

# CHAPTER 27

## PUBLIC ASSISTANCE

### ARTICLE 1

#### GENERAL PROVISIONS

##### 27-1-1. Definitions.

As used in Articles 1 and 2 of Chapter 13 NMSA 1953, "department," "department of public welfare," "state department of public welfare," "New Mexico department of public welfare," "state board of public welfare," "board of public welfare," "state board," "state department," "health and social services department," "department of health and social services," "health and social services board" and "board" mean the human services department.

**History:** 1953 Comp., § 13-1-1, enacted by Laws 1977, ch. 252, § 16.

#### ANNOTATIONS

**Compiler's note.** - The provisions formerly appearing in Chapter 13, Articles 1 and 2, 1953 Comp., are compiled as 24-13-1 to 24-13-8, 27-1-1 to 27-1-3, 27-1-4, 27-2-15, 27-2-17 to 27-2-26, 27-2-30 to 27-2-36, 27-5-1 to 27-5-12, 27-5-13 to 27-5-18 and 28-4-1 to 28-4-3 NMSA 1978.

For definitions of "department" and "board" applicable to some of the provisions listed in the previous note, see 27-2-2 NMSA 1978.

The powers, duties and property of the department of public welfare were transferred to the department of health and social services by Laws 1968, ch. 37, § 3. Laws 1977, ch. 252, § 5, abolished the department of health and social services, and § 4 of said act created the human services department.

##### 27-1-2. Powers of state department.

The state department of public welfare shall be a public corporation, under the name of "the New Mexico department of public welfare," and under its corporate name, an agency of the state of New Mexico; and shall at all times be and remain under the exclusive control of this state. The management and control of the said department is hereby vested in the state board of public welfare herein provided for.

Subject to the constitution of this state, the department shall have the power:

A. to sue and, with the consent of the legislature of this state, be sued;

- B. to adopt and use a corporate seal;
- C. to have succession in its corporate name;
- D. to make contracts, as herein authorized, to carry out the purposes herein expressed;
- E. to adopt, amend and repeal bylaws, rules and regulations;
- F. to purchase, lease and hold such real and personal property as is necessary or convenient for the carrying out of its powers and duties, and to exercise the right of eminent domain to acquire such real property in the same manner as the state now exercises said right, and to dispose of any property acquired in any manner;
- G. to have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon it;
- H. to receive and have custody for protection and administration, disburse, dispose of and account for funds, commodities, equipment, supplies and any kind of property given, granted, loaned or advanced to the state of New Mexico for public assistance, public welfare, social security or any other similar purpose;
- I. to enter into reciprocal agreements with public welfare agencies of other states relative to the provision for relief or assistance to transients and nonresidents;
- J. to establish and administer programs of old-age assistance, aid to dependent children and to the needy blind;
- K. to establish and administer a program of services for children who are crippled or who are suffering from conditions which lead to crippling, and to supervise the administration of those services which are not administered directly by it;
- L. to establish, extend and strengthen public welfare services for children;
- M. to establish and administer a program for general relief.

**History:** Laws 1937, ch. 18, § 3; 1941 Comp., § 73-103; 1953 Comp., § 13-1-3.

### **ANNOTATIONS**

**Cross-references.** - For public assistance programs generally, see 27-2-1 NMSA 1978 et seq.

For programs for persons with special medical needs, see 27-4-1 NMSA 1978 et seq.

For crippled children's services generally, see 24-2-1 NMSA 1978.

For abandonment or abuse of child, see 30-6-1 NMSA 1978.

For eminent domain generally, see Chapter 42A NMSA 1978.

**Department of public welfare.** - The powers, duties and property of the department of public welfare were transferred to the department of health and social services by Laws 1968, ch. 37, § 3. Laws 1977, ch. 252, § 5, abolished the department of health and social services, and § 4 of said act created the human services department.

Laws 1977, ch. 252, §§ 6 and 7, provide for the appointment and powers of the secretary of human services, who shall be the administrative head of the human services department.

**Acquisition and disposition of real property.** - This section clearly gives the department of public welfare (now human services department) full and complete authority to hold real property in its name, and full and complete authority to transfer such property. 1955-56 Op. Att'y Gen. No. 6286.

The public welfare department (now human services department) can rehabilitate buildings, then lease them to the New Mexico boys' school. 1959-60 Op. Att'y Gen. No. 59-85.

**Adoption of rules and regulations required under federal legislation.** - The state welfare department (now human services department) has authority to adopt rules and regulations providing for "welfare standards" required under federal legislation. 1953-54 Op. Att'y Gen. No. 5631.

**Contract for provision of child welfare services.** - The public welfare department (now human services department) can enter into a contract with the New Mexico boys' school to provide child welfare services to children in need of these services. 1959-60 Op. Att'y Gen. No. 59-85.

**Law reviews.** - For comment, "Undocumented Aliens: Education, Employment and Welfare in the United States and in New Mexico," see 9 N.M.L. Rev. 99 (1978-79).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 45 to 74.

81 C.J.S. Social Security and Public Welfare §§ 9, 18, 32, 96.

### **27-1-3. Activities of human services department.**

The human services department shall be charged with the administration of all the welfare activities of the state as provided in Chapter 27 NMSA 1978, except as otherwise provided for by law. The human services department shall, except as otherwise provided by law:

A. administer old age assistance, aid to dependent children, assistance to the needy blind and otherwise handicapped and general relief;

B. administer all aid or services to crippled children, including the extension and improvement of services for crippled children, insofar as practicable under conditions in this state, provide for locating children who are crippled or who are suffering from conditions which lead to crippling, provide corrective and any other services and care and facilities for diagnosis, hospitalization and after-care for children who are crippled or who are suffering from conditions which lead to crippling, and supervise the administration of those services which are not administered directly by the department;

C. administer and supervise all child welfare activities, service to children placed for adoption, service and care of homeless, dependent and neglected children, service and care for children in foster family homes or in institutions because of dependency or delinquency and care and service to any child who because of physical or mental defect may need such service;

D. formulate detailed plans, make rules and regulations and take action deemed necessary or desirable to carry out the provisions of Chapter 27 NMSA 1978 and which is not inconsistent with the provisions of that chapter;

E. cooperate with the federal government in matters of mutual concern pertaining to public welfare and public assistance, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for public welfare and assistance;

F. assist other departments, agencies and institutions of local, state and federal governments when so requested, cooperate with such agencies when expedient in performing services in conformity with the purposes of Chapter 27 NMSA 1978 and cooperate with medical, health, nursing and welfare groups, any state agency charged with the administration of laws providing for vocational rehabilitation of physically handicapped persons, and organizations within the state;

G. act as the agent of the federal government in welfare matters of mutual concern in conformity with the provisions of Chapter 27 NMSA 1978 and in the administration of any federal funds granted to this state, to aid in furtherance of any such functions of the state government;

H. establish in counties or in districts, which may include two or more counties, local units of administration to serve as agents of the department;

I. at its discretion, establish local boards of public welfare for such territory as it may see fit, and by rule and regulation prescribe the duties of the local board;

J. administer such other public welfare functions as may be assumed by the state after the effective date of this section;

K. carry on research and compile statistics relative to the entire public welfare program throughout the state, including all phases of dependency, defectiveness, delinquency and related problems, and develop plans in cooperation with other public and private agencies for the prevention as well as treatment of conditions giving rise to public welfare problems; and

L. inspect and require reports from all private institutions, boarding homes and agencies providing assistance, care or other direct services to children who are crippled, neglected, delinquent or dependent, the aged, blind, feeble-minded and other dependent persons.

Nothing contained in this section shall be construed to authorize the department to establish or prescribe standards or regulations for or otherwise regulate programs or services to children in group homes as defined in Section 9-8-13 NMSA 1978.

**History:** Laws 1937, ch. 18, § 4; 1941 Comp., § 73-104; 1953 Comp., § 13-1-4; Laws 1987, ch. 31, § 3.

## ANNOTATIONS

**Cross-references.** - For public assistance programs generally, see 27-2-1 NMSA 1978 et seq.

For programs for persons with special medical needs, see 27-4-1 NMSA 1978 et seq.

For responsibility of human services department concerning the abuse or neglect of individual children, see 9-8-14 NMSA 1978.

For crippled children's services generally, see 24-2-1 NMSA 1978.

**"Effective date of this section".** - The phrase "effective date of this section," referred to in Subsection J, first appears in Laws 1987, ch. 31, § 3, effective June 19, 1987.

**Denial of benefits supported by substantial evidence.** - Substantial evidence in the record as a whole supported the human services department's denial of aid to families with dependent children benefits where the natural father could provide support. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).

**Adoption of rules and regulations required under federal legislation.** - The state welfare department (now human services department) has authority to adopt rules and regulations providing for "welfare standards" required under federal legislation. 1959-60 Op. Att'y Gen. No. 60-200. See also 1953-54 Op. Att'y Gen. No. 5631, 1951-52 Op. Att'y Gen. No. 5470.

**Durational limit on receipt of benefits.** - The human services department had the implied authority to limit the receipt of general assistance to twelve continuous months by regulation. *Howell v. Heim*, 118 N.M. 500, 882 P.2d 541 (1994).

**Law reviews.** - For symposium, "The Equal Rights Amendment and the Administration of Income Assistance Programs in New Mexico," see 3 N.M.L. Rev. 84 (1973).

For article, "Welfare Reform and the 1973 New Mexico Legislation," see 4 N.M.L. Rev. 1 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 45 to 74.

Judicial questions regarding federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it, 106 A.L.R. 243, 108 A.L.R. 613, 109 A.L.R. 1346, 118 A.L.R. 1220, 121 A.L.R. 1002.

Construction and application of state social security or unemployment compensation act as affected by terms of the federal act or judicial or administrative rulings thereunder, 139 A.L.R. 892.

Actions under 42 USCS § 1983 for violations of Adoption Assistance and Child Welfare Act (42 USCS §§ 620 et seq. and 670 et seq.), 93 A.L.R. Fed. 314.

81 C.J.S. Social Security and Public Welfare §§ 9, 18, 32, 96.

### **27-1-3.1. Acute care bed usage; funding authorization.**

The human services department is authorized to accept and use federal grants or matching funds for the purpose of reimbursement to certain rural hospitals for using empty acute care beds for intermediate care and skilled nursing care, as defined in federal statutes and regulations, subject to federal approval and the availability of funds. The department is authorized to use funds from existing appropriations for matching federal funds for the purposes of this act.

**History:** Laws 1980, ch. 83, § 1.

### **27-1-4. Status of assistance payments.**

Payments received by a displaced person under the Relocation Assistance Act [42-3-1 to 42-3-15 NMSA 1978] shall not be considered as income or resources to any recipient of public assistance, and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under the laws of this state.

**History:** 1953 Comp., § 13-1-20.2, enacted by Laws 1972, ch. 41, § 22.

### **27-1-5 to 27-1-7. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1985, ch. 101, § 9 repeals 27-1-5 through 27-1-7 NMSA 1978, as enacted by Laws 1983, ch. 74, §§ 1 through 3, the Citizen Substitute Care Review Act, effective April 2, 1985. For provisions of former sections, see 1984 Replacement Pamphlet. For present comparable provisions, see 32-7-1 through 32-7-6 NMSA 1978.

## ARTICLE 2 PUBLIC ASSISTANCE ACT

### 27-2-1. Short title.

Sections 1 through 20 of this act and Sections 27-2-15, 27-2-17 through 27-2-25, 27-2-27, 27-2-29 through 27-2-36 NMSA 1978 may be cited as the "Public Assistance Act".

**History:** 1953 Comp., § 13-17-1, enacted by Laws 1973, ch. 376, § 1.

## ANNOTATIONS

**Cross-references.** - As to public assistance appeals, see 27-3-1 NMSA 1978 et seq.

As to programs for persons with special medical needs, see 27-4-1 NMSA 1978 et seq.

**Compiler's note.** - As enacted, this section included references to 13-1-18, 13-1-18.1, 13-1-28.6, 13-1-29, 13-1-30, 13-1-39, 13-1-40 and 13-1-41, 1953 Comp., which were repealed by subsequent acts, and therefore such references are not included in the Public Assistance Act as set out in this compilation.

Section 27-2-27 NMSA 1978 was repealed by Laws 1981, ch. 90, § 1, which enacted a new 27-2-27 containing different provisions.

Section 27-2-29 NMSA 1978 was repealed by Laws 1981, ch. 90, § 4.

**Public Assistance Act.** - Pursuant to this section, §§ 1 to 20 of Laws 1973, Chapter 376, appearing as 27-2-1 to 27-2-6, 27-2-7 to 27-2-9, 27-2-10 to 27-2-12, 27-2-13, and 27-2-14 NMSA 1978, and 27-2-15, 27-2-17 to 27-2-25, 27-2-27, 27-2-29 to 27-2-36 NMSA 1978 comprise the Public Assistance Act. Laws 1987, ch. 16, § 1 adds 27-2-12.2 NMSA 1978 to the Public Assistance Act. Laws 1989, ch. 184, § 1 adds 27-2-23.1 NMSA 1978 to the Public Assistance Act.

**Construction of Public Assistance Act.** - See *Garcia v. Health & Social Servs. Dep't*, 88 N.M. 419, 540 P.2d 1308 (Ct. App. 1975), rev'd on other grounds, 88 N.M. 640, 545 P.2d 1018 (1976).

**Law reviews.** - For symposium, "The Equal Rights Amendment and the Administration of Income Assistance Programs in New Mexico," see 3 N.M.L. Rev. 84 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 1 to 74.

81 C.J.S. Social Security and Public Welfare § 1 et seq.

## **27-2-2. Definitions.**

As used in the Public Assistance Act:

A. "department" means the human services department;

B. "board" means the human services department;

C. "director" means the secretary of human services;

D. "local office" means the county or district office of the human services department;

E. "public welfare" or "public assistance" means any aid or relief granted to or on behalf of an eligible person under the Public Assistance Act and regulations issued pursuant to that act;

F. "applicant" means a person who has applied for assistance or services under the Public Assistance Act;

G. "recipient" means a person who is receiving assistance or services under the Public Assistance Act;

H. "federal act" means the federal Social Security Act, as may be amended from time to time, and regulations issued pursuant to that act; and

I. "secretary" means the secretary of human services.

**History:** 1953 Comp., § 13-17-2, enacted by Laws 1973, ch. 376, § 2; 1977, ch. 252, § 21; 1987, ch. 78, § 1; 1991, ch. 155, § 1.

## **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added "or services" following "assistance" in Subsections F and G.

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Social Security Act.** - The federal Social Security Act, referred to in Subsection H, appears as 42 U.S.C. § 301 et seq.



### **27-2-3. Standard of need; income determination.**

A. Consistent with the federal act and subject to the availability of federal and state funds, the board shall adopt a standard of need which shall establish a reasonable level of subsistence.

B. Consistent with the federal act, the board shall define by regulation exempt and nonexempt income and resources. Medical expenses shall not be deducted from either income or resources in determining eligibility.

**History:** 1953 Comp., § 13-17-3, enacted by Laws 1973, ch. 376, § 3; 1975, ch. 187, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 15, 33, 35, 40, 53 to 60.

