87R10542 MM-F

By:  Toth H.B. No. 4244

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a representative payee or fiduciary for a child in the conservatorship of the Department of Family and Protective Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter A, Chapter 264, Family Code, is amended by adding Section 264.0112 to read as follows:

Sec. 264.0112.  APPOINTMENT OF REPRESENTATIVE PAYEE OR FIDUCIARY FOR CHILD. (a) In this section, "legal representative" means the child's attorney, the child's attorney ad litem, or another individual appointed by a court to represent the legal interests of the child.

(b)  For a child in the department's conservatorship who receives or is eligible to receive benefits or services for which a representative payee or fiduciary is required, the department shall, in cooperation with the child's legal representative, select an appropriate individual to serve as the child's representative payee or fiduciary in accordance with the requirements of 20 C.F.R. Section 404.2021. If the department and the child's legal representative do not agree on a representative payee or fiduciary, the department shall request a hearing to determine an appropriate individual. The court shall consider the appointment of the child's relative and other designated caregivers. If the court does not identify an appropriate individual, the court may name the department as the representative payee or fiduciary.

(c)  In accordance with federal law, if the department serves as the representative payee or in any other fiduciary capacity for a child receiving United States Department of Veterans Affairs benefits, Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., or Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq., the department shall:

(1)  from the date the child turns 14 years of age until the date the department no longer serves as the child's representative payee or fiduciary, reserve the following minimum percentage of the child's benefits for use by the child:

(A)  for a child who is at least 14 years of age but younger than 16 years of age, at least 40 percent;

(B)  for a child who is at least 16 years of age but younger than 18 years of age, at least 80 percent; and

(C)  for a child who is at least 18 years of age, 100 percent;

(2)  exercise discretion in accordance with federal law and in the best interest of the child when making decisions to use or save the child's benefits or resources that are less than or not subject to asset or resource limits under federal law, including using the benefits to address the child's special needs and saving the benefits for the child's reasonably foreseeable future needs;

(3)  appropriately monitor federal asset or resource limits for the child's benefits and ensure that the child's best interest is served by using or saving the benefits in a manner that avoids violating federal asset or resource limits that would negatively affect the child's eligibility to receive the benefits, including by using:

(A)  a Social Security Administration Plan to Achieve Self-Support account for the child and determining whether it is in the best interest of the child to save all or part of the child's benefits in the account;

(B)  an ABLE account authorized by Section 529A, Internal Revenue Code of 1986, for the child and conserving the child's benefits in that account in a manner that appropriately avoids any federal asset or resource limits;

(C)  an individual development account for the child and conserving the child's benefits in that account in a manner that appropriately avoids any federal asset or resource limits;

(D)  a special needs trust for the child and conserving the child's benefits in the trust in a manner that is consistent with federal requirements for special needs trusts and that appropriately avoids any federal asset or resource limits;

(E)  the benefits to pay for the child's special needs not otherwise provided by the department if the department determines it is in the best interest of the child;

(F)  a dedicated account, if federal law requires certain back payments of benefits to be placed in a dedicated account, that complies with the requirements for dedicated accounts under 20 C.F.R. Section 416.640(e); and

(G)  any other exclusions from federal asset or resource limits available under federal law and using or conserving the child's benefits in a manner that appropriately avoids any federal asset or resource limits;

(4)  provide an annual accounting to the child and the child's legal representative regarding the use or saving of the child's resources in accordance with this section; and

(5)  provide financial literacy training for each child who is at least 14 years of age.

(d)  The department shall immediately provide notice to the child through the child's legal representative regarding:

(1)  any application for United States Department of Veterans Affairs benefits, Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., or Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq. made on the child's behalf;

(2)  if the department is identified as the representative payee under Subsection (b), any application to become representative payee for the child's United States Department of Veterans Affairs benefits, Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., or Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq.;

(3)  any decisions or communications from the United States Department of Veterans Affairs or the Social Security Administration regarding an application described by Subdivision (1); and

(4)  any appeal or other action requested by the department regarding an application for benefits described by Subdivision (1).

(e)  If the department serves as the representative payee or otherwise receives United States Department of Veterans Affairs benefits, Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., or Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq. on the child's behalf, the department shall provide notice to the child through the child's legal representative of the following 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.

SECTION 2.  This Act takes effect September 1, 2021.