COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

Kevin Erskine
Commissioner

January 5, 2026

MEMORANDUM

TO: The Honorable Glenn Youngkin
Governor of Virginia

The Honorable L. Louise Lucas
Chair, Senate Finance & Appropriations Committee

The Honorable Luke E. Torian
Chair, House Appropriations Committee

The Honorable Vivian E. Watts
Chair House Finance Committee

FROM: Kevin Erskine

SUBJECT: Report on Applying for Benefits for Children in Foster Care

The attached report is submitted pursuant to Item 329.X. of the 2025 Appropriation Act, which provides:

X. The Department of Social Services shall assess the feasibility of requiring local departments to apply for benefits administered by the Social Security Administration or the Department of Veterans Affairs on behalf of eligible children in foster care and require local departments that are representative payees for children in foster care to conserve such federal benefits in an appropriate trust instrument. The Department shall report its findings to the Chairs of the House Appropriations, House Finance, and Senate Finance and Appropriations Committees by November 1, 2025.

Please contact me if you have questions at (804) 726-7011.

KE:gs
Attachment

cc: The Honorable Janet V. Kelly, Secretary of Health and Human Services

Feasibility of Conserving Social Security Funds for Children in Foster Care

Virginia Department of Social Services 11/1/25

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FEASIBILITY OF CONSERVING SOCIAL SECURITY FUNDS FOR CHILDREN IN FOSTER CARE

A Report for the Virginia General Assembly | November 1, 2025

REPORT MANDATE

Budget Bill – HB 1600 (Chapter 725) Item 329 X

The Department of Social Services shall assess the feasibility of requiring local departments to apply for benefits administered by the Social Security Administration or the Department of Veterans Affairs on behalf of eligible children in foster care and require local departments that are representative payees for children in foster care to conserve such federal benefits in an appropriate trust instrument. The Department shall report its findings to the Chairs of the House Appropriations, House Finance, and Senate Finance and Appropriations Committees by November 1, 2025.

EXECUTIVE SUMMARY

The Virginia Department of Social Services (VDSS) is committed to ensuring that children in foster care receive all benefits that they are entitled to, including benefits from the Social Security Administration (SSA) and the Department of Veterans Affairs. Should local departments of social services (LDSS) be required to conserve these funds for the child or payee upon leaving foster care, there will be a minimum of a $3.6 million deficit in the state's budget to account for the loss of federal funds. This estimate would increase as VDSS continues to implement programs and services that meet the Family First Prevention Services Act (FFPSA) requirements for federal title IV-E prevention services and foster care maintenance funding, such as the Trafficking Specialization designation for non-family-based placement types. LDSS were surveyed and provided feedback on how SSA benefits have been used towards the care of children in foster care. VDSS will continue to collaborate with LDSS to ensure that all federal funds are being used appropriately and according to applicable guidance and laws.

About VDSS and Foster Care

The Virginia Department of Social Services (VDSS) partners with local departments of social services and community organizations, to promote the well-being of children and families across the Commonwealth. We proudly serve alongside nearly 13,000 state and local human services professionals throughout the Social Services System, who ensure that thousands of Virginia's most vulnerable citizens have access to the best services and benefits available to them.

Together, we work each day to serve, empower, and create opportunities for brighter futures.

Foster care provides a safe and stable environment for children and older youth until the issues that made placement outside the home necessary are resolved. When a child cannot return home, another permanent home is found for the child through adoption or legal custody by a relative.

DEFINITIONS

Children's Services Act (CSA)

The Children's Services Act (CSA) is a Virginia state law enacted in 1993 that establishes a single state pool of funds to support services for eligible youth and their families. State funds, combined with local community funds, are managed by local interagency teams who plan and oversee services to youth, including youth in foster care.

Maintenance

Maintenance means payments made on behalf of a child in foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for the child to visit with family or other caretakers and to remain in his or her previous school placement.