81 C.J.S. Social Security and Public Welfare §§ 37 to 44, 97 to 112.

### **27-2-4. Eligibility requirements.**

Consistent with the federal act, a person is eligible for public assistance grants under the Public Assistance Act if:

A. pursuant to Section 27-2-3 NMSA 1978, the total amount of his nonexempt income is less than the applicable standard of need; and

B. nonexempt specific and total resources are less than the level of maximum permissible resources established by the board; and

C. he meets all qualifications for one of the public assistance programs authorized by the Public Assistance Act; and

D. within two years immediately prior to the filing of an application for assistance, he has not made an assignment or transfer of real property unless he has received a reasonable return for the real property; or, if he has not received such reasonable return, he is willing to attempt to obtain such return and, if such attempt proves futile, he is willing to attempt to regain title to the property; and

E. he is not an inmate of any public nonmedical institution at the time of receiving assistance; and

F. he is a resident of New Mexico.

**History:** 1953 Comp., § 13-17-4, enacted by Laws 1973, ch. 376, § 4; 1975, ch. 187, § 4.

## ANNOTATIONS

**Cross-references.** - For qualifications for aid to families with dependent children program, see 27-2-6 NMSA 1978.

For qualifications for general assistance program, see 27-2-7 NMSA 1978.

For medical assistance programs generally, see 27-2-12 NMSA 1978.

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**When real estate contract included in determining eligibility.** - Where a real estate contract is not readily negotiable, it cannot be included in determining eligibility for public assistance. *Frazier v. New Mexico Dep't of Human Servs.*, 98 N.M. 98, 645 P.2d 454 (Ct. App. 1982).

**Law reviews.** - For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 15, 33, 35, 40, 50 to 60.

Status of one as poor person for purpose of statute entitling him to relief as affected by extent of his financial resources, 98 A.L.R. 870.

Alcoholic as entitled to public assistance under poor laws, 43 A.L.R.3d 554.

Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets, 19 A.L.R.4th 146.

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary, 21 A.L.R.4th 729.

Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 A.L.R.4th 215.

Unearned income affecting eligibility for supplemental security income benefits under 42 USCS § 1382a(a)(2), 61 A.L.R. Fed. 230.

81 C.J.S. Social Security and Public Welfare §§ 37 to 44, 97 to 112.

**27-2-5. Amount of grant.**

A. The amount of an eligible person's maximum grant of public assistance is determined by deducting the total amount of his nonexempt income from the applicable standard of need. However, if the amount of federal and state funds available for public assistance is insufficient to provide the grants for all eligible persons, the amount of grants to eligible persons may be reduced as necessary.

B. The secretary of human services may set individual and family maximum and minimum grant levels for each program.

**History:** 1953 Comp., § 13-17-5, enacted by Laws 1973, ch. 376, § 5; 1982, ch. 24, § 1.

### **ANNOTATIONS**

**Validity of regulation limiting duration of cash assistance payments.** - See Health & Social Servs. Dep't v. Garcia, 88 N.M. 640, 545 P.2d 1018 (1976).

**Durational limit on receipt of benefits.** - The human services department had the implied authority to limit the receipt of general assistance to twelve continuous months by regulation. Howell v. Heim, 118 N.M. 500, 882 P.2d 541 (1994).

### **27-2-6. Aid to families with dependent children; qualifications.**

A. Public assistance shall be provided to or on behalf of eligible persons:

(1) who are under the age of eighteen years or, at the option of the department, who are under the age of nineteen years and are full-time students in a secondary school or in the equivalent level of vocational or technical training, if they may reasonably be expected to complete the program of such secondary school or training before attaining age nineteen;

(2) who have been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent; and

(3) who:

(a) are living with one of the following specified relatives, whether natural or adoptive, in a place of residence maintained by the relative as his home: father, mother, grandfather, grandmother, brother, sister, uncle, aunt, first cousin, nephew, niece, stepfather, stepmother, stepbrother or stepsister; persons over the age of eighteen and under the age of nineteen resident at a school pursuant to Paragraph (1) of Subsection A of this section shall be deemed to be living with a specified relative; or

(b) were living with a specified relative within six months prior to the month during which proceedings resulting in court-ordered foster care were initiated and would have been eligible for aid to families with dependent children at any time during the six-month period.

B. Public assistance may be provided to pregnant women deemed eligible for aid under the federal act.

**History:** 1953 Comp., § 13-17-9, enacted by Laws 1973, ch. 376, § 9; 1982, ch. 24, § 2.

## **ANNOTATIONS**

**Cross-references.** - For liability for repayment of public assistance, see 27-2-28 NMSA 1978.

**Refusal to comply with regulations terminates eligibility.** - Where an applicant for public assistance refuses to comply with regulations requiring assignment of support rights, she may not maintain her eligibility for aid to families with dependent children benefits. The department's refusal to provide such benefits on that basis is in accordance with applicable law and regulations. *Melton v. New Mexico Dep't of Human Servs.*, 97 N.M. 102, 637 P.2d 52 (Ct. App. 1981).

**Denial of benefits where natural father could provide support.** - Substantial evidence in the record as a whole supported the human services department's denial of aid to families with dependent children benefits where the natural father could provide support. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 15, 33, 35, 40, 50 to 60.

Denial of social security benefits to adopted children who are neither natural children nor stepchildren of eligible individual and who do not meet dependency requirements, under § 202(d)(8) of the Social Security Act, as amended (42 USCS § 402(d)(8)), 57 A.L.R. Fed. 942.

Requirement, under 42 USCS § 602(a)(28), that state reimburse AFDC recipient for child support payments collected on recipient's behalf, 70 A.L.R. Fed. 941.

81 C.J.S. Social Security and Public Welfare §§ 37 to 44, 97 to 112.

### **27-2-6.1. Supplemental postnatal assistance.**

The health and social services department shall establish a program of supplemental postnatal assistance for those mentally retarded persons who during pregnancy received aid to families with dependent children but whose aid was revoked upon relinquishment of the newly born child for adoption. The supplemental postnatal assistance provided for in this section shall be at the same rate as aid to families with dependent children, but such supplemental postnatal assistance shall not exceed a period of sixty days. The health and social services department shall promulgate rules and regulations in order to carry out the provisions of this section.

**History:** 1978 Comp., § 27-2-6.1, enacted by Laws 1978, ch. 30, § 1.

## **27-2-6.2. Public assistance; employment and training requirements.**

A. In the administration of all food stamp employment and training programs, community work experience programs, work incentive demonstration programs for recipients of aid to families with dependent children and all other work registration, work incentive or employment and training programs established or conducted by the human services department, participation of recipients shall be voluntary except as prohibited by federal law or when mandatory participation is a requirement in order to secure federal funding for services provided.

B. Any waiver requests developed and submitted to the federal government by the human services department for food stamp employment and training programs, community work experience programs, work incentive demonstration programs for recipients of aid to families with dependent children and all other work registration, work incentive or employment, education and training programs shall include a voluntary program and may also include a mandatory alternative.

C. The human services department shall promulgate regulations which shall be published and made available for public notice and comment which detail the criteria for mandatory participation and exemptions in accordance with federal law and regulations for persons in work, education, training, job search and work experience programs administered by the human services department prior to their implementation.

D. The human services department shall not place persons in any community work experience or similar program unless:

(1) appropriate standards for health, safety and other conditions applicable to the performance of work are met;

(2) the program does not result in displacement of persons currently employed; and

(3) provision is made for transportation, day care and other costs necessary and directly related to participation in the program.

**History:** Laws 1988, ch. 122, § 1.

## **27-2-7. General assistance program; qualifications and payments.**

A. Subject to the availability of state funds, public assistance shall be provided under a general assistance program to or on behalf of eligible persons who:

(1) are under eighteen years of age and meet all eligibility conditions for aid to families with dependent children except the relationship to the person with whom they are living; or

(2) are over the age of eighteen and are temporarily disabled, according to regulations of the board, and are not receiving aid to families with dependent children; or

(3) meet the qualifications under such other regulations for the general assistance program as the board shall establish from time to time.

B. General assistance program payments may be made directly to the recipient or to the vendor of goods or services provided to the recipient. The board may by regulation limit the grants that are made to general assistance recipients.

C. Whenever the board makes an adjustment in the standard of need for the aid to families with dependent children program pursuant to Section 27-2-3 NMSA 1978, it shall make a commensurate adjustment in the standard of need for the general assistance program.

**History:** 1953 Comp., § 13-17-10, enacted by Laws 1973, ch. 376, § 10; 1977, ch. 201, § 1.

## ANNOTATIONS

**Cross-references.** - For liability for repayment of public assistance, see 27-2-28 NMSA 1978.

**Refusal to comply with regulations terminates eligibility.** - Where an applicant for public assistance refuses to comply with regulations requiring assignment of support rights, she may not maintain her eligibility for aid to families with dependent children benefits. The department's refusal to provide such benefits on that basis is in accordance with applicable law and regulations. *Melton v. New Mexico Dep't of Human Servs.*, 97 N.M. 102, 637 P.2d 52 (Ct. App. 1981).

**Validity of regulation limiting duration of cash assistance payments.** - This section did not prevent state health and social services department (now human services department) from enacting regulation placing a six-month limitation on general assistance benefits paid to temporarily disabled needy persons with no minor children, since the limitation contemplated by the legislature was not confined to the amount of the periodic payments, but also applied to the length of time such payments were made. *Health & Social Servs. Dep't v. Garcia*, 88 N.M. 640, 545 P.2d 1018 (1976).

### **27-2-8. Granting of assistance.**

A. The local office shall decide whether an applicant is eligible for assistance under the provisions of the Public Assistance Act and regulations of the board adopted pursuant thereto, and shall determine the amount of such assistance and the date upon which such assistance shall begin. The local office shall notify the applicant of its decision and shall report its findings and decision to the department. Assistance shall be paid

monthly, or more often, in the discretion of the department. The department may, in its discretion, review and modify the decision of the local office.

B. If an approved recipient dies before a warrant for assistance has been endorsed or deposited by the recipient, the amount may be paid to a person living with or caring for the recipient at the time of the recipient's death, provided that the recipient was alive on the first day of the month in which the warrant was issued and was entitled to assistance for that month. The board shall adopt regulations prescribing the method of payment in such cases and the manner of ascertaining the person entitled to receive the same.

**History:** 1953 Comp., § 13-17-11, enacted by Laws 1973, ch. 376, § 11; 1975, ch. 187, § 5.

## ANNOTATIONS

**Cross-references.** - For applications for assistance generally, see 27-2-18 NMSA 1978.

For investigation of applications, see 27-2-19 NMSA 1978.

For periodic reconsideration and changes in amount of assistance, see 27-2-20 NMSA 1978.

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

### **27-2-9. Payment for hospital care.**

A. Consistent with the federal act, the department shall provide necessary hospital care for recipients of public assistance other than those eligible under the general assistance program authorized by Section 10 [27-2-7 NMSA 1978] of the Public Assistance Act. The rate of payment for in-patient hospital services shall be based either on the reasonable cost or the customary cost of such services, whichever is less. In determining reasonable cost under this section, the board shall adopt regulations establishing a formula consistent with the federal act. The department shall apply that formula to determine the amount to which each hospital is entitled as reimbursement for providing in-patient hospital services.

B. To receive reimbursement for providing in-patient hospital services, a hospital shall file annually with the department such information as the department may reasonably require to determine reasonable costs or the hospital's customary cost of in-patient hospital services.

C. Any hospital entitled to reimbursement for in-patient hospital services shall be entitled to a hearing, pursuant to regulations of the board consistent with applicable

state law, if the hospital disagrees with the department's determination of the reimbursement the hospital is to receive.

**History:** 1953 Comp., § 13-17-12, enacted by Laws 1973, ch. 376, § 13.

### **ANNOTATIONS**

**Cross-references.** - As to medical assistance programs generally, see 27-2-12 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 4, 32, 38 to 41, 87, 88, 105.

Medical or surgical services rendered to poor person in emergency, without express authority, liability of governmental agency for, 93 A.L.R. 900.

Nature of care contemplated by statute imposing general duty to care for indigent relatives, 92 A.L.R.2d 348.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

81 C.J.S. Social Security and Public Welfare §§ 102, 122, 128, 133.

### **27-2-9.1. Administration of shelter care supplement.**

A. A shelter care supplement shall be provided to those individuals who are recipients of supplemental security income under Title 16 of the federal Social Security Act and who reside in shelter care homes licensed pursuant to regulations of the health and environment department [department of health].

B. The human services department is authorized to determine eligibility, compute payment, make payments and otherwise administer the shelter care supplement program.

C. The amount of the shelter care supplement payment shall be established by the secretary of human services subject to the availability of general funds.

**History:** Laws 1979, ch. 401, § 1; 1983, ch. 174, § 1.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA



1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Social Security Act.** - Title 16 of the federal Social Security Act, referred to in Subsection A, appears as 42 U.S.C. § 1381 et seq.

### **27-2-10. Food stamp program.**

The department is authorized to establish a food stamp program to carry out the federal Food Stamp Act, as may be amended from time to time, and regulations issued pursuant thereto, subject to the continuation of the federal food stamp program and the availability of federal funds.

**History:** 1953 Comp., § 13-17-13, enacted by Laws 1973, ch. 376, § 14.

### **ANNOTATIONS**

**Food Stamp Act.** - The federal Food Stamp Act, referred to in this section, is codified as 7 U.S.C. § 2011 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Eligibility for food stamps under Food Stamp Act of 1964 (7 USC § 2011 et seq.), 118 A.L.R. Fed. 473.

Violations and enforcement of Food Stamp Act of 1964 (7 USC § 2011 et seq.), 120 A.L.R. Fed. 331.

Selection and suspension or disqualification of participating stores under Food Stamp Act of 1964 (7 USC § 2011 et seq.), 121 A.L.R. Fed. 653.

### **27-2-11. Scope of assistance programs.**

Any public assistance program conducted by the department under the federal act is effective in all political subdivisions if the federal act so requires.

**History:** 1953 Comp., § 13-17-14, enacted by Laws 1973, ch. 376, § 15.

### **27-2-12. Medical assistance programs.**

Consistent with the federal act and subject to the appropriation and availability of federal and state funds, the medical assistance division of the human services department may by regulation provide medical assistance, including the services of licensed doctors of oriental medicine and licensed chiropractors, to persons eligible for public assistance programs under the federal act.

**History:** 1953 Comp., § 13-17-15, enacted by Laws 1973, ch. 376, § 16; 1991, ch. 144, § 1; 1993, ch. 158, § 1.

## ANNOTATIONS

**Cross-references.** - For payment for hospital care, see 27-2-9 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "medical assistance division of the human services department" for "board" and inserted "including the services of licensed oriental medical doctors and licensed chiropractors".

**The 1993 amendment,** effective June 18, 1993, substituted "licensed doctors of oriental medicine" for "licensed oriental medical doctors".

**Chiropractors' services not required under state Medicaid program. -**

Chiropractors' services are not physicians' services under the Medicaid program. Chiropractors' services thus are not included in the general categories of medical treatment which must be included in the state plan. *Katz v. New Mexico Dep't of Human Servs.*, 95 N.M. 530, 624 P.2d 39 (1981) (decided prior to 1991 amendment).

