

LFC Requester:

Allegra Hernandez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Feb. 12, 2025

Check all that apply:

Bill Number: HB364

Original Correction
Amendment Substitute

Sponsor: Rep. Marianna Anaya

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Federal Benefits for CYFD Custody

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB333 and SB283**

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill seeks to enact a new act within the Children’s Code, the Federal Benefits for Children in State Custody Act (“Act”), as titled in Section 1. The new Act would direct the Children, Youth and Families Department (“CYFD” or “Department”) upon the determination that a child in their custody is either receiving federal benefits, or is eligible for federal benefits, to identify, in consultation with other certain parties, their representative payee, or become their representative payee. The Act requires CYFD to establish account management in the best interest of the child and an annual determination of other possible better suited representative payees. The Act instructs how to release remaining funds to a child that reaches the age of majority or to a parent or guardian.

Section 2 defines representative payee as a person appointed by a federal agency to manage the benefits the federal agency provides.

Section 3 requires CYFD to apply for the federal benefits. (An example of these federal benefits is the “Supplemental Security Income” benefit under Title XVI of the Social Security Administration Act.) CYFD shall be the party managing the receipt of these benefits, unless CYFD can identify another child’s representative, such as an attorney, custodian, guardian, guardian ad litem or Indian tribe, to serve in this role.

Section 4 requires CYFD to maintain the federal benefits in an account and use them in the “child’s best interest,” provide notice to the child regarding certain actions on their account, provide annual accountings, and prevent overpayment to the account.

Section 5 prohibits CYFD from using the federal benefits “to pay for or reimburse the department for any of the costs of the child’s care.”

Section 6 requires CYFD to release the balance of the funds to the child when the child leaves state foster care custody.

Section 7 requires CYFD to report certain data to the legislative health and human services committee annually beginning September 2026.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Currently, the New Mexico Health Care Authority (“HCA”) is the authorized public body to implement payments of public assistance, and the proposed Act may cause confusion with this established state law, if not clarified. If the language “[i]f the department determines that a child is eligible for benefits administered by the federal government, the department shall apply for those benefits...” directs CYFD to apply to and directly receive payments from the federal government, this would be in direct conflict with current law, and at a minimum this language likely causes confusion about which entity applies for and manages those funds.

However, if the bill simply contemplates that CYFD, as the designated representative payee of the child, will receive federal benefit payments via the Health Care Authority, express language in Section 3 (B)(2) should state that.

Section 3 (C) may also cause confusion as presently drafted where it directs the Department, upon determining a child is eligible for federal benefits, to apply for those benefits and to become the child’s representative payee. However, as drafted, the Act fails to direct where CYFD should apply.

Confusion may be minimized if the Act clarifies that CYFD would be applying to the HCA to become the child’s representative payee and that HCA would be making disbursements to CYFD as authorized under NMSA 1978, Section 27-2-17.

The term “children’s best interest” is used, which is vague. The term fiduciary obligates CYFD with a legal duty to act in the best financial interest of the child. The definition of representative payee in Section 2 should likely include agency as a possible recipient as it is currently limited to a “person appointed by a federal agency.”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB364 appears to address the same concern and cover a lot of the same ground as SB333 and SB283.

TECHNICAL ISSUES

See above in significant issues.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo – the Health Care Authority will continue to process public assistance/TANF payments pursuant to Section 27-1-2 and 8.102.100.3 NMAC.

AMENDMENTS

N/A