Office of Children's Services (OCS)

The Office of Children's Services (OCS) is responsible for the oversight and administration of the Children's Services Act.

Representative Payee

A representative payee is a person or organization appointed by the Social Security Administration to receive the SSA or SSI benefits for anyone who cannot manage or direct the management of his or her benefits.

Retirement, Survivors, And Disability Insurance (RSDI) Benefits

Social Security benefits are payments made under a social insurance program administered by the federal Social Security Administration. They are paid monthly by check or direct deposit to the beneficiary or to a representative payee. RSDI benefits are one type of Social Security benefit. Children may be eligible for these benefits based on the retirement, death, or disability of an insured parent.

Supplemental Security Income (SSI)

Supplemental Security Income is one type of benefit administered by the federal Social Security Administration. SSI is a needs-based program for individuals with limited income and resources who are age 65+, blind, or have a disability.

Title IV-E

Title IV-E is a section of the Social Security Act that provides federal funding to states, territories, and tribes to support foster care, adoption assistance, and guardianship assistance programs.

PROGRAM OVERVIEW

The Foster Care Program provides services to children and families when circumstances require the child to be removed from their home. Foster care provides a safe and stable environment for children and older youth until the issues that made placement outside the home necessary are resolved. When a child cannot return home, another permanent home is found for the child through adoption or legal custody by a relative. The Fostering Futures program, Virginia's extended foster care, enables the extension of foster care maintenance and services as well as independent living services to the age of 21 for those who are in foster care when they reach age 18.

CONTACTS

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Feasibility of Conserving Social Security Funds for Children in Foster Care

SECTION 1 OVERVIEW OF FOSTER CARE & SOCIAL SECURITY

The legislative mandate for this report includes benefits administered by the Social Security Administration or the Department of Veterans Affairs on behalf of eligible children in foster care.) Since the mandate was issued, Virginia has prohibited the use of military survivor benefits to pay for the care and support of children in foster care that the Commonwealth is otherwise obligated to pay for (per HB2457 (2025)). Thus, this report will focus solely on benefits from the Social Security Administration (SSA).

The Social Security Administration provides benefits to children through one or both of the following programs:

1. Supplemental Security Income (SSI), for which children may qualify if their medical conditions meet the statutory definition of a disability, as well as certain financial requirements; or
2. Retirement, Survivors, and Disability Insurance (RSDI) benefits, for which children may qualify based on the disability, retirement, or death of an insured parent.

According to 22VAC40-201-50, when a child enters foster care and is placed in the custody of the LDSS, the service worker is responsible for determining all financial resources available to the child, including SSI, other governmental benefits, and private resources. This includes survivors' benefits. For minor children receiving Social Security benefits, the SSA pays the benefit through a payee. When a child enters foster care, the LDSS will apply to become the representative payee for the child's Social Security benefit. The SSA will determine who is the most appropriate representative payee for that child's account. According to the SSA's Program Operations Manual GN 00502.159 Additional Considerations When Foster Care Agency is Involved, the SSA generally selects the LDSS as the representative payee most of the time, as the agency is legally responsible for the child and their care. LDSS are encouraged to assess children throughout their time in foster care to determine if it would be appropriate to apply for SSI.

Social Security funds for youth are handled in different ways depending on the type of funds received. LDSS abide by the federal guidelines outlined in Public Law (P.L.) 104-134 and Section 1631(a)(2)(F)) and the VDSS Finance Guidelines Manual for Local Departments of Social Services Section 3.50. If the child receives a lump sum SSI payment, the LDSS must establish a separate "dedicated account" in a financial institution for the initial lump sum payment and keep these funds separate from the child's other resources. These funds do not count as income to the individual/child. The LDSS may not spend the lump sum funds to reimburse maintenance costs. Lump sum funds of greater than six (6) months may be used only for medical treatment, education, or job skills training if related to the child's impairment, personal needs assistance, special equipment, housing modification, therapy or rehabilitation, or other items or services as SSA deems appropriate.