**Services of a physical therapist are not required** to be included in the state plan. *Katz v. New Mexico Dep't of Human Servs.*, 95 N.M. 530, 624 P.2d 39 (1981).

**Denial of services not denial of equal protection. -** The denial of Medicaid benefits for the services of chiropractors and physical therapists is not so arbitrary and unreasonable as to constitute a denial of equal protection. *Katz v. New Mexico Dep't of Human Servs.*, 95 N.M. 530, 624 P.2d 39 (1981) (decided prior to 1991 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references. -** Transsexual surgery as covered operation under state medical assistance program, 2 A.L.R.4th 775.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

### **27-2-12.1. Repealed.**

## ANNOTATIONS

**Repeals. -** Laws 1979, ch. 330, § 1, repeals 27-2-12.1 NMSA 1978, enacted by Laws 1978, ch. 94, § 1, relating to Medicaid institutional care computation. For provisions of former section, see 1978 Supplement.

### **27-2-12.2. Medical assistance program; eligibility of married individuals.**

For the purpose of determining medical assistance for institutional care program eligibility under the Public Assistance Act, the community spouse resource allowance for a community spouse as defined and authorized by the federal Medicare

Catastrophic Coverage Act of 1988 shall be a minimum of thirty thousand dollars (\$30,000).

**History:** Laws 1987, ch. 16, § 1; 1989, ch. 74, § 1.

#### **ANNOTATIONS**

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Medicare Catastrophic Coverage Act of 1988.** - The federal Medicare Catastrophic Coverage Act of 1988, referred to in this section, is Public Law 100-360 and appears as various sections in Titles 26 and 42 of the United States Code.

#### **27-2-12.3. Medicaid reimbursement; equal pay for equal physicians', dentists', optometrists', podiatrists' and psychologists' services.**

The human services department shall establish a rate for the reimbursement of physicians, dentists, optometrists, podiatrists and psychologists for services rendered to medicaid patients that provides equal reimbursement for the same or similar services rendered without respect to the date on which such physician, dentist, optometrist, podiatrist or psychologist entered into practice in New Mexico, the date on which the physician, dentist, optometrist, podiatrist or psychologist entered into an agreement or contract to provide such services or the location in which such services are to be provided in the state; provided, however, that the requirements of this section shall not apply when the human services department contracts with entities pursuant to Section 27-2-12.6 NMSA 1978 to negotiate a rate for the reimbursement for services rendered to medicaid patients in the medicaid managed care system.

**History:** 1978 Comp., § 27-2-12.2, enacted by Laws 1987, ch. 269, § 1; 1996, ch. 70, § 1.

#### **ANNOTATIONS**

**The 1996 amendment,** added the provisio at the end of the section. Laws 1996, ch. 70 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **27-2-12.4. Long-term care facilities; noncompliance with standards and conditions; sanctions.**

A. In addition to any other actions required or permitted by federal law or regulation, the human services department shall impose a hold on state medicaid payments to a long-term care facility thirty days after the health and environment department [department of

health] notifies the human services department in writing pursuant to an on-site visit that the long-term care facility is not in substantial compliance with the standards or conditions of participation promulgated by the federal department of health and human services pursuant to which the facility is a party to a medicaid provider agreement, unless the substantial noncompliance has been corrected within that thirty-day period or the facility's medicaid provider agreement is terminated or not renewed based in whole or in part on the noncompliance. The written notice shall cite the specific deficiencies that constitute noncompliance.

B. The human services department shall remove the payment hold imposed under Subsection A of this section when the health and environment department [department of health] pursuant to an on-site visit certifies in writing to the human services department that the long-term care facility is in substantial compliance with the standards or conditions of participation pursuant to which the facility is a party to a medicaid provider agreement.

C. The human services department shall not reimburse any long-term care facility during the payment hold period imposed pursuant to Subsection A of this section for any medicaid recipient-patients who are new admissions and who are admitted on or after the day the hold is imposed and prior to the day the hold is removed.

D. If a long-term care facility is certified in writing to be in noncompliance pursuant to Subsection A of this section for the second time in any twelve-month period, the human services department shall cancel or refuse to execute the long-term care facility's medicaid provider agreement for a two-month period, unless it can be demonstrated that harm to the patients would result from this action or that good cause exists to allow the facility to continue to participate in the medicaid program. The provisions of this subsection are subject to appeal procedures set forth in federal regulations for nonrenewal or termination of a medicaid provider agreement.

E. A long-term care facility shall not charge medicaid recipient-patients, their families or their responsible parties to recoup any payments not received because of a hold on medicaid payments imposed pursuant to this section.

F. This section shall not be construed to affect any other provisions for medicaid provider agreement termination, nonrenewal, due process and appeal pursuant to federal law or regulation.

G. As used in this section:

(1) "day" means a twenty-four hour period beginning at midnight and ending one second before midnight;

(2) "long-term care facility" means any intermediate care facility or skilled nursing facility which is licensed by the health and environment department [department of health] and which is medicaid certified;

(3) "new admissions" means medicaid recipients who have never been in the long-term care facility or, if previously admitted, had been discharged or had voluntarily left the facility. The term does not include:

(a) individuals who were in the long-term care facility before the effective date of the hold on medicaid payments and became eligible for medicaid after that date; and

(b) individuals who, after a temporary absence from the facility, are readmitted to beds reserved for them in accordance with federal regulations; and

(4) "substantial compliance" means the condition of having no cited deficiencies or having only those cited deficiencies which:

(a) are not inconsistent with any federal statutory requirement;

(b) do not interfere with adequate patient care;

(c) do not represent a hazard to the patients' health or safety;

(d) are capable of correction within a reasonable period of time; and

(e) are ones which the long-term care facility is making reasonable plans to correct.

**History:** Laws 1987, ch. 214, § 1.

## **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

### **27-2-12.5. Medicaid-certified nursing facilities; retroactive eligibility; refunds; penalty.**

A. Medicaid payment for a medicaid-eligible patient shall be accepted by a medicaid-certified nursing facility from the first month of medicaid eligibility, regardless of whether the eligibility is retroactive. The nursing facility shall refund to the patient or responsible party all out-of-pocket money except for required medical-care credits paid to the nursing facility for that patient's care on and after the date of medicaid eligibility for services covered by the medicaid program. Within thirty days after notification by the human services department of the patient's medicaid eligibility, the nursing facility shall make any necessary refund to the patient or responsible party required under this section.

B. In any cause of action brought against a nursing facility because of its failure to make a refund to the patient or responsible party as required under Subsection A of this section, the patient or responsible party may be awarded triple the amount of the money not refunded or three hundred dollars (\$300), whichever is greater, and reasonable attorneys' fees and court costs.

**History:** Laws 1989, ch. 83, § 1; 1991, ch. 211, § 1.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added "Penalty" in the catchline; designated the formerly undesignated provision as Subsection A; and added Subsection B.

### **27-2-12.6. Medicaid payments; managed care.**

A. The department shall provide for a statewide, managed care system to provide cost-efficient, preventive, primary and acute care for medicaid recipients by July 1, 1995.

B. The managed care system shall ensure:

(1) access to medically necessary services, particularly for medicaid recipients with chronic health problems;

(2) to the extent practicable, maintenance of the rural primary care delivery infrastructure;

(3) that the department's approach is consistent with national and state health care reform principles; and

(4) to the maximum extent possible that medicaid-eligible individuals are not identified as such except as necessary for billing purposes.

C. The department may exclude nursing homes, intermediate care facilities for the mentally retarded, medicaid in-home and community-based waiver services and residential and community-based mental health services for children with serious emotional disorders from the provisions of this section.

**History:** Laws 1994, ch. 62, § 22.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 62, § 28 makes the act effective immediately. Approved March 4, 1994.

### **27-2-13. Conflict in federal and state laws.**

Any section of the NMSA 1978 relating to public assistance which is in conflict with the provisions of the federal act or the federal Food Stamp Act, as may be amended from time to time, and federal regulations issued pursuant thereto, shall be suspended in its operation if the attorney general certifies that such conflict exists.

**History:** 1953 Comp., § 13-17-16, enacted by Laws 1973, ch. 376, § 17.

## **ANNOTATIONS**

**Food Stamp Act.** - The federal Food Stamp Act, referred to in this section, is compiled as 7 U.S.C. § 2011 et seq.

### **27-2-14. Continuing effect of regulations and standards.**

Regulations and standards of the board and department adopted prior to the effective date of the Public Assistance Act are continued in full force and effect, unless modified or revoked.

**History:** 1953 Comp., § 13-17-17, enacted by Laws 1973, ch. 376, § 18.

### **27-2-15. Cooperation with United States.**

The state department is hereby designated as the state agency to cooperate with the federal government in the administration of the provisions of Title 1, Title 4, Part 2 and 3 of Title 5, and Title 10 of the federal Social Security Act. The state board is hereby authorized and directed to cooperate with the proper departments of the federal government, and with all other departments of the state and local governments in the enforcement and administration of such provisions of the federal Social Security Act, and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith in the manner prescribed in this act, or as otherwise provided by law.

The department shall also make reports in such form and containing such information as any agency or instrumentality of the United States, with which it is cooperating, may from time to time require, and shall comply with such provisions as any such agency or instrumentality may from time to time find necessary to assure the correctness and verification of such reports.

**History:** Laws 1937, ch. 18, § 9; 1941 Comp., § 73-109; 1953 Comp., § 13-1-9.

## **ANNOTATIONS**

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the un repealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

**Social Security Act.** - The federal Social Security Act, referred to in this section, is compiled as 42 U.S.C. § 301 et seq. Titles 1, 4, 5 and 10 of the act, referred to in the first sentence in the first paragraph, appear as 42 U.S.C. §§ 301 et seq., 601 et seq., 701 et seq., and 1201 et seq., respectively.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 15, 32 to 41, 43.

Constitutionality of old-age pension or assistance acts, 37 A.L.R. 1524, 86 A.L.R. 912, 101 A.L.R. 1215.

Old-age assistance benefits under federal and state Social Security Act, 121 A.L.R. 1002.

Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731.

Residence required for purposes of old-age assistance, 43 A.L.R.2d 1427.

What constitutes "disability" within federal Social Security Act, 77 A.L.R.2d 641.

81 C.J.S. Social Security and Public Welfare §§ 94 to 112.

## **27-2-16. Compliance with federal law.**

A. Subject to the availability of state funds, the human services department may provide assistance to aged, blind or disabled individuals in the amounts consistent with federal law to enable the state to be eligible for medicaid funding. Individuals shall be determined to be aged, blind or disabled according to regulations of the human services department.

B. If drug product selection is permitted by Section 26-3-3 NMSA 1978, reimbursement by the medicaid program shall be limited to the wholesale cost of the lesser expensive therapeutic equivalent drug generally available in New Mexico plus a reasonable dispensing fee of at least three dollars sixty-five cents (\$3.65).

**History:** 1953 Comp., § 13-17-18, enacted by Laws 1974, ch. 31, § 1; 1982, ch. 26, § 2; 1984, ch. 27, § 1.

## **ANNOTATIONS**

**Cross-references.** - For medical assistance programs generally, see 27-2-12 NMSA 1978.

For programs for persons with special medical needs generally, see 27-4-1 NMSA 1978 et seq.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 15, 32 to 41, 43.

Constitutionality of old-age pension or assistance acts, 37 A.L.R. 1524, 86 A.L.R. 912, 101 A.L.R. 1215.

Old-age assistance benefits under federal and state Social Security Act, 121 A.L.R. 1002.

Residence required for purpose of old-age assistance, 43 A.L.R.2d 1427.

What constitutes "disability" within federal Social Security Act, 77 A.L.R.2d 641.

Use of medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2) in determining disability of social security benefits claimant, 60 A.L.R. Fed. 796.

81 C.J.S. Social Security and Public Welfare §§ 94 to 112.

## **27-2-17. Custodian of funds.**

The state department is hereby designated as the custodian, subject to the provisions of Section 21 [27-2-33 NMSA 1978] of this act, of any and all moneys which may be received by the state of New Mexico, which the state board of public welfare 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, referred to in Section 9 [27-2-15 NMSA 1978], and all moneys received from any other source for the purposes set forth in this act. The state department is hereby authorized to receive such moneys, provide for the proper custody thereof, and to make disbursements therefrom under such rules and regulations as the state board may prescribe.

**History:** Laws 1937, ch. 18, § 10; 1941 Comp., § 73-110; 1953 Comp., § 13-1-10.

### **ANNOTATIONS**

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the unrepealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

**Social Security Act.** - The federal Social Security Act, referred to in this section, is compiled as 42 U.S.C. § 301 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare §§ 15, 32 to 41, 50, 67, 103, 111 to 113.

Unemployment or other unusual conditions, power of state or municipality to appropriate funds or incur indebtedness, in excess of poor funds, for relief of distress due to, 87 A.L.R. 371.

81 C.J.S. Social Security and Public Welfare §§ 2, 6, 9, 94 to 112, 116.

### **27-2-18. Application for public assistance.**

Application for public assistance shall be made to the local office in the county or district in which the applicant resides. The application shall be in writing, or reduced to writing in the manner and upon the form prescribed by the state department, and shall be subscribed by the applicant under oath. Every application shall contain a complete statement of the amount of property, both personal and real, in which the applicant has any interest, a statement of all income which he has at the time of the filing of the application, and such other information as may be required by the state department.

In the case of dependent children, the application shall be made under oath by the person having custody of the dependent child. Each application shall contain a statement of the age and residence of the child and such other information concerning the dependent child and the person having custody of the child as may be required by the rules and regulations of the state department. One application may be made for several dependent children of the same family if they reside with the same person.

**History:** Laws 1937, ch. 18, § 11a; 1941 Comp., § 73-112; 1953 Comp., § 13-1-12; Laws 1963, ch. 220, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 38, 67, 96, 112, 113.

Status of one as poor person for purposes of statutes entitling him to relief or providing for compensation of persons who render services or aid, as affected by extent of his financial resources, 98 A.L.R. 870.

Who qualifies as "child" within survivor benefit provisions of federal Social Security Act, § 216(h)(2), 60 A.L.R.2d 1070.

Criminal liability for wrongfully obtaining unemployment benefits, 80 A.L.R.3d 1280.

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary, 21 A.L.R.4th 729.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments, 22 A.L.R.4th 534.

Construction and application of §§ 202(d)(8)(D) and 202(d)(9)(B) of Social Security Act (42 U.S.C. §§ 402(d)(8)(D) and 402(d)(9)(B)) respecting award of child benefits to child legally adopted by individual within 24 months after individual has become entitled to disability or old-age insurance benefits, 10 A.L.R. Fed. 903.

81 C.J.S. Social Security and Public Welfare §§ 6, 9, 91, 107, 116.

### **27-2-19. Investigation of application.**

Whenever a local office receives an application for assistance under the Public Assistance Act, an investigation and record shall promptly be made of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as may be required by the rules of the human services department. The investigation may include a visit to the home of the applicant.

