FISCAL IMPACT REPORT

SPONSOR	Jaramillo/Chavez/Garcia, H/Little/ Figueroa	**LAST UPDATED**	
		ORIGINAL DATE	1/27/2024
SHORT TITLE	CYFD and Federal Benefits	**BILL NUMBER**	House Bill 254
		ANALYST	Garcia

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
SSA/ SSI Benefits	($1,600.0)	($1,643.0)	($1,703.0)	($1,741.0)	($1,779.0)	Recurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	$0	Up to $198.5	Up to $198.5	Up to $397.0	Recurring	General Fund

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

Relates to an appropriation in the General Appropriation Act

Sources of Information

LFC Files
Federal Administration for Children and Families

Agency Analysis Received From
Children, Youth and Families Department (CYFD)
Health Care Authority (HCA)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 254

House Bill 254 establishes a new section of the Children's Code, known as the Federal Benefits for Children in State Custody Act.

The bill would require the Children, Youth and Families Department to determine if a child is eligible to receive federal benefits within 60 days of a child entering custody and annually.

If the child is already receiving federal benefits, the department shall, in consultation with the child, their payee, guardian, custodian, attorney, and Indian tribe, apply to become the child's representative. If the child is eligible for benefits, the department shall apply for these benefits for the child and become their payee, if no other candidate is available.

If the department becomes the payee, the department shall establish an account to use and conserve the child's federal benefits in the child's best interest for current and unmet needs, as allowed by federal law. The department shall also annually review if any other person is available to assume the role of representative payee and make appropriate notifications. The bill also requires the department to provide an annual accounting of benefit use.

The bill prohibits the department from using a child's federal benefits to pay or reimburse the department for any of the costs associated with the child's care, though the department may use the child's benefits for the child's unmet needs beyond the department's obligations. The department must then release any remaining funds to the child if they exit CYFD custody.

The department must submit an annual report to the Legislative Health and Human Services Committee about the collection and use of these federal benefits conserved.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The Children, Youth and Families Department has historically used social security administration and supplemental security income (SSI) benefits received by children and youth in custody to pay for their care. The department ended this practice in September 2023, though the Attorney General's Office notes the CYFD directive is set to expire in March 2024 if not extended.

LFC analysis suggests social security and supplemental security benefits generated roughly $1.6 million in revenue used by the department to provide for the care and support of children in custody, and ending the practice would result in a cost of roughly $1.6 million in general fund revenue to offset the reduction in revenue.

House Bill 2 includes an appropriation of $1.6 million to replace federal benefit revenue with general fund revenue within the Protective Services Program at the Children, Youth and Families Department.

In the future, the bill would prevent the state from using social security or SSI benefits to pay for foster care and would constrain future Legislatures from using these revenues for the care and support of children or youth in foster care. In addition, CYFD reports the agency would need 2 FTE to complete reporting functions outlined in the bill and estimated operational costs associated with implementation to be $198.5 thousand.

LFC estimates the department would need to track benefits for roughly 150 youth 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.

HCA estimates no fiscal impact to the department associated with implementation of the bill.

SIGNIFICANT ISSUES

When a social security or 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 were an average of roughly $914 per month.

CYFD notes 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.

In August 2023, the federal Administration for Children and Families (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. The federal Social Security Administration monitors and reviews payments made to payees to prevent misuse.

ACF noted in the communication that conserving funding can affect a child's eligibility for the SSI program; 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 accounts (ABLE). In the August 2023 communication, ACF encouraged child welfare agencies to consider using "all of the tools at their disposal when conserving youth's federal benefits."

The Office of the Attorney General notes this bill would ensure CYFD's current practice continues and would insulate the department from potential legal challenges to CYFD's authority to implement the requirements through a directive.

PERFORMANCE IMPLICATIONS

CYFD reports the department would need additional FTE to perform the reporting requirements in the bill.

ADMINISTRATIVE IMPLICATIONS

CYFD reports the department would need to codify the requirements of the bill into the department's policies and procedures.

HCA reports the bill would require the department to expand an existing memorandum of understanding between HCA and CYFD to allow data sharing to review the child's eligibility for federal programs administered by HCA.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The General Appropriations Act includes $1.643 million in general fund revenue to backfill social security and SSI revenue previously used by CYFD to pay for the care and support of children in custody who received these benefits.

TECHNICAL ISSUES

CYFD notes the bill generally refers to "federal benefits," which can more precisely be described as social security administration (SSA) benefits applicable to children and youth in state custody. Additionally, CYFD notes there is a distinction between supplemental security income (SSI) and Retirement, Survivor, and Disability Insurance (RSDI). These are different types of social security benefits that are expended and conserved differently, according to the Social Security Administration.

CYFD recommends replacing the general term "federal benefits" with the term "SSA benefits" and removing the requirement that CYFD prevent overpayment of SSA benefits, because those overpayments are outside of the control of the department.

It is possible the bill could be interpreted to include other federal benefits, and the bill could clarify through definition the specific federal benefits subject to this act.

RMG/rl/ne/al