

LFC Requester:

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment**

Date 2025-02-12

Correction **Substitute**
n

Prepared:
Bill No: HB364

Sponsor(s) Marianna Anaya
:

Agency Name CYFD 69000
and Code
Number:

Person Ramona Martinez
Writing
Analysis:
Phone:

Short FEDERAL BENEFITS FOR
Title: CYFD CUSTODY

Email: ramona.martinez@cyfd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

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

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

This bill would amend the Children's Code by adding a new section known as the "Federal Benefits for Children in State Custody Act". This bill defines the "representative payee" to mean a person appointed by a federal agency to manage the benefits the federal agency provides to a child.

This bill adds the following to the new Children's Code section:

- * Within sixty days of a child entering the department's legal custody, and annually thereafter, the department shall determine whether the child is currently receiving or is eligible to receive federal benefits.
- * If it is determined that a child in the legal custody of the department is already receiving federal benefits, the department shall identify the child's representative payee and apply to become the child's representative payee when no other candidate is available.
- * If the department becomes the representative payee, the department shall establish an appropriate account to use and conserve the child's federal benefits, annually determine whether a person, other than the department, is available to assume the role of representative payee and could better serve in that role, in the child's best interest, and provide notification of any application, decision or appeal related to a child's federal benefits.
- * When providing notice of any denial of benefits, the department shall consult with the child's attorney and appeal the denial if it is in the child's best interest.
- * The department will provide a annual accounting as to the use, application or conservation of the child's federal benefits to the child.
- * The department will avoid receiving overpayment of federal benefits and pay any discovered overpayment to the appropriate federal agency.
- * If the department is the child's representative payee, the department shall not use a child's federal benefits to pay for or reimburse the department for any of the costs of the child's care; however, the department may use those benefits to pay for the child's unmet needs beyond what the department is

obligated or required or has agreed to pay.

* The department shall submit a report to the legislative health and human services committee that includes: the number of children in its custody who receive federal benefits, the type of federal benefits; the manner in which those benefits are conserved, and the amounts of federal benefits used and conserved.

FISCAL IMPLICATIONS

Currently children in the department's custody who receive SSI payments receive the maximum payment of \$967 per month because the department utilizes SSI funds toward the care and support of the child via the monthly foster care maintenance payment. If the department did not apply a child's SSI benefits toward the monthly foster care maintenance payment and CYFD covered the costs of care and support (foster care maintenance) with state funding, the Social Security Administration would reduce the child's SSI payment by that amount provided by the department. If the foster care maintenance payment exceeded the maximum SSI benefit, the benefit would stop and that child could potentially not be eligible for SSI. This could cause potential issues for when a child exits the department's custody and is no longer receiving foster care maintenance payments.

SIGNIFICANT ISSUES

Although the premise of this bill is intended to improve access to and use of federal benefits and directs the department, as the representative payee, to conserve federal benefits for children and youth in the custody of the department, there are some significant issues in this bill. The primary issue is that the bill does not differentiate between the two main types of federal benefits: Supplemental Security Income (SSI) which is based on a child's disability, income and assets, and Retirement, Survivors, and Disability Insurance (RSDI). These are two very different benefits with disparate eligibility, application, and criteria. Other significant issues include:

* "If it is determined that a child in the legal custody of the department is already receiving federal benefits, the department shall identify the child's representative payee and apply to become the child's representative payee when no other candidate is available." The Social Security Administration, not the department, chooses the child's representative payee. When a child comes into the departments' custody, the department identifies whether a child is already receiving federal benefits as part of the Title IV-E eligibility determination process. If a child is identified as receiving either Supplemental Security Income (SSI) or Retirement, Survivors, and Disability Insurance (RSDI), the department applies to become representative

payee (using the SSA 11) to the Social Security Administration after the adjudicatory hearing or 60 days after a child or youth comes into custody, whichever comes first. The Social Security Administration then reviews the application and chooses the representative payee based on the court-appointed legal guardian or custody. If the Social Security Administration chooses and appoints the department as representative payee, the department is responsible for all representative payee duties including receipt, disbursement, and accounting of monetary benefits received. The department does not have the authority to appoint an alternate representative payee. If another representative payee is suggested, that person or entity would have to apply to become representative payee through the Social Security Administration. If that person or entity is chosen over CYFD, then the new representative payee would take over those responsibilities and would receive, disburse and account for the monetary benefits on behalf of that child.

* "The department will avoid receiving overpayment of federal benefits and pay any discovered overpayment to the appropriate federal agency." The department does not have any control over any overpayments that are sent to the department by the Social Security Administration. This is particularly true for the receipt of Supplemental Security Income (SSI). The application and approval process for SSI is lengthy, and once approved, the benefits are retroactive back to application month, and those retroactive months are paid in one lump sum. This overpayment or lump sum is designated as "dedicated funds" which are to be reserved in a separate account and expended in only limited circumstances according to Social Security regulations. In addition, because SSI payments are linked to income and other federal and state assistance, when a child moves from a foster home to a therapeutic facility, where Medicaid covers room, board and therapeutic needs, the child's SSI benefit drops to \$50 a month. The department notifies the Social Security Administration of all placement changes, including placement in a therapeutic facility. Regardless of the timely notification, it can take the Social Security Administration up to a month to make changes in their system, and the department will receive an overpayment. The overpayment is returned to the Social Security Administration as part of the current accounting process.

* "If the department is the child's representative payee, the department shall not use a child's federal benefits to pay for or reimburse the department for any of the costs of the child's care; however, the department may use those benefits to pay for the child's unmet needs beyond what the department is obligated or required or has agreed to pay." The SSA specifically indicates that benefits should be used for a child's "current and reasonably foreseeable needs" which includes food, housing, medical items, clothing, transportation, and personal needs. Currently children in CYFD custody who receive SSI payments receive the maximum payment of \$967 per month because the department utilizes SSI funds toward care and support the child via the monthly foster care maintenance payment. If the department did not apply SSI benefits toward the monthly foster care maintenance payment and covered care and support (foster care maintenance) with state funding, then the Social

Security Administration would reduce the SSI payment by that amount provided by the department and children would no longer receive the full benefit amount. SSI funds could be conserved for the child up to a limit of \$2000 and cannot exceed that threshold to avoid penalties, suspension or possible termination of SSI. To avoid penalties and increase the threshold of amount conserved, there would need to be support from the State Treasurers Office to set up ABLE accounts for each child in the department's custody with SSI benefits.

PERFORMANCE IMPLICATIONS

Currently, children in the department's custody who receive SSI payments receive the maximum payment of \$967 per month because the department utilizes SSI funds toward care and support the child via the monthly foster care maintenance payment. If the department did not apply SSI benefits toward the monthly foster care maintenance payment and covered care and support (foster care maintenance) with state funding, the Social Security Administration would reduce the SSI payment by that amount provided by the department. If the foster care maintenance payment exceeded the maximum SSI benefit, that child could potentially not be eligible for SSI. This could cause potential issues for when a child exits the department's custody and is no longer receiving foster care maintenance payments.

ADMINISTRATIVE IMPLICATIONS

The department would need support from the State Treasurer's office to open, close, and track individual bank accounts for children in the custody of the department receiving Social Security benefits.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill duplicates HB 238 and SB 333.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The department will continue to conserve Retirements, Survivor's, and Disability Insurance (RSDI) monetary benefits in a separate account for each child and not apply those benefits to the monthly foster care maintenance payment. The department would continue to act as representative payee when appointed by the Social Security Administration and continue to comply with all Social Security Administration rules and regulations while providing for the needs and best interest of children.

AMENDMENTS

None.