**History:** Laws 1937, ch. 18, § 11b; 1941 Comp., § 73-113; 1953 Comp., § 13-1-13; 1984, ch. 102, § 1.

### **ANNOTATIONS**

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare §§ 15, 32 to 41, 50, 67, 103, 111 to 113.

Status of one as poor person for purposes of statutes entitling him to relief or providing for compensation of persons who render services or aid, as affected by extent of his financial resources, 98 A.L.R. 870.

Who qualifies as "child" within survivor benefit provisions of federal Social Security Act, § 216 (h)(2), 60 A.L.R.2d 1070.

Criminal liability for wrongfully obtaining unemployment benefits, 80 A.L.R.3d 1280.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments, 22 A.L.R.4th 534.

81 C.J.S. Social Security and Public Welfare §§ 2, 6, 9, 94 to 112, 116.

### **27-2-20. Periodic reconsideration and changes in amount of assistance.**

All assistance grants made under this act shall be reconsidered by the local office as frequently as may be required by the rules of the state department. After such further investigation as the local office may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely

withdrawn if the state department or local office find that the recipient's circumstances have altered sufficiently to warrant such action.

**History:** Laws 1937, ch. 18, § 11e; 1941 Comp., § 73-116; 1953 Comp., § 13-1-17.

### **ANNOTATIONS**

**Cross-references.** - For granting of assistance generally, see 27-2-8 NMSA 1978.

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the unpealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

### **27-2-21. Assistance not assignable.**

Assistance granted under this act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

**History:** Laws 1937, ch. 18, § 11g; 1941 Comp., § 73-118; 1953 Comp., § 13-1-19.

### **ANNOTATIONS**

**Cross-references.** - For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801 NMRA 1997, respectively.

For form for claim of exemptions on executions, see Rule 4-803 NMRA 1997.

For form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804 NMRA 1997.

For form for application for writ of garnishment and affidavit, see Rule 4-805 NMRA 1997.

For form for notice of right to claim exemptions from execution, see Rule 4-808A NMRA 1997.

For form for claim of exemption from garnishment, see Rule 4-809 NMRA 1997.

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the unpealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws § 101.

81 C.J.S. Social Security and Public Welfare §§ 100, 202, 222.

### **27-2-22. Recovery from a recipient.**

If at any time during the continuance of assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient immediately to notify the local office of the receipt or possession of such property or income and the local office may, after investigation, either cancel the assistance or alter the amount thereof in accordance with the circumstances.

Any assistance paid after the recipient has come into possession of such property or income in excess of his need, shall be recoverable by the state department as a debt due to the state.

**History:** Laws 1937, ch. 18, § 11h; 1941 Comp., § 73-119; 1953 Comp., § 13-1-20.

#### **ANNOTATIONS**

**Cross-references.** - For right of federal government to share recovery, see 27-2-24 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 91, 99, 103.

Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731.

81 C.J.S. Social Security and Public Welfare § 8.

### **27-2-23. Third-party liability.**

A. The health and social services department shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the medical cost of injury, disease or disability of an applicant or recipient of medical assistance.

B. When the department makes medical assistance payments in behalf of a recipient, the department is subrogated to any right of the recipient against a third party for recovery of medical expenses to the extent that the department has made payment.

**History:** 1953 Comp., § 13-1-20.1, enacted by Laws 1969, ch. 232, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For medical assistance programs generally, see 27-2-12 NMSA 1978.

For liability for repayment of public assistance, see 27-2-28 NMSA 1978.

**Department's subrogation is right of recovery subject to equitable principles.**

White v. Sutherland, 92 N.M. 187, 585 P.2d 331 (Ct. App.), cert. denied, 92 N.M. 79, 582 P.2d 1292 (1978).

**Circumstances held not to justify complete reimbursement.** - Although this section shows an intent that medical assistance payments be repaid, it says nothing as to 100 percent repayment regardless of the facts. Where the settlement proceeds in a medical malpractice suit would constitute but a small fraction of a medical assistance recipient's actual damages and any money which the department might recover would be due to a very large extent to the energies expended in pursuing the malpractice claim by the recipient and her attorneys, who were charging a contingent fee of 25 percent of the recovery, the department was not equitably entitled to complete reimbursement for its payments to the recipient. White v. Sutherland, 92 N.M. 187, 585 P.2d 331 (Ct. App.), cert. denied, 92 N.M. 79, 582 P.2d 1292 (1978).

**27-2-23.1. Employee retirement income security act employee health benefit plans; clauses to exclude medicaid coverage prohibited.**

No employee health benefit plan established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1144, that provides payments for health care on behalf of individuals residing in the state shall contain any provisions excluding or limiting coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee health benefit plan, because that individual is provided, or is eligible for, benefits under the medicaid program of this state pursuant to Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq.

**History:** 1978 Comp., § 27-2-23.1, enacted by Laws 1989, ch. 184, § 1.

**27-2-24. [Federal government entitled to share recovery.]**

The federal government shall be entitled to a share of any amounts recovered under the preceding two sections [27-2-22, 27-2-23 NMSA 1978] if required as a condition to federal financial participation. The federal government's share shall be limited to a percentage of the net recovery equal to the percentage of federal participation claimed by the state for the payments when originally made. The amount due the United States shall be paid promptly from the funds so collected to the United States government.

**History:** Laws 1937, ch. 18, § 11i; 1941, ch. 116, § 6; 1941 Comp., § 73-120; 1953 Comp., § 13-1-21; Laws 1969, ch. 232, § 2.

**ANNOTATIONS**

**Compiler's note.** - The words "preceding two sections," which first appeared in this section as amended by Laws 1969, ch. 232, § 2, apparently were intended to refer to 13-1-20 and 13-1-20.1, 1953 Comp., which at that time were the two sections immediately preceding this section in the 1953 Compilation. Sections 13-1-20 and 13-1-20.1, 1953 Comp., are compiled as 27-2-22 and 27-2-23 NMSA 1978.

## **27-2-25. Funeral expenses.**

A. On the death of:

(1) a recipient of financial assistance under Section 27-2-6 NMSA 1978 or Section 27-2-7 NMSA 1978 or under the federal supplemental security income program; or

(2) an individual living in a nursing home or an intermediate care facility the payment for whose care is made in whole or in part pursuant to Title 19 of the federal act; funeral expenses up to two hundred dollars (\$200) shall be paid by the health and social services department if the deceased's available resources, as defined by regulation of the board, are insufficient to pay the funeral expenses, the persons legally responsible for the support of the deceased are unable to pay the funeral expenses, and no other person will undertake to pay said expenses.

B. No payment shall be made by the department when resources available from all sources to pay the funeral expenses total six hundred dollars (\$600) or more. When the resources are less than six hundred dollars (\$600), the department shall pay the difference between six hundred dollars (\$600) and the resources, or two hundred dollars (\$200), whichever is less.

**History:** Laws 1937, ch. 18, § 11j; 1941 Comp., § 73-121; 1953 Comp., § 13-1-22; Laws 1959, ch. 49, § 1; 1969, ch. 234, § 1; 1975, ch. 220, § 1.

### **ANNOTATIONS**

**Cross-references.** - For burial of indigents, see 24-13-1 NMSA 1978 et seq.

**Meaning of "federal act".** - "Title 19 of the federal act," referred to in Subsection A(2), means Subchapter 19 of the federal Social Security Act, which appears as 42 U.S.C. §§ 1396 to 1396s. See 27-2-2 NMSA 1978.

**Funeral expenses of a child of the recipient are not covered by this section.** 1943-44 Op. Att'y Gen. No. 4389.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 41, 101.

81 C.J.S. Social Security and Public Welfare § 36.

## **27-2-26. Money received from other sources; duty and liability of funeral director.**

Should any funeral director accept payment from sources other than the department for burial of a deceased person for whom a claim for burial expenses has been made to the department, he shall immediately notify the department of said payment. The department will consider said payment in determining the amount of any funeral expense payment it makes. If the department has already made payment, the funeral director shall refund to the department any excess over the amount which the department would have paid had it known of the payment from other sources. If any funeral director shall fail to notify the department of any such payment from other sources, he shall be liable to the department in an amount double the amount paid or to be paid by the department.

**History:** 1953 Comp., § 13-1-22.1, enacted by Laws 1975, ch. 220, § 2.

## **27-2-27. Single state agency; powers and duties.**

The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the following duties and powers:

- A. establish the paternity of a child in the case of the child born out of wedlock with respect to whom an assignment of support rights has been executed in favor of the department;
- B. establish an order of support for children receiving aid to families with dependent children and, at the option of the department, for the spouse or former spouse with whom such children are living, but only if a support obligation has been established with respect to such spouse or former spouse, for whom no order of support presently exists and seek modification, based upon the noncustodial parent's ability to pay, of existing orders in which the support order is inadequate to properly care for the child and the spouse or former spouse with whom the child is living;
- C. enforce as the real party in interest any existing order for the support of children who are receiving aid to families with dependent children or of the spouse or former spouse with whom such children are living; and
- D. provide services to non-aid families with dependent children in the establishment and enforcement of paternity and child support obligations, including locating the absent parent. For these services, the department is authorized to establish and collect fees, costs and charges permitted or required by federal law or by regulations adopted pursuant to that federal law.
- E. In all cases handled by the department pursuant to the provisions of this section, the child support enforcement division of the department and any attorney employed by the



division represent the department in establishing, modifying and enforcing support obligations.

**History:** 1978 Comp., § 27-2-27, enacted by Laws 1981, ch. 90, § 1; 1982, ch. 12, § 1; 1984, ch. 98, § 1; 1995, ch. 46, § 1.

## ANNOTATIONS

**Cross-references.** - For provision requiring welfare payments be disregarded in making award of child support, see 40-4-11 NMSA 1978.

For child support guidelines, see 40-4-11.1 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Repeals and reenactments.** - Laws 1969, ch. 182, § 1, repealed 13-1-27, 1953 Comp., relating to notice to law enforcement officials of furnishing of aid to deserted or abandoned child, and enacted a former 27-2-27 NMSA 1978.

Laws 1981, ch. 90, § 1, repealed former 27-2-27 NMSA 1978, as enacted by Laws 1969, ch. 182, § 1, relating to duties of the department of health and social services regarding an absent parent of a dependent child, and enacted a new 27-2-27 NMSA 1978. For provisions of former section, see 1978 Original Pamphlet.

**The 1995 amendment,** effective June 16, 1995, deleted "human services" preceding "department" in four places; in Subsection D, substituted "provide services to" for "represent" at the beginning of the first sentence and "For these services" for "For such representation" at the beginning of the second sentence; and added Subsection E.

**Meaning of "federal act".** - Title IV D of the federal act, referred to in the introductory paragraph, means Subchapter IV D of the federal Social Security Act, which appears as 42 U.S.C. § 651 et seq. See 27-2-2 NMSA 1978.

**State not barred by laches in determining paternity.** - Where a determination of the paternity of a child is in the public interest, as when the state is seeking reimbursement for payments it has made in the past, as well as future support payments for so long as the child receives public assistance, absent proof of inexcusable neglect, the state will not be barred by the doctrine of laches from maintaining such an action. State ex rel. Department of Human Servs. v. Davis, 99 N.M. 138, 654 P.2d 1038 (1982).

**Law reviews.** - For article, "Fathers Behind Bars: The Right to Counsel in Civil Contempt Proceedings," see 14 N.M.L. Rev. 275 (1984).

**27-2-28. Liability for repayment of public assistance.**

A. A noncustodial parent is liable to the human services department in the amount of the public assistance lawfully and properly furnished to the children, and the spouse or former spouse with whom such children are living, to whom the noncustodial parent owes a duty of support; except that if a support order has been entered, liability for the time period covered by the support order shall not exceed the amount of support provided for in the order.

B. Amounts of support due and owing for periods prior to the granting of public assistance shall be paid to and retained by the human services department to the extent that the amount of assistance granted exceeds the amount of the monthly support obligation.

C. Amounts of support collected that are in excess of the amounts specified in Subsections A and B of this section shall be paid by the human services department to the custodian of the child.

D. No agreement between any custodian of a child and a parent of that child, either relieving the parent of any duty of child or spousal support or responsibility or purporting to settle past, present or future support obligations, either as a settlement or prepayment, shall act to reduce or terminate any rights of the human services department to recover from that parent for support provided, unless the human services department has consented to the agreement in writing.

E. The noncustodial parent shall be given credit for any support actually provided, including housing, clothing, food or funds paid prior to the entry of any order for support. The noncustodial parent has the burden on the issue of any payment.

F. An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for or receiving assistance. The assignment includes all support rights that have accrued at the time of application for public assistance and continues as an assignment of all support rights the applicant is entitled to for as long as the applicant receives public assistance.

G. By operation of law, an assignment to the human services department of any and all rights of an applicant for or recipient of medical assistance under the medicaid program in New Mexico or supplemental security income through the social security administration:

(1) is deemed to be made of:

(a) any payment for medical care from any person, firm or corporation, including an insurance carrier; and

(b) any recovery for personal injury, whether by judgment or contract for compromise or settlement;

(2) shall be effective to the extent of the amount of medical assistance actually paid by the department under the medicaid program; and

(3) shall be effective as to the rights of any other individuals who are eligible for medical assistance and whose rights can legally be assigned by the applicant or recipient.

An applicant or recipient is required to cooperate fully with the human services department in its efforts to secure the assignment and to execute and deliver any instruments and papers deemed necessary to complete the assignment by that department.

**History:** 1978 Comp., § 27-2-28, enacted by Laws 1981, ch. 90, § 2; 1982, ch. 12, § 2; 1991, ch. 223, § 1; 1995, ch. 202, § 1.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1981, ch. 90, § 2, repealed former 27-2-28 NMSA 1978, as amended by Laws 1973, ch. 376, § 12, relating to actions brought by the department of health and social services against the person responsible for the support of a spouse or minor children who are recipients of public assistance, and enacted a new 27-2-28 NMSA 1978. For provisions of former section, see 1978 Original Pamphlet.

**The 1991 amendment,** effective June 14, 1991, inserted "human services" preceding "department" throughout the section; added Subsections F and G; and made a minor stylistic change in Subsection C.

**The 1995 amendment,** effective June 16, 1995, deleted a proviso relating to claims for reimbursement by the human services department six years prior to filing an action from the end of Subsection A and made a minor stylistic change in Subsection C.

**Contempt proceeding brought to enforce child support order is civil** in nature. State ex rel. Department of Human Servs. v. Rael, 97 N.M. 640, 642 P.2d 1099 (1982).

**State brings action as assignee of claim for nonsupport.** - Where the state brings an action under this section, it is merely acting as an assignee of the minor's mother's claim for nonsupport rather than exercising its police power, and is therefore acting as a private party. State ex rel. Department of Human Servs. v. Rael, 97 N.M. 640, 642 P.2d 1099 (1982).

**State not barred by laches.** - Where a determination of the paternity of a child is in the public interest, as when the state is seeking reimbursement for payments it has made in the past, as well as future support payments for so long as the child receives public assistance, absent proof of inexcusable neglect, the state will not be barred by the

doctrine of laches from maintaining such an action. State ex rel. Department of Human Servs. v. Davis, 99 N.M. 138, 654 P.2d 1038 (1982).