For a monthly Social Security benefit such as SSI, it is the expectation that these funds are used for the beneficiary's current maintenance according to Code of Federal Regulations §404.2040. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care and personal comfort items. The amount is placed in a special welfare account with the LDSS and can be used to reimburse expenditures for the child such as their maintenance costs (room and board, clothing, childcare, transportation), medical care not covered by Medicaid, and other services. Excess funds are to be saved for the child or may be used for case-specific personal needs of the child. For example, funds could be used to send the child or youth to a specialized or therapeutic camp to help improve social skills or other case-specific services. The LDSS worker, in consultation with the child's biological parents and foster parents, is responsible for identifying how these excess funds are to be used.

The monthly SSI for children who receive title IV-E funding (federal funding) for their foster care placement is reduced by the amount of monthly title IV-E funds received for the child. The LDSS may choose to receive only the SSI payment to cover the costs of the child's care. Since both funds (SSI and title IV-E) are federal funds, LDSS cannot utilize both sources for the same purpose. Typically, the LDSS will opt to access title IV-E funding as that amount is substantially more than the SSI benefit.

If custody is transferred back to a parent, the agency would notify SSI that the child was no longer in their care and no longer receiving title IV-E funds so that the SSI could revert to its original amount. Additionally, when any child receiving SSI enters a Medicaid-funded residential treatment facility, the LDSS must notify SSA of their placement as that can also reduce their SSI for the timeframe they are in the facility.

For title IV-E eligible children, the resource maximum is $10,000 which means that they can accumulate combined resources/funds to a maximum of $10,000 before becoming ineligible for title IV-E and Medicaid. Since their SSI is reduced dollar for dollar by the amount of title IV-E funds received for the child (based on federal law), it is unlikely that their resources will accumulate that high. For non-title IV-E children, the resource maximum is $2,000 which can make them ineligible for SSI and Medicaid. Since their SSI is not reduced dollar for dollar, it is likely that they would quickly reach $2,000 maximum limit if funds were not spent, and it would impact their Medicaid and SSI eligibility.

When a child leaves foster care, all funds in the special welfare account received from SSA shall be returned to the SSA, including SSA/SSI savings, other investments, and interest earned on the funds. If the child in foster care has remaining unspent funds other than saved SSA/SSI benefits upon leaving the custody of the LDSS, they must be paid to the child or the parent or guardian, in accordance with § 63.2-314 of the Code of Virginia. When a child leaves foster care, the LDSS, as the representative payee, shall inform the local SSA office immediately of the change and shall return any accumulated SSI funds and interests earned on the funds to SSA (§ 63.2-314 of the Code of Virginia). SSA will disburse the accumulated SSI funds to the next payee for the child. All accumulated funds belong to the child.

For older youth in care (18 years of age and older), they may choose to accept their SSI check in lieu of the maintenance payment, due to the requirement outlined above; or the youth can agree to have the payment sent to the LDSS to reimburse their care (as would be done for youth under 18 years of age). Chapter E, Section 14.5.3 of the VDSS Child and Family Services Manual outlines the proper handling of SSA/SSI for youth ages 18-21 in the Fostering Futures program.

SECTION 2 OPTIONS TO CONSERVE

At present, LDSS hold Social Security funds in a special welfare account, which is essentially an interest-bearing bank account at a financial institution of the LDSS' choosing. The amounts must be limited so as to not make the child ineligible for title IV-E, if applicable, or Medicaid. For title IV-E eligible children, the resource maximum is $10,000, which means that they can accumulate combined resources/funds to a maximum of $10,000 before becoming ineligible for title IV-E and Medicaid. For non-title IV-E children, the resource maximum is $2,000, which can make them ineligible for SSI and Medicaid.

