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# FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Anaya **ORIGINAL DATE** 2/19/2025

**BILL**

**SHORT TITLE** Federal Benefits for CYFD Custody **NUMBER** House Bill 364

**ANALYST** Hernandez

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

| Agency/Program | FY25                | FY26             | FY27             | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|----------------|---------------------|------------------|------------------|----------------------|------------------------------|------------------|
| CYFD           | No fiscal<br>impact | At least \$198.5 | At least \$198.5 | At least<br>\$397.0  | Nonrecurring                 | General Fund     |

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 283

### Sources of Information

LFC Files  
 Federal Administration for Children and Families (ACF)

Agency Analysis Received From  
 Health Care Authority (HCA)

Agency Analysis was Solicited but Not Received From  
 Children, Youth and Families Department (CYFD)  
 New Mexico Attorney General  
 Office of Family Representation and Advocacy (OFRA)

## SUMMARY

### Synopsis of House Bill 364

House Bill 364 (HB364) creates a new section of the Children’s Code (32A-4 et. seq. NMSA 1978), the Federal Benefits for Children in State Custody Act. The bill requires that within sixty days of a child entering the Children, Youth and Families Department’s (CYFD) custody the department must determine if the child is receiving or eligible for federal benefits. If the child is already receiving federal benefits, the department must determine who the child’s representative payee is. If the child is eligible but not receiving benefits, CYFD must apply on behalf of the child and appoint a representative payee. Under either circumstance, if CYFD is the representative payee, the department must establish an “appropriate account” to use and conserve the child’s federal benefits, provide an annual summary of the amount in the account of the child, avoid receiving overpayment of federal benefits, and provide the child with financial literacy regarding the account when the child departs custody. HB364 prevents CYFD from using a child’s federal benefits to pay for or reimburse the department for any of the costs of the child’s care.

CYFD is required to submit a report to the interim Legislative Health and Human Services Committee on September 1, 2026, and every year thereafter, about the number of children receiving federal benefits, the type of federal benefits, the manner in which those benefits are conserved, and the amount of federal benefits used and conserved.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The CYFD has historically used social security and Supplemental Security Income (SSI) benefits received by children and youth in custody to pay for their care. However, as of FY25, CYFD's base budget includes a \$1.6 million appropriation to replace federal benefit revenue with general fund revenue within the Protective Services Program at CYFD.

CYFD analysis for House Bill 254 (HB254), a similar bill to HB364 introduced in the second session of the fifty-sixth legislature, noted that it would need two FTE to complete reporting functions outlined in HB254 and estimated operational costs associated with implementation to be \$198.5 thousand. However, LFC staff estimate the department would need to track benefits for roughly 150 children in custody and is already required by federal law to perform this function if holding funds in trust. Thus, the estimated need for 2 additional FTE may be higher than true additional costs.

## **SIGNIFICANT ISSUES**

When a social security and SSI beneficiary is unable to manage or direct their own benefits, the federal Social Security Administration (SSA) appoints a payee to manage or direct the management for the beneficiary. In general, children under the age of 18 must have a payee. If a child's parent, legal guardian, or other close relative or friend are unable or unwilling to serve, an organization, such as a state or tribal child welfare agency, may be designated the payee. All designated payees must use social security and SSI benefits for the "use and benefit" of the beneficiary, which generally means the beneficiary's "current maintenance," such as food, clothing, shelter, and medical needs. A payee must conserve any benefits not needed for current maintenance for the beneficiary's future needs. In FY23, SSA benefits averaged roughly \$914 per month.

CYFD previously noted the department cannot control payments made by the SSA, and in the event overpayments occur, the department must return funds to the SSA. Additionally, SSA has the sole authority to determine who is the representative payee. However, the federal Administration for Children and Families (ACF) noted that in general, a single person becomes ineligible for SSI if they have more than \$2,000 in "countable resources." Some resources do not count toward this federal limit, such as achieving a better life experience or ABLE Account. In a August 2023 communication, ACF encouraged child welfare agencies to consider using "all of the tools at their disposal when conserving youth's federal benefits."

In August 2023, ACF reminded states about how state and tribal agencies that serve as representative payees for children receiving social security or SSI benefits must manage these funds and encouraged state and tribal agencies to work with youth and young adults to understand their benefits, particularly as they transition from foster care.

ACF encourages state and tribal welfare agencies to act within their authority and capacity to make the best decision for using each child's social security benefits. SSA monitors and reviews payments made to payees to prevent misuse.

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

Duplicates Senate Bill 283 CYFD.

## **TECHNICAL ISSUES**

On page 5, line 18 should add “interim” prior to “legislative health and human services committee.”

HCA notes confusion about the type of federal benefits discussed. The term “federal benefits” should likely be changed to solely capture SSI benefits.

AEH/SL2/rl