**Court cannot relieve parent of duty to support child.** - In adopting a valid decree, a judge cannot discharge a parent of his or her duty to support his or her child and thereby place the burden on the taxpayers. Martinez v. Martinez, 98 N.M. 535, 650 P.2d 819 (1982).

Parents cannot enter into an agreement to extinguish a parent's duty to support their children before executing an assignment of support rights to a state agency. Parents have a duty to support their children and cannot rid themselves of it by transferring the duty to someone else. Martinez v. Martinez, 98 N.M. 535, 650 P.2d 819 (1982).

**Court cannot relieve parent from obligation to department for public assistance paid,** in the past and in the future, on behalf of the children. Martinez v. Martinez, 98 N.M. 535, 650 P.2d 819 (1982).

**Noncustodial parent's repayment of public assistance.** - A noncustodial parent's obligation for repayment of public assistance spent on children may be ascertained without regard to the obligations of any other parent, including other noncustodial parents. State ex rel. Human Servs. Dep't v. Barela, 117 N.M. 526, 873 P.2d 272 (Ct. App. 1994).

**Parent's pro se status does not relieve parent of statutory burden** to prove affirmatively her contribution to her children's support. State ex rel. Human Servs. Dep't v. Barela, 117 N.M. 526, 873 P.2d 272 (Ct. App. 1994).

**Law reviews.** - For article, "Child Support Enforcement: The New Mexico Experience," see 9 N.M.L. Rev. 25 (1978-79).

For article, "Fathers Behind Bars: The Right to Counsel in Civil Contempt Proceedings," see 14 N.M.L. Rev. 275 (1984).

## **27-2-29. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 90, § 4, repeals 27-2-29 NMSA 1978, as enacted by Laws 1969, ch. 182, § 2, relating to procedure for the enforcement of support by the district attorney, effective March 21, 1981. For provisions of former section, see 1978 Original Pamphlet.

## **27-2-30. [Enforcement of support;] orders.**

The court in term time or judge in vacation may make and enforce by attachment or otherwise such order to restrain the use or disposition of the property of the defendant

to provide for the support of the dependents during the pendency of the suit as in his discretion may seem just and proper.

**History:** 1953 Comp., § 13-1-27.3, enacted by Laws 1965, ch. 66, § 3.

### **27-2-31. Judgments and proceeds.**

Upon final hearing, judgment for the department shall include all sums expended during the pendency of the action. When the department of public welfare recovers judgments under this act [27-2-30, 27-2-31 NMSA 1978], it may enforce, compromise or settle the judgments in any way considered by the board of public welfare to be in the public interest. Any proceeds of judgments or settlements shall be retained by the department for its authorized activities and required reimbursements to the federal government.

**History:** 1953 Comp., § 13-1-27.4, enacted by Laws 1965, ch. 66, § 4.

### **ANNOTATIONS**

**Department of public welfare.** - The powers, duties and property of the department of public welfare were transferred to the department of health and social services by Laws 1968, ch. 37, § 3. Laws 1977, ch. 252, § 5, abolished the department of health and social services, and § 4 of said act created the human services department. See also 27-1-1 NMSA 1978.

### **27-2-32. Duty of agencies to cooperate.**

All state, county and municipal agencies, departments, bureaus and divisions shall cooperate in the location of absent parents who are not fulfilling their obligation to support their children and shall on request supply the department with all information on hand relative to the location, social security number, income and property of such absent parents, notwithstanding any other provision of law making the information confidential. The department shall use such information only for the purpose of enforcing the support liability of such absent parents and shall not use the information or disclose it for any other purpose.

**History:** 1953 Comp., § 13-1-28, enacted by Laws 1969, ch. 182, § 3; 1981, ch. 90, § 3; 1985, ch. 105, § 14.

### **ANNOTATIONS**

**Repeals.** - Laws 1955, ch. 194, § 1, repeals former 13-1-28, 1953 Comp., relating to the hospitalization, treatment and care of welfare patients. For present provisions on hospital care for welfare recipients, see 27-2-9 NMSA 1978.

### **27-2-33. Method of handling funds.**

All moneys received from the federal government for carrying out of any of the purposes of this act, and all other funds received by the state department under the provisions of this act, shall be by it paid over to the state treasurer and shall be by him kept in a separate fund, known as the "social security fund," and all moneys in such fund are hereby appropriated to the state board for the carrying out of the purposes of this act, provided that all moneys received from the federal government shall be spent solely for the purposes for which said funds were granted.

By resolution of the state board, requisitions shall be made from time to time from the state treasurer for funds needed for the carrying out of any of the purposes of this act, and the funds so requisitioned shall be disbursed under rules and regulations of the state board, provided, however, that the state board shall not requisition at any one time and have on hand more than sufficient moneys to meet its estimated needs for a period of sixty days.

The state board shall be subject at all times to audit by the state comptroller [state auditor] or any other agency provided by law, provided that an audit by any private auditor, approved by the state comptroller [state auditor], may be accepted by him. The state board may, with the approval of the state comptroller [state auditor], provide for a continuous audit of its transactions.

**History:** Laws 1937, ch. 18, § 21; 1941 Comp., § 73-131; 1953 Comp., § 13-1-34.

## ANNOTATIONS

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the unrepealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

**Bracketed material.** - The office of state comptroller was abolished by Laws 1977, ch. 26, § 1 and all records transferred to the state auditor. The bracketed material was not enacted by the legislature and is not a part of the law.

**New Mexico statutes do not prohibit welfare department (now human services department) from establishing a medical pool fund** in order to cooperate with the federal social security administration, subject only to the limitation contained in this section. 1951-52 Op. Att'y Gen. No. 5429.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81 C.J.S. Social Security and Public Welfare § 8.

### **27-2-34. Limitations of act.**

All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be

passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act.

**History:** Laws 1937, ch. 18, § 22; 1941, ch. 116, § 7; 1941 Comp., § 73-132; 1953 Comp., § 13-1-35.

## ANNOTATIONS

**Meaning of "this act".** - The words "this act" refer to Laws 1937, ch. 18. For disposition of the unrepealed sections of this act in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

### **27-2-35. Custody of records; disclosure of information.**

The New Mexico department of public welfare shall have power to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of its state and county departments and to restrict the use or disclosure of information contained therein concerning applications for and recipients of assistance of any kind to purposes directly connected with the administration of the Public Welfare Act and of [any] related federal act, except as hereinafter provided.

A. Records open to inspection; exceptions. The department of public welfare shall, on or before the last day of each month, make available in the county office of the department of public welfare of each county, a complete list showing all the names and addresses of all the recipients receiving payments under the Public Welfare Act within that county for the preceding month, together with the amount paid each during the said month. The reports shall be securely bound in a separate record book, provided for that purpose, which said book and all reports contained therein shall be, and the same hereby are, declared to be public records, and shall be open to public inspection at all times during the regular office hours of said office, subject to rules and regulations of the department. Provided, however, that nothing herein contained shall be construed to authorize or require the disclosure of any record of the public welfare department pertaining to adoption.

B. Unlawful uses. Except as provided in this act [this section], it shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any name or list of names for commercial or political purposes of any nature.

C. Penalty. Any person, body, association, corporation or any other agency who shall willfully or knowingly violate any provision of this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000), to which may be added imprisonment in the county jail for any term or period not to exceed sixty days.

**History:** Laws 1941, ch. 116, § 1; 1941 Comp., § 73-134; 1953 Comp., § 13-1-37; Laws 1955, ch. 10, § 1; 1955 (S.S.), ch. 2, § 1.

## ANNOTATIONS

**Bracketed material.** - The bracketed words in Subsections A and B were inserted by the compiler. They were not enacted by the legislature and are not a part of the law.

**Department of public welfare.** - The powers, duties and property of the department of public welfare were transferred to the department of health and social services by Laws 1968, ch. 37, § 3. Laws 1977, ch. 252, § 5, abolished the department of health and social services, and § 4 of said act created the human services department. See also 21-1-1 NMSA 1978 and notes thereto.

**Public Welfare Act.** - Laws 1937, ch. 18, was cited as the "Public Welfare Act of 1937." For disposition of the unrepealed sections of Laws 1937, ch. 18, in this compilation, see the Table of Disposition of Acts in Volume 14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws § 24.

Admissibility of records or report of welfare department or agency relating to payment to or financial condition of particular person, 42 A.L.R.2d 752.

Privileged communications: communications to social worker as privileged, 50 A.L.R.3d 563.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

81 C.J.S. Social Security and Public Welfare §§ 121, 194.

### **27-2-36. [Federal act accepted.]**

The state of New Mexico hereby accepts the provisions of the "Act for the public protection of maternity and infancy and providing a method of cooperation between the government of the United States and the several states," now pending in the congress of the United States, known as the "Sheppard-Towner Act," or any other act or acts that may be passed by the congress providing for such cooperation or other cooperation in matters relating to child welfare, public health or public welfare, and appropriating money therefor.

The state board of public welfare is hereby designated as the agency for the state of New Mexico with which the children's bureau or other agency of the United States authorized by any such act of congress shall have all necessary powers to cooperate as provided in any such act in the administration thereof.



The state treasurer of New Mexico is hereby appointed as custodian for all moneys that may be allotted to this state for such purposes by the United States and said state treasurer shall receive and provide for the proper custody of such money and its disbursement on requisition of the state board of public welfare.

**History:** Laws 1921, ch. 117, § 9; C.S. 1929, § 126-109; 1941 Comp., § 73-139; 1953 Comp., § 13-1-42.

## ANNOTATIONS

**State board of public welfare.** - The powers, duties and property of the department of public welfare were transferred to the department of health and social services by Laws 1968, ch. 37, § 3. Laws 1977, ch. 252, § 5, abolished the department of health and social services, and § 4 of said act created the human services department. See also 27-1-1 NMSA 1978 and notes thereto.

**Sheppard-Towner Act.** - The Sheppard-Towner Act (42 Stat. 224), referred to in this section, was terminated as of June 30, 1929 by the Act of January 22, 1927 (44 Stat. 1024). The present federal act is compiled as 42 U.S.C. § 701 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 25 to 31.

81 C.J.S. Social Security and Public Welfare §§ 114 to 124.

### **27-2-37. Short title.**

This act [27-2-37 to 27-2-40 NMSA 1978] may be cited as the "AFDC Recipient Work Incentive Act".

**History:** Laws 1980, ch. 25, § 1.

### **27-2-38. Purpose.**

It is the purpose of the AFDC Recipient Work Incentive Act [27-2-37 to 27-2-40 NMSA 1978] to provide for the encouragement of family stability and self-support. The legislature recognizes that in order to minimize welfare dependence, those persons who desire and who are able to find gainful employment should be assisted in that endeavor by the provision of adequate and cost-effective child day-care services.

**History:** Laws 1980, ch. 25, § 2.

### **27-2-39. Definitions.**

As used in the AFDC Recipient Work Incentive Act [27-2-37 to 27-2-40 NMSA 1978]:

A. "AFDC" means aid to families with dependent children, pursuant to the provisions of Section 27-2-6 NMSA 1978;

B. "AFDC recipient" means a person who receives AFDC payments;

C. "caregiver" means a person eighteen years of age or older who is compensated for the direct care, supervision and guidance of children for less than a daily twenty-four hour period;

D. "child day-care facility" means a child day-care center or child day-care home;

E. "department" means the human services department; and

F. "gainful employment" [means] working for remuneration for others, either full-time or part-time, or employment in one's own business or partnership.

**History:** Laws 1980, ch. 25, § 3.

## ANNOTATIONS

**Bracketed material.** - The bracketed word "means" in Subsection F was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

### **27-2-40. Child day-care services; program established; regulations.**

A. The department shall purchase units of child day care pursuant to the provisions of the AFDC Recipient Work Incentive Act [27-2-37 to 27-2-40 NMSA 1978] to enable persons to maintain gainful employment.

(1) Eligibility for child day care purchased pursuant to this section shall be given to:

(a) persons who at the time of application to the program are AFDC recipients, provided they are no longer AFDC recipients two weeks after first participating in such programs; and

(b) employed persons who are income eligible for AFDC.

(2) Child day-care benefits pursuant to this section shall continue provided:

(a) the client maintains proof of current employment; and

(b) the client's non-exempt income determined pursuant to the Public Assistance Act does not exceed the maximum level as determined by the department.

B. The department shall promulgate regulations to facilitate the administration of the program, including regulations:

(1) for the determination of eligible clients;

(2) for the certification of child day-care facilities;

(3) establishing payment rates reasonably consistent with the fair market value of child day care in New Mexico; and

(4) establishing a system of copayment for child day care by eligible clients and the department.

C. Child day care purchased pursuant to this section shall be in a certified child day-care facility or from a caregiver who is a relative.

D. The choice of a specific caregiver who is a relative or of a specified certified child day-care facility, if a vacancy exists, shall be made by persons served by the provisions of the AFDC Recipient Work Incentive Act and not by the department.

**History:** Laws 1980, ch. 25, § 4; 1983, ch. 176, § 1.

#### **ANNOTATIONS**

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

#### **27-2-41. Short title.**

This act [27-2-41 to 27-2-47 NMSA 1978] may be cited as the "Indigent Catastrophic Illness Hospital Funding Act".

**History:** Laws 1990, ch. 93, § 1.

#### **27-2-42. Legislative findings; purpose.**

A. The legislature finds that twenty-five percent of New Mexicans have no health insurance. When such individuals suffer a catastrophic illness, the large hospital bills that are incurred can often result in indigency for that sick person and his family.

B. The purpose of the Indigent Catastrophic Illness Hospital Funding Act [27-2-41 to 27-2-47 NMSA 1978] is to reduce the impact of medical indigency on the cost of health care in New Mexico by providing for payment of some portion of large hospital bills incurred by medically indigent patients.

**History:** Laws 1990, ch. 93, § 2.

#### **27-2-43. Definitions.**

As used in the Indigent Catastrophic Illness Hospital Funding Act [27-2-41 to 27-2-47 NMSA 1978]:

A. "department" means the human services department;

B. "fund" means the indigent catastrophic illness hospital fund;

C. "hospital" means any general or special hospital that is licensed by the health and environment department [department of health] and that has annual gross charges for medicare, medicaid and indigent patients greater than ten percent of the hospital's total annual gross charges; and

D. "medically indigent patient" means an individual who is a New Mexico resident who incurs hospital charges, who is not eligible for medicaid or medicare and whose family or household income does not exceed two hundred fifty percent of the federal poverty level.

**History:** Laws 1990, ch. 93, § 3.

## ANNOTATIONS

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

### **27-2-44. Indigent catastrophic illness hospital fund created.**

There is created in the state treasury the "indigent catastrophic illness hospital fund". Money in the fund is appropriated to the department for the purpose of reimbursing hospitals for eligible claims for hospital charges incurred by medically indigent patients and for paying administrative costs of the department not to exceed three percent of the annual appropriation or other distribution or transfer to the fund. Money in the fund shall be invested as provided for other state funds and income earned on the fund shall be credited to the fund. No balance remaining at the end of any fiscal year shall revert to the general fund.

**History:** Laws 1990, ch. 93, § 4.

### **27-2-45. Hospitals; claims for payment.**

A. A hospital may submit eligible claims to the department on or before April 1 of each year for payment from the fund by June 30 of each year in an amount determined pursuant to this section.