When the child's special welfare account exceeds $10,000 for title IV-E children/$2,000 for non-title IV-E children, the LDSS can establish an irrevocable trust account that will allow resources to accumulate over these income/resource levels, while not making the child ineligible for most benefits. However, to be exempt as countable income for the purposes of Medicaid eligibility, the trust must meet specific requirements. It is strongly recommended that the LDSS consult with an attorney that specializes in special needs planning and trust administration to ensure that the trust is set up properly.

It has been proposed that Achieving a Better Life Experience (ABLE) Accounts can be used to conserve the SSI funds for children in foster care. ABLE accounts are tax-advantaged savings accounts for eligible individuals with disabilities. For individuals receiving SSI for their own disability, they could become ineligible for SSI when their assets go above $2,000. ABLE accounts enable them to conserve savings without jeopardizing their SSI eligibility.

ABLE accounts would be an option only for children in foster care who are receiving SSI for their own disability. It would not be an option for children who are recipients of Retirement or Survivor's benefits or when a child is receiving a disability benefit based on their parent's disability. If the ABLE account is opened on behalf of the child while in foster care and the child is discharged from foster care, the LDSS will need to seek the approval of SSA to transfer the conserved funds by changing the signature authority for the account to the new payee or beneficiary.

Because of the limitations of OASIS, which is the current Child Welfare Information System (CWIS), it is difficult to ascertain how many children are receiving SSI versus other kinds of Social Security benefits.

SECTION 3 FISCAL IMPACT

Currently, section 22VAC40-201-50 of the Administrative Code of Virginia requires LDSS to establish a foster child's eligibility for federal, state, or other funding sources and make required payments from such sources. Under this requirement, LDSS are required to seek state funds for a foster child's maintenance and service needs when other funding sources are not available.

Federal rules require that the SSI payment received by title IV-E foster care children be reduced dollar for dollar by the amount of title IV-E funding. This typically reduces the child's SSI to a zero-dollar amount. Title IV-E foster children receive a mix of federal and state funds for maintenance and care. Foster children who are not eligible for title IV-E funding receive only state dollars for their maintenance and care. Currently, for children in foster care who receive Social Security benefits, the benefits are used to offset the children's current needs such as housing, food, medical care and personal items. If Social Security benefits for foster children are no longer used to support the child, it will require the difference to be funded with state funds. State funding for foster children resides with the Office of Children's Services (OCS).

In FY 2024, OCS reported that there were $2,209,198 in local refunds to the Children's Services Act (CSA) pool from recovered SSI and SSA benefits paid for youth in foster care. It is estimated that the termination of the use of federal benefits for maintenance and care for state-funded foster children will reduce federal revenues at OCS by at least $2.2 million a year. To continue foster care payments at the current rate for these children, OCS will need an estimated $2.2 million in general fund dollars annually. However, it is important to note that this is based on what LDSS have reported and/or refunded to OCS and the total amount could be higher. Again, due to the limitations of our current CWIS, neither VDSS nor OCS have the ability to verify how many children are recipients of Social Security benefits outside of the LDSS self-reporting.

Additionally, any children receiving title IV-E foster care funding who are found to be eligible for federal benefits would see their monthly maintenance payments reduced by the amount of the federal benefits. This reduction will then cause a reduction in title IV-E funding and the corresponding general fund match for that child. While the corresponding general fund match can be used instead to offset the federal funding loss, additional general funds in the amount of the lost title IV-E funding will be needed to keep those children's maintenance payments at the same rate.

