is repealed.