B. A claim submitted by a hospital for payment from the fund shall be deemed an eligible claim if it is for:

(1) uncovered hospital charges of five thousand dollars (\$5,000) or more for an illness of a medically indigent patient;

(2) hospital charges incurred within the twelve months immediately prior to the applicable April 1 closing deadline; and

(3) an amount determined by subtracting from the base claim the medically indigent patient's deductible and then reducing the resulting balance, based on the hospital's medicare cost-to-charge ratio, to an amount equal to medicare allowable costs.

C. The department shall pay from the fund to each hospital the amount of each eligible claim if there is sufficient money in the fund. If there is not sufficient money in the fund to pay all eligible claims of hospitals for that year, the amount of each claim that shall be paid shall be an amount derived from multiplying the full amount of the eligible claim by the percentage derived from dividing the balance in the fund, after administrative costs have been subtracted, by the sum of the eligible claims.

**History:** Laws 1990, ch. 93, § 5.

### **27-2-46. Medically indigent patient deductible.**

A medically indigent patient's deductible shall be an amount determined by the hospital that the medically indigent patient is able to pay the hospital in monthly installments over an eighteen-month period. That determination shall be made pursuant to department rules and regulations and shall include, but not be limited to, consideration of the medically indigent patient's family size, household income and obligations.

**History:** Laws 1990, ch. 93, § 6.

### **27-2-47. Department; regulations.**

The department shall adopt and promulgate by September 30, 1990 rules and regulations necessary to implement and administer the Indigent Catastrophic Illness Hospital Funding Act [27-2-41 to 27-2-47 NMSA 1978].

**History:** Laws 1990, ch. 93, § 7.

## **ARTICLE 2A MEDICAID ESTATE RECOVERY**

### **27-2A-1. Short title.**

This act [27-2A-1 to 27-2A-9 NMSA 1978] may be cited as the "Medicaid Estate Recovery Act".

**History:** Laws 1994, ch. 87, § 1.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

**Temporary provisions.** - Laws 1994, ch. 87, § 10 provides that the dean of the university of New Mexico school of law shall appoint a chair, who shall in turn appoint the members of a task force to review the provisions of the Medicaid Estate Recovery Act and to make recommendations on proposed regulations authorized pursuant to that act and recommend any necessary amendments to that act to the first session of the forty-second legislature.

### **27-2A-2. Purpose of act.**

The purpose of the Medicaid Estate Recovery Act [27-2A-1 to 27-2A-9 NMSA 1978] is to authorize and require the department to seek recovery of medical assistance payments made by the department for certain individuals, under certain circumstances, as provided in Title XIX of the Social Security Act.

**History:** Laws 1994, ch. 87, § 2.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

**Title XIX of the Social Security Act.** - Title XIX of the federal Social Security Act is located at 42 U.S.C. § 1396 et seq.

### **27-2A-3. Definitions.**

As used in the Medicaid Estate Recovery Act [27-2A-1 to 27-2A-9 NMSA 1978]:

A. "department" means the human services department;

B. "estate" means real and personal property and other assets of the individual subject to probate or administration pursuant to the provisions of the Uniform Probate Code; and

C. "medical assistance" means amounts paid by the department as medical assistance pursuant to Title XIX of the Social Security Act.

**History:** Laws 1994, ch. 87, § 3.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

**Title XIX of the Social Security Act.** - Title XIX of the federal Social Security Act is located at 42 U.S.C. § 1396 et seq.

#### **27-2A-4. Department to seek recovery of medical assistance payments.**

The department shall seek recovery from the estate of an individual:

A. for medical assistance paid on behalf of an individual who was an inpatient in a nursing facility, intermediate care facility for the mentally retarded or other medical institution if the individual was required, as a condition of receiving services in the facility or institution pursuant to the state plan, to spend for costs of services all but a minimal amount of his income required for personal needs, and with respect to whom the department determined, after opportunity for a hearing in accordance with procedures established by the department, could not reasonably have been expected to have been discharged from the facility or institution to return home; and

B. for medical assistance payments made for nursing facility services, home- and community-based services and related hospital and prescription drug services on behalf of an individual who was fifty-five years of age or older when he received medical assistance.

**History:** Laws 1994, ch. 87, § 4.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

#### **27-2A-5. Administration; recovery from estates.**

A. The department shall administer the estate recovery program.

B. The department shall adopt and promulgate rules and regulations to implement the provisions of the Medicaid Estate Recovery Act [27-2A-1 to 27-2A-9 NMSA 1978].

C. The department may compromise, settle or waive recovery pursuant to the Medicaid Estate Recovery Act when deemed by the department to be in the best interests of the state.

**History:** Laws 1994, ch. 87, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

#### **27-2A-6. Hardship waiver.**

The department shall waive the application of the provisions of the Medicaid Estate Recovery Act [27-2A-1 to 27-2A-9 NMSA 1978] if application of the provisions would work an undue hardship as determined pursuant to regulations adopted and promulgated by the secretary of human services. The regulations shall include a provision for special consideration when an asset subject to recovery is the sole income-producing asset or is a homestead of modest value.

**History:** Laws 1994, ch. 87, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

#### **27-2A-7. Restrictions on recovery from estates.**

Any recovery from an estate may be made only after the death of the decedent's surviving spouse, if any, and only at a time when the decedent has no surviving child who is less than twenty-one years of age or is blind or disabled as defined in 42 U.S.C. 1383C.

**History:** Laws 1994, ch. 87, § 7.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

#### **27-2A-8. Due process.**

When the department determines it will seek to recover from an estate, it shall give written notice of that intent to the personal representative or successor in interest of the estate or the individual.

**History:** Laws 1994, ch. 87, § 8.

#### **ANNOTATIONS**



**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

### **27-2A-9. Department exempt from bond requirement for personal representative.**

If the department seeks appointment as a personal representative of a decedent to enforce its rights as a creditor of the decedent pursuant to the provisions of the Medicaid Estate Recovery Act [27-2A-1 to 27-2A-9 NMSA 1978], it is exempt from any requirement for posting a bond.

**History:** Laws 1994, ch. 87, § 9.

#### **ANNOTATIONS**

**Cross-references.** - For personal representative bond requirements, see 45-3-603 NMSA 1978.

**Emergency clauses.** - Laws 1994, ch. 87, § 11 makes the Medicaid Estate Recovery Act effective immediately. Approved March 7, 1994.

## **ARTICLE 3 PUBLIC ASSISTANCE APPEALS**

### **27-3-1. Short title.**

This act [27-3-1 to 27-3-4 NMSA 1978] may be cited as the "Public Assistance Appeals Act".

**History:** 1953 Comp., § 13-18-1, enacted by Laws 1973, ch. 256, § 1.

#### **ANNOTATIONS**

**Law reviews.** - For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M.L. Rev. 103 (1979-1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Propriety of telephone testimony or hearings in public welfare proceedings, 88 A.L.R.4th 1094.

### **27-3-2. Definitions.**

As used in the Public Assistance Appeals Act [27-3-1 to 27-3-4 NMSA 1978]:

A. "department" means the income support division, the medical assistance division or the social services division of the human services department;

B. "board" means the income support division, the medical assistance division or the social services division of the human services department; and

C. "director" means the director of the income support division, the medical assistance division or the social services division of the human services department.

**History:** 1953 Comp., § 13-18-2, enacted by Laws 1973, ch. 256, § 2; 1977, ch. 252, § 22; 1991, ch. 155, § 2.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "the medical assistance division" in Subsections A and C and "the medical assistance division or the social services division" in Subsection B.

### **27-3-3. Fair hearing.**

A. An applicant for or recipient of assistance or services under any provisions of the Public Assistance Act, Social Security Act or Special Medical Needs Act [27-4-1 to 27-4-5 NMSA 1978] or regulations of the board adopted pursuant to those acts may request a hearing in accordance with regulations of the board if:

(1) an application is not acted upon within a reasonable time after the filing of the application;

(2) an application is denied in whole or in part; or

(3) the assistance or services are modified, terminated or not provided.

The department shall notify the recipient or applicant of his rights under this section.

B. The board shall by regulation establish procedures for the filing of a request for a hearing and the time limits within which a request may be filed; provided, however, that the department may grant reasonable extensions of the time limits. If the request is not filed within the specified time for appeal or within whatever extension the department may grant, the department action shall be final. Upon receipt of a timely request, the department shall give the applicant or recipient reasonable notice of an opportunity for a fair hearing in accordance with the regulations of the board.

C. The hearing shall be conducted by a hearing officer designated by the director. The powers of the hearing officer shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence and reopening any hearing to receive additional evidence. The

technical rules of evidence and the rules of civil procedure shall not apply. The hearing shall be conducted so that the contentions or defenses of each party to the hearing are amply and fairly presented. Either party may be represented by counsel or other representative of his designation, and he or his representative may conduct cross-examination. Any oral or documentary evidence may be received, but the hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence.

D. The director shall review the record of the proceedings and shall make a decision thereon. The applicant or recipient or his representative shall be notified in writing of the director's decision and the reasons for the decision. The written notice shall inform the applicant or recipient of his right to judicial review. The department shall be responsible for assuring that the decision is enforced.

**History:** 1953 Comp., § 13-18-3, enacted by Laws 1973, ch. 256, § 3; 1991, ch. 155, § 3.

### ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, in Subsection A, substituted "Social Security Act" for "Social Services Act" near the beginning and added "or not provided" at the end of Paragraph (3) and made minor stylistic changes in Subsections A and D.

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Social Security Act.** - The federal Social Security Act, referred to in Subsection A, appears as 42 U.S.C. § 301 et seq.

**Requirement that medical reports evidence be available for examination.** - Since medical reports are written information, they cannot be made a part of a hearing record or be used in making a decision on the case unless they have been made available for examination prior to or during the hearing. *Hillman v. Health & Social Servs. Dep't*, 92 N.M. 480, 590 P.2d 179 (Ct. App. 1979).

**Consideration of report not properly admitted into evidence held harmless error.** - Where a report is not available to recipient before the hearing is concluded, and is not properly admitted into evidence, consideration of this report by the hearing officer violates the program manual but where the report does no more than agree with previous reports of specialists, which were properly in evidence and which provide substantial support for the decision to terminate benefits, consideration of the report is harmless error. *State ex rel. Human Servs. Dep't v. Gomez*, 99 N.M. 261, 657 P.2d 117 (1982).

**Termination of benefits cannot be based upon information outside record.** *Hillman v. Health & Social Servs. Dep't*, 92 N.M. 480, 590 P.2d 179 (Ct. App. 1979).

**Termination hearing must protect claimant's opportunity to present case.** - Any decision terminating a claimant's benefits must be based on a hearing which fully protects the claimant's opportunity to present his case; specifically, the option to examine all medical reports prior to or during the hearing. *Hillman v. Health & Social Servs. Dep't*, 92 N.M. 480, 590 P.2d 179 (Ct. App. 1979).

**Hearing conducted by telephone not denial of due process.** - A recipient of welfare benefits is not deprived of due process because his termination hearing is conducted by telephone and not in the presence of a hearing officer who can observe his demeanor. *State ex rel. Human Servs. Dep't v. Gomez*, 99 N.M. 261, 657 P.2d 117 (1982).

**Reasons for decision.** - Although the director signed a form paragraph entitled "Final Decision" and inserted a check mark indicating "[d]ecided in favor of Dept.," his signature and the check mark failed to comply with Subsection D because they did not indicate the reason for his decision. Specifically, the director failed to indicate whether he adopted or approved the findings and conclusions of the hearing officer or whether he reached his decision on some other basis. *Green v. New Mexico Human Servs. Dep't*, 107 N.M. 628, 762 P.2d 915 (Ct. App. 1988).

**Burden on department to inform about subsequent hearing opportunities.** - The burden of informing an applicant/recipient of the opportunity to present his case in light of new medical reports and social summaries at subsequent hearings is placed upon the department. *Hillman v. Health & Social Servs. Dep't*, 92 N.M. 480, 590 P.2d 179 (Ct. App. 1979).

**No duty to inform of right to reapply.** - There is nothing in the statutes or regulations that would impose upon the department the duty to inform an applicant to reapply for benefits. *Landavazo v. New Mexico Dep't of Human Servs.*, 106 N.M. 715, 749 P.2d 538 (Ct. App. 1988).

**Subsequent change of circumstance.** - Where an applicant's application for food stamp benefits was originally denied by the county office because the resource maximum for his household was exceeded by the value of his vehicle, and he then modified his vehicle to accommodate his physical handicap, so as to exclude it from consideration as a resource, this modification constituted a changed condition or circumstance subsequent to the original denial of his application, so that the hearing officer did not err in refusing to consider this evidence. The applicant's proper remedy was to reapply for benefits. *Landavazo v. New Mexico Dep't of Human Servs.*, 106 N.M. 715, 749 P.2d 538 (Ct. App. 1988).

**Department is bound by its own regulations.** *Hillman v. Health & Social Servs. Dep't*, 92 N.M. 480, 590 P.2d 179 (Ct. App. 1979).

**Judicial review.** - In reviewing an administrative decision, the courts must view the evidence in the light most favorable to the decision. *New Mexico Dep't of Human Servs. v. Tapia*, 97 N.M. 632, 642 P.2d 1091 (1982).

**Notice of right of review.** - This section provides for joint notice of decision and notice of the right of review, and, consequently, the notice of the right of review can be sent to a representative who has represented the applicant at the hearing and who receives notice of the director's decision. *James v. New Mexico Human Serv. Dep't*, 106 N.M. 318, 742 P.2d 530 (Ct. App. 1987).

**Tardy notice of appeal.** - An applicant may not rely on inaccurate information in her notification from the director under this section as to the time for taking an appeal to excuse the tardy filing of her notice of appeal. *James v. New Mexico Human Serv. Dep't*, 106 N.M. 318, 742 P.2d 530 (Ct. App. 1987).

**Scope of judicial review of "fair hearing" decision.** - A judicial review of a "fair hearing" decision is not limited to whether the department's representative proceeded properly on the basis of information known prior to the "fair hearing". On the contrary, the evidence that is considered is the evidence contained in the record of the entire "fair hearing." *Cruz v. New Mexico Dep't of Human Servs.*, 100 N.M. 133, 666 P.2d 1280 (Ct. App. 1983).

**Law reviews.** - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Representation by attorney of social security benefit claimant in administrative proceeding, 59 A.L.R. Fed. 595.

## **27-3-4. Review and appeal.**

A. Within thirty days after receiving written notice of the decision of the director, pursuant to Section 3 [27-3-3 NMSA 1978] of the Public Assistance Appeals Act, an applicant or recipient may file a notice of appeal with the court of appeals, together with a copy of the notice of the decision. The clerk of the court shall transmit a copy of the notice of appeal to the director.

B. The filing of a notice of appeal shall not stay the enforcement of the decision of the director, but the department may grant, or the court, upon motion and good cause shown, may order a stay.

C. Within twenty days after receipt of the notice of appeal, the department shall file with the clerk of the court three copies and furnish to the appellant one copy of the written transcript of the record of the proceedings.