In FY 2024, the total amount of title IV-E expenditures was $35,116,753. There were 2,666 title IV-E foster children receiving an average IV-E monthly maintenance payment of $1,097.67. According to the Virginia Child Welfare Outcome Reports (VCWOR), 4.1 percent of children in foster care received Social Security benefits at some point during FY 2024. An estimated 109 children (2,666 x 4.1 percent) received Social Security income at an average Social Security payment of $850 per month. If Social Security funds must be conserved, the LDSS must forgo the use of title IV-E funding so as to not reduce the SSI. In FY 2024, federal title IV-E funding received by Virginia required the state to provide a 48.78 percent match. It is estimated IV-E funding would be reduced by $562.22 ($1097.67 x 51.22%) per month or $6,746.71 per child annually. Additionally, as a result of the federal benefit reduction, it is estimated that the general fund costs would be reduced by $535.44 ($1097.67 x 48.78%) per month or $6,425.32 per child annually. The total estimated annual reduction in IV-E federal funding is $735,392.35 and $700,360 in general fund match (total $1,435,752.3). In summary, it is estimated that an additional $3,635,752.35 would be needed at a minimum to account for the loss of federal funds ($2.2 million in general funds to OCS and $1,435,752.3 to account for the estimated annual reduction in IV-E federal funding).

It is important to note that VDSS is still in the process of implementing programs and services that meet the Family First Prevention Services Act (FFPSA) requirements for federal title IV-E prevention services and foster care maintenance funding. To this end, VDSS is proceeding with the implementation of the Trafficking Specialization designation for non-family-based placement types. It is anticipated that this will significantly increase the total amount of IV-E funds utilized for foster care placements. VDSS estimates that an additional $4.38 million of IV-E funds could be drawn down annually with the implementation of the Trafficking Specialization designation. This was not factored into the above calculations, but it will subsequently increase the total needed to account for the loss of federal funds.

It should also be noted that while LDSS are required to apply for Social Security benefits for children in foster care, title IV-E children cannot become eligible for SSI until foster care payments have stopped. Therefore, the estimate that 4.1% of children in foster care in Virginia receive Social Security benefits is likely low as additional children would be eligible if they were not receiving title IV-E benefits.

Lastly, this policy change will have a fiscal impact on LDSS. If the Social Security funds are allowed to accrue, they will likely exceed the allowable limits for IV-E and Medicaid eligibility very quickly. This would require LDSS to set up and manage trust instruments or protected accounts for children in foster care who receive Social Security benefits. LDSS will need to obtain consultation and recommendations from attorneys who specialize in special needs planning and trust administration to ensure that any accounts created would not jeopardize eligibility for Medicaid or Social Security benefits. It can cost anywhere from $3,000-$7,000 to set up an irrevocable trust. Additionally, there may be annual fees associated with the management of the trust accounts. If federal funds cannot be used to offset the cost of maintenance for children in foster care and this becomes solely state funds, LDSS will also be responsible for providing the match. Currently, the match required for title IV-E funds is provided by the state.

SECTION 4 PRACTICE IN OTHER STATES

At present, there are a handful of states that have passed legislation regarding this topic. Arizona became one of the first states to pass comprehensive legislation in 2023 (HB 2559), which altered how the Arizona Department of Child Safety (DCS) could use federal benefits for children in foster care. HB 2559 mandated that no federal benefits could be used to reimburse the Department of Child Safety or the state for any of the costs of the child’s care.

For the purpose of this report, VDSS met with a senior finance leader at Arizona DCS. The leader confirmed there has been a significant fiscal impact due to the implementation of HB 2559. When a child in foster care receives SSI benefits, Arizona DCS will forego the child's IV-E eligibility so as to not reduce any of the child's SSI benefits. No SSA funds of any kind are used towards the child's care. Since these changes have gone into effect, the Arizona DCS leader shared that they had to ask for an increase of approximately $5 million to their annual budget. According to the Arizona FY2025 Appropriations Report, the FY 2025 budget included a $5,855,000 increase to backfill Social Security and Veterans Affairs benefits received previously on behalf of children in DCS custody.

Oregon, Washington D.C., Massachusetts, and most recently Kansas, New Mexico and Missouri have passed legislation similar to Arizona that prohibits the use of all federal funds to reimburse the state for the cost of foster care services.

