

By: Toth

H.B. No. 4244

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the appointment of a representative payee or fiduciary  
3 for a child in the conservatorship of the Department of Family and  
4 Protective Services.

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

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

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

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

1 department as the representative payee or fiduciary.

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

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

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

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

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

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

25 (3) appropriately monitor federal asset or resource  
26 limits for the child's benefits and ensure that the child's best  
27 interest is served by using or saving the benefits in a manner that

1 avoids violating federal asset or resource limits that would  
2 negatively affect the child's eligibility to receive the benefits,  
3 including by using:

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

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

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

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

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

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

27 (G) any other exclusions from federal asset or

1 resource limits available under federal law and using or conserving  
2 the child's benefits in a manner that appropriately avoids any  
3 federal asset or resource limits;

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

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

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

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

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

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

27 (4) any appeal or other action requested by the

1 department regarding an application for benefits described by  
2 Subdivision (1).

3 (e) If the department serves as the representative payee or  
4 otherwise receives United States Department of Veterans Affairs  
5 benefits, Supplemental Security Income (SSI) benefits under 42  
6 U.S.C. Section 1381 et seq., or Social Security Disability  
7 Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq. on the  
8 child's behalf, the department shall provide notice to the child  
9 through the child's legal representative of the following before  
10 each placement review hearing:

11 (1) the amount of benefit funds received on the child's  
12 benefit since the most recent notification to the child's legal  
13 representative and the date the benefits were received;

14 (2) information regarding the child's assets and  
15 resources, including the child's benefits, insurance, cash assets,  
16 trust accounts, earnings, and other resources;

17 (3) an accounting of the disbursement of benefit  
18 funds, including the date, amount, and identification of the payee;  
19 and

20 (4) information regarding each request by the court  
21 appointed special advocate for the child, the child's legal  
22 representative, or the child's caregiver for disbursement of funds  
23 and a statement regarding the department's reason for not granting  
24 the request if the request was not granted.

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