D. If, before the date set for argument, application is made to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that there was good reason for not presenting it in the hearing, the court may order the additional evidence taken before the department. If the application to present additional evidence is filed by the department and is approved by the court, the decision of the department which is being appealed shall be stayed. The director may

modify his findings and decision by reason of the additional evidence and shall file with the court a transcript of the additional evidence, together with any modified or new findings or decision.

E. The review of the court shall be made upon the decision and the record of the proceedings provided for in Section 3 [27-3-3 NMSA 1978] of the Public Assistance Appeals Act.

F. The court shall set aside a decision and order of the director only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record as a whole; or

(3) otherwise not in accordance with law.

**History:** 1953 Comp., § 13-18-4, enacted by Laws 1973, ch. 256, § 4.

### **ANNOTATIONS**

**Time for filing notice of appeal.** - Because the requirement of the time for filing notice of an appeal from a decision of an administrative board or agency lies within the supreme court's rule-making authority, and because such timing is now covered by Rule 12-601A NMRA 1997, requiring filing notice within 30 days of the decision appealed from, not Subsection A of this section, requiring filing notice within 30 days of receipt of written notice of the decision, governs. *James v. New Mexico Human Serv. Dep't*, 106 N.M. 318, 742 P.2d 530 (Ct. App. 1987).

**Review of administrative decisions where whole record considered.** - Because of the minor departure from the customary substantial evidence rule in reviewing administrative decisions where the record as a whole must be considered, the reviewing court may act on other convincing evidence in the record and may make its own findings based thereon. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).

In reviewing an administrative decision, the courts must view the evidence in the light most favorable to the decision. *New Mexico Dep't of Human Servs. v. Tapia*, 97 N.M. 632, 642 P.2d 1091 (1982).

In order to determine whether a decision by the human services department is supported by substantial evidence in the record as a whole, the court must view the evidence in the light most favorable to the decision by the human services department; this does not permit accepting part of the evidence and totally disregarding other convincing evidence in the record considered as a whole. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).

**The court of appeals does not reweigh the evidence** nor resolve any conflicts in evidence. If there is substantial evidence on which a reasonable mind would have made such a decision, the court should affirm the administrative officer's decision. *Montoya v. New Mexico Human Servs. Dep't*, 108 N.M. 263, 771 P.2d 196 (Ct. App. 1989).

**Nonincome producing property not bar to benefits.** - Where the evidence shows that the property cannot be utilized to produce income and a sale of the property would produce no income, the applicants for public assistance are eligible for benefits; therefore, the department's decision to deny aid to families with dependent children benefits has no support in the record. *Robnett v. New Mexico Dep't of Human Servs. Income Support Div.*, 93 N.M. 245, 599 P.2d 398 (Ct. App. 1979).

**Denial of benefits based upon substantial evidence.** - Substantial evidence in the record as a whole supported the human services department's denial of aid to families with dependent children benefits where the natural father could provide support. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).

**Arbitrary and capricious action by administrative agency is evident when** it can be said that such action is unreasonable or does not have a rational basis and is the result of an unconsidered, willful and irrational choice of conduct, and not the result of a winnowing and sifting process. *Garcia v. New Mexico Human Servs. Dep't*, 94 N.M. 178, 608 P.2d 154 (Ct. App. 1979), rev'd on other grounds, 94 N.M. 175, 608 P.2d 151 (1980).

**Failure to give notice of reason for reduction in benefits.** - The action of the department in not giving notice to a recipient of the reason why her benefits were reduced invalidates the decision of the department. *Taylor v. Department of Human Servs.*, 98 N.M. 314, 648 P.2d 353 (Ct. App. 1982).

**Failure of department to consider certain relevant medical evidence found to be arbitrary,** capricious and not in accordance with law. *Saenz v. New Mexico Dep't of Human Servs.*, 98 N.M. 805, 653 P.2d 181 (Ct. App. 1982).

**Correct decision reached for wrong reason not reversed.** - A correct decision of the department will not be reversed because the result was reached for the wrong reason where the court finds another valid basis for that result. *Melton v. New Mexico Dep't of Human Servs.*, 97 N.M. 102, 637 P.2d 52 (Ct. App. 1981).

**Law reviews.** - For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M.L. Rev. 103 (1979-80).

For article, "Substantial Evidence Reconsidered: The Post-Duke City Difficulties and Some Suggestions for Their Resolution," see 18 N.M.L. Rev. 525 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 105 to 108.

Sufficiency of notice or hearing required prior to termination of welfare benefits, 47 A.L.R.3d 277.

81 C.J.S. Social Security and Public Welfare §§ 13, 26, 27, 62, 72.

### **27-3-5. [Expenditures for programs.]**

Nothing in the Public Assistance Act or the Fair Hearing Act shall be construed as authorizing or allowing expenditures for the affected programs in excess of the amounts previously appropriated by the legislature for such programs.

**History:** Laws 1991, ch. 155, § 4.

### **ANNOTATIONS**

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Fair Hearing Act.** - The reference to the Fair Hearing Act appears to be a reference to the Public Assistance Appeals Act, 27-3-1 to 27-3-4 NMSA 1978, and specifically 27-3-3 NMSA 1978.

**Durational limit on receipt of benefits.** - The human services department had the implied authority to limit the receipt of general assistance to twelve continuous months by regulation. *Howell v. Heim*, 118 N.M. 500, 882 P.2d 541 (1994).

## **ARTICLE 4 SPECIAL MEDICAL NEEDS**

### **27-4-1. Short title.**

Sections 1 through 7 of this act [27-4-1 to 27-4-5 NMSA 1978] may be cited as the "Special Medical Needs Act".

**History:** 1953 Comp., § 13-15-1, enacted by Laws 1973, ch. 311, § 1.

### **ANNOTATIONS**

**Cross-references.** - For public assistance generally, see 27-2-1 NMSA 1978 et seq.

**Law reviews.** - For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

### **27-4-2. Definitions.**

As used in the Special Medical Needs Act [27-4-1 to 27-4-5 NMSA 1978]:



- A. "department" means the income support division of the human services department;
- B. "board" means the income support division of the human services department;
- C. "aged person" means one who has attained the age of sixty-five years and does not have a spouse financially able, according to regulations of the board, to furnish support;
- D. "disabled person" means one who has attained the age of eighteen years and is determined to be permanently and totally disabled according to regulations of the board; and
- E. "blind person" means one who is determined to be blind according to regulations of the board.

**History:** 1953 Comp., § 13-15-2, enacted by Laws 1973, ch. 311, § 2; 1977, ch. 252, § 20.

### **27-4-3. Persons with special needs.**

- A. The board shall by regulation establish a program to provide essential medical care for aged, blind or disabled persons not eligible for public assistance under the Public Assistance Act and who have a serious medical condition which will as a reasonable medical probability lead to death in the near future.
- B. Such medical condition will be certified by an individual licensed under state law to practice medicine or osteopathy. The medical care shall be reviewed and approved according to regulations of the board.

**History:** 1953 Comp., § 13-15-3, enacted by Laws 1973, ch. 311, § 3.

### **ANNOTATIONS**

**Public Assistance Act.** - See 27-2-1 NMSA 1978 and notes thereto.

**Law reviews.** - For note, "Medical Benefits Awarded to an Illegal Alien: Perez v. Health and Social Services," see 9 N.M.L. Rev. 89 (1978-79).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 32 to 41.

81 C.J.S. Social Security and Public Welfare §§ 97, 102, 103, 126.

### **27-4-4. Standard of need; income determination.**

- A. Standard of need for purposes of the Special Medical Needs Act [27-4-1 to 27-4-5 NMSA 1978] shall be determined in accordance with regulations adopted by the board.

B. The board shall define by regulation exempt and nonexempt income and resources. Medical expenses shall not be deducted from either income or resources in determining eligibility.

**History:** 1953 Comp., § 13-15-4, enacted by Laws 1973, ch. 311, § 4; 1975, ch. 187, § 1.

## ANNOTATIONS

**Community property principles should determine definition of income under section,** as property acquired during marriage by either husband or wife, or both, is presumed to be community property pursuant to 40-3-12A NMSA 1978. *Herrera v. Health & Social Servs.*, 92 N.M. 331, 587 P.2d 1342 (Ct. App. 1978).

**Law reviews.** - For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

### **27-4-5. Eligibility requirements.**

A person is eligible for medical care under the Special Medical Needs Act [27-4-1 to 27-4-5 NMSA 1978] if:

A. pursuant to Section 27-4-4 NMSA 1978, the total amount of his nonexempt income is less than the applicable standard of need; and

B. nonexempt specific and total resources are less than the level of maximum permissible resources established by the board; and

C. he meets all qualifications for persons with special needs, pursuant to Section 27-4-3 NMSA 1978; and

D. within two years immediately prior to the filing of an application for assistance, he has not made an assignment or transfer of real property unless he has received a reasonable return for the real property; or, if he has not received such reasonable return, he is willing to attempt to obtain such return and, if such attempt proves futile, he is willing to attempt to regain title to the property; and

E. he is not an inmate of any public nonmedical institution at the time of receiving assistance; and

F. he is a resident of New Mexico.

**History:** 1953 Comp., § 13-15-5, enacted by Laws 1973, ch. 311, § 5; 1975, ch. 187, § 2.

## ANNOTATIONS

**"Residence"** should be given its ordinary and common meaning. *Perez v. Health & Social Servs.*, 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), cert. denied, 91 N.M. 491, 576 P.2d 297 (1978).

A residence is variously defined as the place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; the house where one's home is; and, a dwelling house. *Perez v. Health & Social Servs.*, 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), cert. denied, 91 N.M. 491, 576 P.2d 297 (1978).

**Undocumented alien living in state is resident** and is entitled to the benefits of the Special Medical Needs Act, provided he meets the statutory eligibility requirements. *Perez v. Health & Social Servs.*, 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), cert. denied, 91 N.M. 491, 576 P.2d 297 (1978).

**Law reviews.** - For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

## **ARTICLE 5 INDIGENT HOSPITAL AND COUNTY HEALTH CARE**

### **27-5-1. Short title.**

Chapter 27, Article 5 NMSA 1978 may be cited as the "Indigent Hospital and County Health Care Act".

**History:** 1953 Comp., § 13-2-12, enacted by Laws 1965, ch. 234, § 1; 1993, ch. 321, § 1.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "Chapter 27, Article 5 NMSA 1978" for "This act" and "and County Health Care" for "Claims".

**Compiler's note.** - Section 13-2-21, 1953 Comp., authorizing suit against a county on hospital claim with judgment to be collected through a levy, was held unconstitutional in *Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd.*, 77 N.M. 475, 423 P.2d 994 (1967). The court held that the provision was an unconstitutional attempt to circumvent N.M. Const., Art. VIII, § 2 since such a judgment would not create a "public debt" and thus did not fall within exception to constitutional limitation on property tax levies. See also 1968 Op. Att'y Gen. No. 68-107.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 38 to 41.

### **27-5-2. Purpose of Indigent Hospital and County Health Care Act.**

The purpose of the Indigent Hospital and County Health Care Act [this article] is:

A. to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care or the provision of the health care to indigent patients domiciled in that county for at least three months or for such period of time, not in excess of three months, as determined by resolution of the board of county commissioners, and to provide a means whereby each county can discharge this responsibility through a system of financial reimbursement to ambulance providers, hospitals or health care providers for actual cost incurred for the care and treatment of the indigent patient in the hospitals of this state, or both; and

B. to recognize that the counties of the state are also responsible for supporting indigent patients by providing local revenues to match federal funds for the state medicaid program, including the provision of matching funds for payments to sole community provider hospitals and the transfer of funds to the county-supported medicaid fund pursuant to the Statewide Health Care Act [27-10-1 to 27-10-4 NMSA 1978].

**History:** 1953 Comp., § 13-2-13, enacted by Laws 1965, ch. 234, § 2; 1971, ch. 72, § 1; 1983, ch. 234, § 1; 1987, ch. 88, § 1; 1993, ch. 321, § 2.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "and County Health Care" for "Claims" in the section heading and near the beginning of the section; added the Subsection A designation in the existing provisions and added Subsection B, making a related grammatical change; and in Subsection A, substituted "or the provision of the health care to" for "of the" near the beginning and "hospitals or health care providers for actual cost incurred for" for "or hospitals for actual cost incurred as the result of ambulance transportation provided for or" near the end.

**"Hospital care".** - The term "hospital care" encompasses mental health treatment provided by a county hospital to indigent residents of the county. 1988 Op. Att'y Gen. No. 88-64.

**Individuals committed under statutory involuntary commitment.** - Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 38 to 41.

### **27-5-3. Public assistance provisions.**

A. A hospital shall not be paid from the county indigent hospital claims fund under the Indigent Hospital and County Health Care Act [this article] for any costs of an indigent

patient for services that have been determined by the human services department to be eligible for medicaid reimbursement from that department. However, nothing in the Indigent Hospital and County Health Care Act shall be construed to prevent the board from transferring money from the county indigent hospital claims fund to the sole community provider fund or the county-supported medicaid fund for support of the state medicaid program.

B. No action for collection of claims under the Indigent Hospital and County Health Care Act shall be allowed against an indigent patient who is medicaid eligible for medicaid covered services, nor shall action be allowed against the person who is legally responsible for the care of the indigent patient during the time that person is medicaid eligible.

**History:** 1953 Comp., § 13-2-14, enacted by Laws 1965, ch. 234, § 3; 1984, ch. 101, § 1; 1993, ch. 321, § 3.

## ANNOTATIONS

**The 1993 amendment**, effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, rewrote the section heading and Subsection A, and substituted "and County Health Care" for "Claims" and "medicaid eligible for medicaid covered services" and "medicaid eligible" for "a welfare recipient" in Subsection B.

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### 27-5-4. Definitions.

As used in the Indigent Hospital and County Health Care Act [this article]:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the state corporation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and

charges established by state corporation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means the county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care or ambulance transportation and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of the board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

D. "hospital" means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of the board the following health facilities if licensed, or in the case of out-of-state hospitals, approved, by the department of health:

(1) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation or medical care costs, including the costs of prenatal care, to the extent determined by resolution of the board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of the board, which includes cost of ancillary services, but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

F. "fund" means the county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements pursuant to the Drug Abuse Act [26-2-1 to 26-2-4, 26-2-5 to 26-2-12 NMSA 1978];

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [Article 3, Chapter 43, NMSA 1978];

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health pursuant to the Community Mental Health Services Act [23-7-2 to 23-7-12 NMSA 1978]; and

N. "health care provider" means:

(1) a nursing home;

(2) in-state home health agencies;

(3) an in-state licensed hospice;

(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

(6) a drug rehabilitation center;

(7) an alcohol rehabilitation center; or

(8) a mental health center.

**History:** 1953 Comp., § 13-2-15, enacted by Laws 1965, ch. 234, § 4; 1975, ch. 44, § 1; 1977, ch. 253, § 43; 1978, ch. 123, § 1; 1979, ch. 146, § 1; 1983, ch. 234, § 2; 1987, ch. 50, § 1; 1987, ch. 88, § 2; 1990, ch. 37, § 1; 1991, ch. 171, § 1; 1991, ch. 212, § 19; 1993, ch. 321, § 4.

