

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 932**

Introduced by Hunt, 8.

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,

1 Section 1. Section 43-907, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 43-907 (1) Unless a guardian shall have been appointed by a court  
4 of competent jurisdiction, the Department of Health and Human Services  
5 shall take custody of and exercise general control over assets owned by  
6 children under the charge of the department.

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

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

23 Sec. 3. (1)(a) The Department of Health and Human Services shall  
24 screen all children under its charge for eligibility of receipt of social  
25 security benefits within sixty days after the child enters the  
26 department's custody. If the department determines the child is likely  
27 eligible for receipt of one or more types of social security benefits, it  
28 shall complete and submit an application for such benefits on behalf of  
29 the child and maintain and respond to correspondence regarding the  
30 application and eligibility determinations with the Social Security  
31 Administration in a timely manner.

1       (b) If, in response to such application, a child is deemed  
2 ineligible to receive benefits from the Social Security Administration,  
3 the department shall participate in the appeal process on behalf of the  
4 child and if necessary, resubmit an application for benefits on behalf of  
5 the child upon belief that the reason for the child's ineligibility no  
6 longer exists.

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

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

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

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

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

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

1 needs;

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

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

9 (ii) For all social security benefits or resources received and  
10 maintained above any federal asset or resource limits, including those  
11 conserved in accordance with subsection (3)(d) of this section, exercise  
12 discretion in accordance with this section and federal law to use and  
13 conserve the funds in the child's best interest and in a manner that  
14 avoids violating such asset or resource limits, including using the funds  
15 for the child's needs or for services when funding is not otherwise  
16 available for the department or conserving funds within accounts and  
17 programs not subject to such federal asset or resource limits on behalf  
18 of the child in accordance with federal law. Such accounts and programs  
19 include, but are not limited to: (A) Plans for achieving self-support;  
20 (B) achieving a better life experience accounts under sections 77-1401 to  
21 77-1409; (C) individual development accounts; (D) special needs trusts;  
22 and (E) dedicated accounts for social security back payments;

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

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

30 (i) Beginning at fourteen years of age to fifteen years of age, at  
31 least forty percent;

1        (ii) Beginning at sixteen years of age to seventeen years of age, at  
2 least eighty percent; and

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

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

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

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

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

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

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

31        (3) Any decisions or communications from the Social Security

1 Administration regarding such application for social security benefits on  
2 behalf of the child;

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

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

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

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

15 (1) Immediate notice to the child beneficiary, in a developmentally  
16 appropriate manner, and the child's guardian ad litem, of (a) the  
17 department's receipt of the child's first payment of social security  
18 benefits, including the amount received, (b) where the payment was  
19 deposited, and (c) of the child's right and the right of any other party  
20 to the child's juvenile court case to request access to such social  
21 security benefits for the child's personal use in accordance with section  
22 4 of this act;

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

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

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

1 child receiving such social security benefits; and

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

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

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

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

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

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