In Nebraska, Legislative Bill 275 (LB 275) was proposed in early 2025, which would require the Nebraska Department of Health and Human Services (DHHS) to conserve 100% of the SSA benefits for children in foster care. A foster care program specialist with Nebraska DHHS shared that the bill was amended due to the deficit being so high if DHHS were unable to use any federal funds towards the children's care. The amended bill passed, requiring Nebraska DHHS to conserve a portion of the youth's benefits as they get older (age 14 & 15 - 20%, age 16 - 30%, age 17 - 40%, and age 18 - 50%). Nebraska DHHS is still exploring the types of accounts they will use for conserving funds when ABLE accounts cannot be used. The changes will be implemented on October 1, 2026.

Other states have passed similar legislation. Maryland and Illinois have requirements that a minimum percentage of Social Security funds are conserved. A recent directive was issued in Idaho by the Idaho Department of Health and Welfare that prohibits only the use of survivors' benefits to pay for costs associated with foster care.

SECTION 5 LOCAL AGENCY SUPPORT OF YOUTH IN FOSTER CARE

A common misconception expressed about Social Security funds and foster care is that the funds are being "stolen" from children in foster care. As representative payee, LDSS are required to ensure that Social Security benefits are used to meet the needs of the child and properly account for the use of these funds. Regarding usage of Social Security funds, VDSS sought feedback from LDSS via the Permanency Advisory Committee and a survey sent to all 120 LDSS. Sixty LDSS responded to the survey. LDSS reported that Social Security funds are mainly used to reimburse maintenance costs. There were typically no funds remaining as the total cost of maintenance was higher than the Social Security benefit received. However, there were times when LDSS were able to use Social Security funds to support children in foster care beyond the basic maintenance. LDSS shared that Social Security funds were used towards the following, according to SSA guidelines:

- Medical services and medication outside of what Medicaid covers
- Equipment, uniforms, fees for sport teams

- Extracurricular and recreational activities
- Summer camps
- Additional clothing and shoes
- Furniture
- Car purchase and/or repairs
- Driving-related fines
- School supplies
- Musical Instruments and lessons
- Electronic equipment such as cell phones, laptops, cameras and gaming systems
- Hygiene products
- Rent for youth aging out of care
- Toys, additional holiday gifts

SECTION 6 CONCLUSION

VDSS is committed to ensuring that children in foster care receive all benefits that they are entitled to, including benefits from SSA. Currently, those funds are used in accordance with the requirements outlined in federal law. For a monthly Social Security benefit such as SSI, it is the expectation that these funds are used for the beneficiary's current maintenance according to Code of Federal Regulations §404.2040. Current maintenance includes costs incurred with obtaining food, shelter, clothing, medical care and personal comfort items. Should LDSS be required to conserve these funds to be given to the child or payee when they leave foster care, there will be a minimum of a $3.6 million deficit in the state's budget to account for the loss of federal funds. As noted earlier, this is likely to be higher for several reasons. In addition to the fiscal impact to the state budget, there will be a significant impact to the budgets of the individual LDSS.

Key Takeaways

- The proposed system of conserving all benefits from Social Security Administration would require significantly more state funding.
- At a minimum, it would require at least $3.6M in additional state funding.
- It would require more state funding because Social Security benefits would no longer offset maintenance costs for foster care children currently 100% funded by the state ($2.2M) and children funded by both federal (title IV-E) and state sources ($1.4M).
- This does not include future increases in federal funding available to foster care children as a result of FFPSA implementation (+$4.4M potential).

APPENDIX A-LEGISLATIVE MANDATE: HB 1600 (CHAPTER 725) ITEM 329X

329 X. The Department of Social Services shall assess the feasibility of requiring local departments to apply for benefits administered by the Social Security Administration or the Department of Veterans Affairs on behalf of eligible children in foster care and require local departments that are representative payees for children in foster care to conserve such federal benefits in an appropriate trust instrument. The Department shall report its findings to the Chairs of the House Appropriations, House Finance, and Senate Finance and Appropriations Committees by November 1, 2025.