

1 HOUSE BILL 364

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Marianna Anaya and Heather Berghmans

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10 AN ACT

11 RELATING TO CHILDREN; REQUIRING THE CHILDREN, YOUTH AND
12 FAMILIES DEPARTMENT TO DETERMINE FEDERAL BENEFITS ELIGIBILITY
13 FOR CHILDREN IN ITS CUSTODY, APPLY FOR FEDERAL BENEFITS AND
14 EITHER ACT AS THE CHILD'S REPRESENTATIVE PAYEE OR DETERMINE AN
15 APPROPRIATE ALTERNATIVE; SETTING FORTH THE DEPARTMENT'S
16 OBLIGATIONS WHEN ACTING AS THE CHILD'S REPRESENTATIVE PAYEE;
17 PROHIBITING THE USE OF FEDERAL BENEFITS TO PAY THE DEPARTMENT
18 FOR THE CHILD'S CARE; SETTING FORTH PROVISIONS FOR THE RELEASE
19 OF FEDERAL BENEFITS PROVIDED TO CHILDREN IN LEGAL CUSTODY OF
20 THE STATE.

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22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the

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1 "Federal Benefits for Children in State Custody Act"."

2 SECTION 2. A new section of the Children's Code is
3 enacted to read:

4 "[NEW MATERIAL] DEFINITION.--As used in the Federal
5 Benefits for Children in State Custody Act, "representative
6 payee" means a person appointed by a federal agency to manage
7 the benefits the federal agency provides to a child."

8 SECTION 3. A new section of the Children's Code is
9 enacted to read:

10 "[NEW MATERIAL] FEDERAL BENEFITS PROVIDED TO CHILDREN IN
11 THE LEGAL CUSTODY OF THE DEPARTMENT--ELIGIBILITY
12 DETERMINATIONS.--

13 A. Within sixty days after a child enters the
14 department's legal custody, and annually thereafter, the
15 department shall determine whether the child is currently
16 receiving or is eligible to receive federal benefits.

17 B. If it is determined that a child in the legal
18 custody of the department is already receiving federal
19 benefits, the department shall:

20 (1) in consultation with the child and the
21 following individuals, identify the child's representative
22 payee: the child's attorney; the child's custodian; the
23 child's guardian; the child's guardian ad litem; or the child's
24 Indian tribe, if the child is known to be an Indian child; or

25 (2) apply to become the child's representative

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1 payee; provided that no other candidate is available.

2 C. If the department determines that a child is
3 eligible for benefits administered by the federal government,
4 the department shall apply:

5 (1) for those benefits on behalf of the child;
6 and

7 (2) to become the child's representative payee
8 if no other candidate is available."

9 SECTION 4. A new section of the Children's Code is
10 enacted to read:

11 "[NEW MATERIAL] FEDERAL BENEFITS PROVIDED TO CHILDREN IN
12 THE LEGAL CUSTODY OF THE DEPARTMENT--OBLIGATIONS OF THE
13 DEPARTMENT WHEN ACTING AS THE REPRESENTATIVE PAYEE.--If the
14 department becomes the representative payee of a child in the
15 legal custody of the department, the department shall:

16 A. establish an appropriate account to use and
17 conserve the child's federal benefits, in the child's best
18 interest, for current unmet needs and future needs pursuant to
19 the requirements of the funding source and any applicable asset
20 and resource limits;

21 B. annually determine whether a person, other than
22 the department, is available to assume the role of
23 representative payee and could better serve in that role, in
24 the child's best interest;

25 C. notify the child and the following individuals

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1 of any application, decision or appeal related to a child's
2 federal benefits: the child's attorney; the child's custodian;
3 the child's guardian; the child's guardian ad litem; or the
4 child's Indian tribe, if the child is known to be an Indian
5 child. In providing notice of any denial of benefits, the
6 department shall consult with the child's attorney and appeal
7 the denial if it is in the child's best interest;

8 D. provide an annual accounting as to the use,
9 application or conservation of the child's federal benefits to
10 the child and the following individuals: the child's attorney;
11 the child's custodian; the child's guardian; the child's
12 guardian ad litem; or the child's Indian tribe, if the child is
13 known to be an Indian child; and

14 E. avoid receiving overpayment of federal benefits
15 and pay any discovered overpayment to the appropriate federal
16 agency."

17 SECTION 5. A new section of the Children's Code is
18 enacted to read:

19 "[NEW MATERIAL] PROHIBITED USE OF FEDERAL BENEFITS.--If
20 the department is the child's representative payee, the
21 department shall not use a child's federal benefits to pay for
22 or reimburse the department for any of the costs of the child's
23 care; however, the department may use those benefits to pay for
24 the child's unmet needs beyond what the department is obligated
25 or required or has agreed to pay."

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1 SECTION 6. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] RELEASE OF REMAINING FEDERAL BENEFIT FUNDS
4 UPON TERMINATION OF LEGAL CUSTODY.--If the department is the
5 child's representative payee, upon termination of the
6 department's legal custody of a child, the department shall
7 release any remaining funds to the child's credit pursuant to
8 the requirements of the funding source. In the absence of any
9 requirements, the department shall release the funds to:

10 A. the child, if the child is at least eighteen
11 years old or emancipated; or

12 B. the child's parent or guardian, if the child is
13 younger than eighteen years old or not emancipated."

14 SECTION 7. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] REPORTING.--Beginning September 1, 2026
17 and annually thereafter, the department shall submit a report
18 to the legislative health and human services committee that
19 includes:

20 A. the number of children in its custody who
21 receive federal benefits;

22 B. the type of federal benefits;

23 C. the manner in which those benefits are
24 conserved; and

25 D. the amounts of federal benefits used and

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