

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: February 11, 2025

Check all that apply:

Bill Number: SB 333

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Michael Padilla

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

Short Title: Children’s Benefits Account Act

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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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **Relates to SB 283, CYFD & Use of Federal Benefits. See discussion below.**

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:** SB 333 would add eight new sections to the Children’s Code. These additions create a mechanism in which the Children, Youth and Families Department (CYFD) would receive and manage federal retirement, survivor, and disability insurance payments for the benefit of children in CYFD custody. Each section is summarized below.

**Section 1** titles these new sections of the Children’s Code as the Children’s Benefits Account Act (the Act).

**Section 2** defines five terms for the Act. They are: beneficiary, benefit, benefits account, eligible beneficiary, and representative payee.

**Section 3** requires CYFD to secure appointment as the representative payee by the federal social security administration (SSA) for each child in its custody who is a beneficiary or is an eligible beneficiary. For eligible beneficiaries, CYFD is to apply to SSA for benefits on the child’s behalf and apply to be the representative payee. For both scenarios, CYFD is to provide a plan to indicating how the beneficiary’s funds will be used to meet the child’s needs. After being appointed representative payee, CYFD has thirty days to notify the child’s parent or legal guardian.

**Section 4** requires CYFD to establish an account for each beneficiary for whom CYFD is appointed representative payee. Any funds in prior beneficiary accounts are to be transferred to the new account created by CYFD. Benefit payments are to be deposited into the accounts, and CYFD is to “administer, maintain and manage the benefits account” for the benefit of the beneficiary. CYFD is to keep each account separate, create a process for a beneficiary, parent or legal guardian to request an accounting, and provide an annual accounting.

**Section 5** requires CYFD to evaluate accounts when the beneficiary reaches the age of 17. At that time, CYFD is to determine whether the beneficiary will require a representative payee after the beneficiary turns 18. If CYFD determines that the beneficiary should still have a representative payee, it will identify an appropriate representative payee. If a representative payee is deemed no longer necessary, CYFD is to provide financial literacy tools and planning to the child prior to leaving custody. CYFD will disburse any remaining funds in the child’s account as permitted by federal guidelines and rules after the child leaves custody

because of aging out, adoption, designation of a legal guardian, or familial reunification. Once funds have been distributed, the account shall be closed and an audited closing statement shall be provided to the beneficiary and, if the beneficiary is under 18, their parent or guardian.

**Section 6** requires that benefits accounts be kept confidential. However, disclosures can be made to the beneficiary, a parent or guardian, a guardian ad litem, the beneficiary's attorney, or upon court order.

**Section 7** limits CYFD liability. CYFD is not liable for delays in SSA payment processing and is not required to try to recoup losses that may result from federal delay. CYFD is only responsible for maintaining and managing the benefits that come in for a child during the period for which CYFD is the representative payee.

**Section 8** requires CYFD to collaborate with the Department of Finance and Administration to adopt rules to implement the Children's Benefits Account Act.

**Section 9** provides a July 1, 2025 effective date.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented. – N/A

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

## **SIGNIFICANT ISSUES**

See below – Conflict, Duplication, Companionship, Relationship

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

### **Companionship:**

SB 333 is very similar to SB 283. Both bills seek to establish CYFD as representative payee for children in foster care who are entitled to certain federal benefits. While both bills contain certain distinct characteristics, much of the analysis of SB 283 is applicable.

SB 283 requires CYFD to be the representative payee, unless CYFD identifies a different appropriate representative for the child, such as an attorney, custodian, guardian, guardian ad litem or Indian tribe. SB 283 also requires that CYFD re-evaluate annually whether someone else could better serve in the role of representative payee. SB 283 requires notification of overpayments or decisions or appeals related to a child's benefits and requires CYFD to report certain data to the legislative health and human services committee beginning September 2026. Notably, SB 283 does not require CYFD to evaluate whether a beneficiary should still be subject to a representative payee after turning 18.

### **Conflicts:**

SB 333 conflicts with NMSA 1978, Section 27-1-2, powers of health care authority. The health care authority (HCA) is the designated state authority to administer the temporary assistance for need family (TANF) block grant with the New Mexico Works program (NMW) and is authorized to hold funds advanced or loaned to the state for public assistance, welfare or other similar purpose. 8.102.100.3 NMAC, pursuant to NMSA, Section 27, Articles 1 and 2. Under the federal Social Security Act, the HCA was designated as the state agency responsible for the TANF program.

NMSA 1978, Section 27-2-17 clearly identifies the HCA as the “custodian of all money received by the state, which the authority is authorized to administer, from any appropriations made by the congress of the United States for the purpose of cooperating with the several states in the enforcement and administration of the provisions of the federal Social Security Act...[t]he authority is authorized to receive such money, provide for its proper custody and make disbursements of it under such rules as the authority may prescribe.” There appears to be a conflict where both HCA and CYFD are identified as ‘custodian’ of funds.

Pursuant to NMSA 1978, Section 27-2-13, where a conflict exists between state public assistance laws and federal laws (such as the social security act), the state law “shall be suspended in its operation if the attorney general certifies that such conflict exists.”

The proposed bill may be in direct conflict with Section 27-2-13 if the language is meant to propose direct funding to CYFD of the federal funds meant to support children.

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

**Section 5** gives CYFD authority to determine whether a beneficiary is allowed to manage their own benefit payments after the age of 18. However, there are no criteria for CYFD to follow in evaluating whether a child should be allowed to receive their own benefits directly after turning 18. Moreover, there are no criteria to direct CYFD’s selection in “[i]dentif[ing] an appropriate representative payee.”

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

#### **AMENDMENTS**

N/A