

LFC Requester:	Allegra Hernandez
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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}

Date Prepared: 2025.02.13 *Check all that apply:*
Bill Number: HB 364 Original Correction
 Amendment Substitute

Sponsor: Marianna Anaya **Agency Name and Code** OFRA 68000
Short Title: Federal Benefits for Children in State Custody **Number:** _____
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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		
0	0	0	n/a	n/a

(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: **SB 333**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1: title of the new section of the Children's Code.

Section 2: definition of representative payee.

Section 3: details about how the law will work.

- a. Within sixty (60) days of a child entering CYFD custody, and annually thereafter, CYFD must determine whether the child is receiving or is eligible to receive federal benefits.
- b. Requiring CYFD to take certain actions if a child is already receiving some sort of federal benefit, including identifying the representative payee; CYFD to apply to be the representative payee if no other candidate is available.
- c. CYFD shall apply for federal benefits the child is eligible to receive and to become the representative payee if no other candidate is available.

Section 4: if CYFD becomes the representative payee for federal benefits the child is entitled to receive, it shall:

- a. Establish an appropriate account to *use* and conserve the child's benefits for "current unmet needs" and future needs pursuant to the requirements of the funding source and applicable asset and resource limits.
- b. Annually determine if someone other than CYFD could better serve as the representative payee.
- c. Notify the child and enumerated individuals of any application for federal benefits, and decision or appeal related to the child's benefits. In consultation with the child/youth's attorney, appeal the denial of benefits if it is in the child/youth's best interests to do so.
- d. Provide an annual accounting of the use, application, or conservation of the benefits.
- e. Avoid receiving overpayments of federal benefits and repay any overpayments.

Section 5: CYFD is prohibited from using a child's federal benefits for any of the costs of the child's care. However, CYFD can use the benefits to pay "for the child's unmet needs beyond what the department is obligated or required or has agreed to pay."

Section 6: sets out what CYFD is to do with the funds upon termination of its legal custody of a child or youth.

- a. If the youth has either aged out of care (age 18) or been emancipated, the funds shall be released to the youth.
- b. If the child/youth is under age 18 or unemancipated, the funds shall be released to the child/youth's parent or guardian.

Section 7: starting September 1, 2026 and annually thereafter, CYFD must submit a report to the legislature's health and human services committee that includes specific pieces of information:

- a. The number of children in custody receiving federal benefits
- b. The type of federal benefits
- c. The way the benefits are conserved

- d. The amounts of federal benefits used and conserved.

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.

Requiring CYFD to take responsibility for ensuring that children in state custody receive the federal benefits to which they are entitled, is an important step in protecting their economic well-being. However, this bill makes no appropriation for the additional work this will create for CYFD staff who must become experts in federal benefits, then seek benefits when appropriate, appeal decisions, manage funds, and report to the legislature. Nor does the bill appropriate funds for the extra work created for Office of Family Representation and Advocacy attorneys who will have to consult with CYFD and monitor CYFD's fulfillment of its duties under this bill to their clients.

SIGNIFICANT ISSUES

Section 4(C) requires CYFD to provide notice to certain individuals of any application, decision, or appeal related to a child's federal benefits. Further, in "consultation with the child/youth's attorney," CYFD is required to appeal the denial of benefits if it is in the child/youth's best interests to do so. It is unclear what this consultation requires. Is CYFD consulting on the child's best interests? What obligations, if any, does this requirement place on the child's attorney?

Section 4(E) requires CYFD to "avoid receiving overpayment of federal benefits and pay any discovered overpayment to the appropriate federal agency." An equally important function would be to monitor payments to uncover underpayments and ensure the child is receiving the full amount of benefits for which the child is eligible.

Section 5 is unnecessarily vague. As the legal custodian of a child/youth, CYFD is obligated to pay for the child's needs. Such needs extend beyond the bare minimum of one pair of shoes, three pairs of pants, and five shirts and include after school activities, clubs, and other enrichment that all children should have. The lack of parameters in this section could result in CYFD using a child's federal benefits inappropriately or misappropriating the funds for things that CYFD should pay for.

Section 7. In addition to the annual data CYFD is required to report, it should also be required report on how the federal benefits of children in state custody are being used.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This House Bill conflicts with Senate Bill 0333, which would create the "Children's Benefits Account Act."

Section 2: The definitions of “representative payee” in HB 0364 and SB 0333 are different.

Section 3: “federal benefits” is broader than the SS benefits addressed in SB 0333, but SS benefits falls squarely within the broader category. The actions to be taken by CYFD for “federal benefits” in HB 0364 conflict with the actions to be taken by CYFD in SB 0333.

Section 4: Unlike SB 0333, there is no provision for confidentiality of the “appropriate account,” creating another conflict.

Section 7: This provision, requiring annual reports to the legislature, conflicts with SB 0333, which has no such requirement.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Unlike SB 0333, HB 0364 does not say anything about how a child/youth’s funds will be held by CYFD other than requiring it to “establish an appropriate account.” This is a significant flaw/conflict. As it currently reads, there is no direction to CYFD as to where or how to hold the funds. Would the “appropriate account” be within CYFD or a federally insured bank? Should an account that does not bear interest be considered an “appropriate account”?

Unlike SB 0333, there is no language about CYFD’s liability or lack of liability for its delays in securing federal benefits for a child in its custody. This is another significant flaw/conflict. There should be some liability on CYFD if it fails to secure a child’s federal benefits or fails to become the child’s representative payee when it knew or should have known of a child’s entitlement to benefits or that the child was already receiving benefits.

What exactly is contemplated as an “unmet need beyond what the department is obligated or required or has agreed to pay”?

Would the child or youth have access to the funds for any purpose? What rights would a child have to appeal the Representative Payee’s decision not to allow the child to use the funds? Would a child’s access to the funds depend on their age (under 14, no; 14 and older, yes)?

OFRA is concerned about the growing number of bills that directly affect the Children, Youth, and Families Department (CYFD) and the child and family welfare system more broadly. Some of these bills may directly conflict with one another and/or duplicate efforts. However, even where they do not, this piecemeal approach could lead to a patchwork of uncoordinated requirements. Together, these changes would create significant administrative and programmatic burdens on CYFD.

Additionally, many of the requirements proposed in the multitude of bills would not improve practices or lead to better outcomes for children and families. OFRA is concerned that these bills, if passed without coordination, would negatively impact our clients and their ability to work with CYFD to reunify their families.

ALTERNATIVES

SB 0333

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None

AMENDMENTS

None