## ANNOTATIONS

**1991 amendments.** - Laws 1991, ch. 171, § 1, effective June 14, 1991, in Subsection D, adding a Paragraph (6), relating to drug and alcohol rehabilitation centers, and redesignating Paragraphs (6) and (7) as Paragraphs (7) and (8); adding Subsections H and I, relating to drug and alcohol rehabilitation centers; and redesignating Subsections H and I as Subsections J and K, was approved on April 4, 1991. However, Laws 1991, ch. 212, § 19, effective July 1, 1991, in Subsection C, adding the third sentence and making a minor stylistic change and, in Subsection D, adding the exception at the end of the introductory paragraph, deleting a sentence at the end of Paragraph (7) which read "All hospitals, as defined in this subsection, must comply with the provisions of the Indigent Hospital Claims Act and be licensed by the health and environment department", adding Paragraph (8) and making a related stylistic change, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 212, § 19. See 12-1-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "and County Health Care" for "Claims" in the introductory language; substituted "and county health care" for "claims" in Subsection B; in Subsection C, substituted "a hospital or a health care provider" for "or a hospital" in the first sentence and "or treated by a health care provider or all three" for "or both" in the last sentence, and made a stylistic change in the second sentence; in Subsection D, rewrote the introductory language and deleted former Paragraphs (3) and (5) through (8), the provisions of which may now be found in Subsection N, renumbering former Paragraph (4) as Paragraph (3) and making a related grammatical change; substituted "health care provider" for "nursing home" near the end of Subsection E; rewrote Subsections G and H, and added Subsections J through N.

**Social Security Act.** - Title 18 of the Federal Social Security Act is found at 42 U.S.C. § 1395 et seq.

**Definition of "indigent patient" was not unconstitutional** under N.M. Const., art. 9, § 14. *Humana of N.M., Inc. v. Board of County Comm'rs*, 92 N.M. 34, 582 P.2d 806 (1978)(decided prior to 1978 amendment).

### **27-5-4.1. Applicability.**



Nothing in this act shall apply to any county which has in effect, upon the effective date of this act, a county sales tax, unless the most recent county sales tax resolution provides for possible expanded use of the county indigent hospital claims fund.

**History:** 1953 Comp., § 13-2-15.1, enacted by Laws 1978, ch. 123, § 2.

### **ANNOTATIONS**

**Meaning of "this act".** - The phrase "this act" refers to Laws 1978, ch. 28, which enacted this section and amended 27-5-4 and 27-5-13 NMSA 1978.

**Effective date of this act.** - The phrase "effective date of this act", referred to in this section, means February 16, 1978, the effective date of Laws 1978, ch. 123.

### **27-5-5. County indigent hospital and county health care board.**

A. There is created within each county a "county indigent hospital and county health care board" which shall be composed of the members of the board of county commissioners of that county, and the chairman of the board of county commissioners shall be the chairman of the board.

B. Members of the board shall receive no compensation but shall be reimbursed for their actual per diem and mileage in an amount not to exceed the per diem and mileage paid to county commissioners.

C. Each member of the board shall furnish a surety bond, premium for which shall be paid from the fund, executed by a surety company licensed to do business in New Mexico, conditioned that he will faithfully perform his duties and account for the funds. The bond shall be in the penal sum of five thousand dollars (\$5,000) running to the benefit of the board for payments into the fund.

**History:** 1953 Comp., § 13-2-16, enacted by Laws 1965, ch. 234, § 5; 1993, ch. 321, § 5.

### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "and county health care" for "claims" in the section heading and Subsection A; and made stylistic changes in Subsections A and B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39 Am. Jur. 2d Health § 53.

Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 93 A.L.R. 900.

Statute imposing duty to maintain or aid indigent relative as supporting action by third person, 116 A.L.R. 1281.

### **27-5-5.1. Indigent health care report; required.**

Every county in New Mexico shall file an annual report on indigent health care funded in whole or in part by the county with the local government division of the department of finance and administration. The report shall contain the county's eligibility criteria for indigent patients, services provided to indigent patients, restrictions on services provided to indigent patients, conditions for reimbursement to providers of health care, revenue sources used to pay for indigent health care and other related information as determined by the local government division. The report shall be submitted by July 31 of each year on a form provided by the local government division and shall provide information from the previous fiscal year. The local government division shall make the report available for analysis by interested parties.

**History:** Laws 1993, ch. 321, § 17.

### **27-5-6. Powers and duties of the board.**

The board:

A. shall administer claims pursuant to the provisions of the Indigent Hospital and County Health Care Act [this article];

B. shall prepare and submit a budget to the board of county commissioners for the amount needed to defray claims made upon the fund and to pay costs of administration of the Indigent Hospital and County Health Care Act, which costs of administration shall in no event exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year or based on projected revenues for the year being budgeted for a fund that has existed for less than one fiscal year. The percentage of the revenues in the fund that may be used for administrative costs is equal to the sum of the following:

(1) ten percent of the amount in the fund not over five hundred thousand dollars (\$500,000);

(2) eight percent of the amount in the fund over five hundred thousand dollars (\$500,000) but not over one million dollars (\$1,000,000); and

(3) four and one-half percent of the amount in the fund over one million dollars (\$1,000,000);

C. shall make rules and regulations necessary to carry out the provisions of the Indigent Hospital and County Health Care Act; provided that the standards for eligibility and

allowable costs for county indigent patients shall be no more restrictive than the standards for eligibility and allowable costs prior to December 31, 1992;

D. shall set criteria and cost limitations for medical care in licensed out-of-state hospitals, ambulance services or health care providers;

E. shall cooperate with appropriate state agencies to use available funds efficiently and to make health care more available;

F. shall cooperate with the department in making any investigation to determine the validity of claims made upon the fund for any indigent patient;

G. may accept contributions or other county revenues, which shall be deposited in the fund;

H. may hire personnel to carry out the provisions of the Indigent Hospital and County Health Care Act;

I. shall review all claims presented by a hospital, ambulance service or health care provider to determine compliance with the rules and regulations adopted by the board or with the provisions of the Indigent Hospital and County Health Care Act, determine whether the patient for whom the claim is made is an indigent patient and determine the allowable medical or ambulance service costs; provided that the burden of proof of any claim shall be upon the hospital, ambulance service or health care provider;

J. shall state in writing the reason for rejecting or disapproving any claim and shall notify the submitting hospital, ambulance service or health care provider of the decision;

K. shall pay all claims that are not matched with federal funds under the state medicaid program and that have been approved by the board from the fund;

L. shall determine by county ordinance the types of health care providers that will be eligible to submit claims under the Indigent Hospital and County Health Care Act;

M. shall review, verify and approve all medicaid sole community provider hospital payment requests in accordance with rules and regulations adopted by the board prior to their submittal by the hospital to the department for payment but no later than January 1 of each year;

N. shall transfer to the state treasurer by the last day of March, June, September and December of each year an amount equal to one-fourth of the county's payment for support of sole community provider payments as calculated by the department for that county for the current fiscal year. This money shall be deposited in the sole community provider fund; and

O. may provide for the transfer of money from the county indigent hospital claims fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act [27-10-1 to 27-10-4 NMSA 1978].

**History:** 1953 Comp., § 13-2-17, enacted by Laws 1965, ch. 234, § 6; 1979, ch. 146, § 2; 1983, ch. 234, § 3; 1987, ch. 88, § 3; 1991, ch. 212, § 20; 1993, ch. 321, § 6.

## ANNOTATIONS

**Cross-references.** - For payment of claims, see 27-5-12 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, rewrote Subsection B and deleted "human services" preceding "department" in Subsection E.

**The 1993 amendment,** effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, added Subsections E and L through O, redesignating former Subsections E through J as Subsections F through K and making a related grammatical change; substituted "and County Health Care" for "Claims" in Subsections A, B, C, H, and I; rewrote Paragraphs (1) through (3) of Subsection B, adding new introductory language for these paragraphs and closing off the former introductory language as the first sentence of the subsection; added the proviso at the end of Subsection C; substituted "ambulance services or health care providers" for "or ambulance service" in Subsection D; substituted "ambulance service or health care provider" for "or ambulance service" in two places in Subsection I and in Subsection J; and inserted "that are not matched with federal funds under the state medicaid program and" in Subsection K.

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### **27-5-6.1. Sole community provider fund created.**

A. The "sole community provider fund" is created in the state treasury. The fund, which shall be administered by the human services department, shall consist of funds provided by counties to match federal funds for medicaid sole community provider

hospital payments. Money in the fund shall be invested by the state treasurer as other state funds are invested. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

B. Money in the sole community provider fund is appropriated to the human services department to make sole community provider hospital payments pursuant to the state medicaid program. No sole community provider hospital payments or money in the sole community provider fund shall be used to supplant any general fund support for the state medicaid program.

C. Money in the sole community provider fund shall be remitted back to the individual counties from which it came if federal medicaid matching funds are not received for medicaid sole community provider hospital payments.

**History:** Laws 1993, ch. 321, § 18.

### ANNOTATIONS

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### **27-5-7. County indigent hospital claims fund.**

A. There is created in the county treasury of each county a "county indigent hospital claims fund".

B. Collections under the levy made pursuant to the Indigent Hospital and County Health Care Act [this article] and all payments shall be placed into the fund, and the amount placed in the fund shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act, by warrant upon vouchers approved by a majority of the board and signed by the chairman of the board. Payments for indigent hospitalizations shall not be made from any other county fund.

C. The fund shall be audited in the manner that other state and county funds are audited, and all records of payments and verified statements of qualification upon which payments were made from the fund shall be open to the public.

D. Any balance remaining in the fund at the end of the fiscal year pursuant to Subsection F of this section shall carry over into the ensuing year, and that balance shall be taken into consideration in the determination of the ensuing year's budget and certification of need for purposes of making a tax levy.

E. Money may be transferred to the fund from other sources, but no transfers may be made from the fund for any purpose other than those specified in the Indigent Hospital and County Health Care Act.

F. On June 30 of each fiscal year, beginning in 1998, the board shall transfer to the county-supported medicaid fund that amount of the balance in the county indigent hospital claims fund that exceeds two hundred thousand dollars (\$200,000) or that exceeds the amount equal to thirty percent of the income to the fund during that fiscal year, whichever is greater. Beginning in 1998, the transfer shall be made by September 1 of each fiscal year. Any amount transferred to the county-supported medicaid fund pursuant to this subsection is in addition to the county's obligation pursuant to Section 27-10-4 NMSA 1978.

**History:** 1953 Comp., § 13-2-18, enacted by Laws 1965, ch. 234, § 7; 1991, ch. 212, § 21; 1992, ch. 31, § 1; 1993, ch. 321, § 7; 1996, ch. 29, § 4.

## ANNOTATIONS

**The 1991 amendment**, effective July 1, 1991, added the second sentence in Subsection D and made minor stylistic changes throughout the section.

**The 1992 amendment**, effective May 20, 1992, deleted "county indigent hospital claims" preceding "fund" at the second instance of that term in Subsection B and at the first instance of that term in Subsections C, D, and E; and in Subsection D, made a section reference substitution and inserted "except voluntary contributions made during the eightieth and eighty-first fiscal years" and added the last sentence.

**The 1993 amendment**, effective July 1, 1993, substituted "and County Health Care" for "Claims" in two places in the first sentence of Subsection B and in Subsection E; substituted "Payments" for "Contributions" in the first sentence of Subsection B; inserted "pursuant to Subsections F and G of this section" in Subsection D and deleted the former second and third sentences of that subsection, which related to transfers and payments from the fund in the eightieth and eighty-first fiscal years; and added Subsection F.

**The 1996 amendment**, substituted "Subsection F" for "Subsections F and G", in Subsection D and substituted "1998" for "1996" twice in Subsection F. Laws 1996, ch. 29 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Mill levy funds used for indigent medical care.** - Colfax County could not use mill levy funds to provide indigent medical care for its non-miner residents admitted to Miners' Hospital, a state owned and operated facility, where such funds were not proceeds in the county indigent hospital claims fund but instead were proceeds from another county fund. The county could, however, use any proceeds in the indigent hospital claims fund to provide medical care for indigent patients at the Miners' Hospital if they otherwise qualify. 1988 Op. Att'y Gen. No. 88-41.

### **27-5-7.1. County indigent hospital claims fund; authorized uses of the fund.**

A. The fund shall be used:

(1) to meet the county's contribution for support of sole community provider payments as calculated by the department for that county; and

(2) to pay all claims that have been approved by the board that are not matched with federal funds under the state medicaid program.

B. The fund may be used to meet the county's obligation under Section 27-10-4 NMSA 1978.

C. Until June 30, 1996, the cash reserves from the fund may be used to meet the county's obligation under Section 27-10-4 NMSA 1978.

**History:** Laws 1993, ch. 321, § 16.

### **ANNOTATIONS**

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### **27-5-8. Board certification to county commissioners.**

For the purpose of providing funds for the administration of the Indigent Hospital and County Health Care Act [this article], the board shall each year certify the amount

needed to the board of county commissioners. For the first year of operation the board shall estimate the amount necessary, and in succeeding years the board may use the previous year's experience to determine the amount necessary.

**History:** 1953 Comp., § 13-2-19, enacted by Laws 1965, ch. 234, § 8; 1993, ch. 321, § 8.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "and County Health Care" for "Claims" in the first sentence and inserted "the board" before "may use" in the second sentence.

**It is required that the amount needed to care for the indigent in any year shall be estimated** and that a levy shall be made to raise sufficient money to cover the amounts estimated. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

### **27-5-9. Tax levies authorized.**

A. Subject to the provisions of Subsection B of this section, the board of county commissioners, upon the certification of the board as to the amount needed in the fund, shall impose a levy against the net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of the property in the county sufficient to raise the amount certified by the board.

B. The question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act [this article] shall be submitted to the electors and voted upon as a separate question at the next subsequent general election or any special election called prior thereto for such purpose.

C. Upon finding by the board of county commissioners that an election will be necessary, the board of county commissioners shall meet and order an election to be held at a designated time in the county upon the question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act in the county. If the question is to be voted upon at a special election, the election shall be held not less than thirty nor more than fifty days after the finding, but in no event shall the election be held within five days preceding or succeeding any general election held in the county. The order for the election shall be made a part of the official minutes of the board of county commissioners. A copy of the order shall be published in a newspaper of general circulation in the county at least fifteen days before the date set for the election, and an affidavit of publication shall be obtained. At least five days



prior to the date for holding the election, the board of county commissioners shall publish in a newspaper of general circulation in the county and post in five conspicuous places in the county a notice of election, which shall be in substantially the following form:

"NOTICE OF ELECTION ON SPECIAL INDIGENT HOSPITAL LEVY

Notice is given on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, there will be held in \_\_\_\_\_ county of New Mexico an election on the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property in the county and limited to an amount sufficient to provide funds necessary to pay claims pursuant to such act.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_".  
\_\_\_\_\_ Official Title of the Authority

The election shall be held on the date specified in the notice and shall be, if a special election, conducted and canvassed in substantially the same manner as general elections are conducted and canvassed in the county; provided that the ballot used in any election shall be a special and separate ballot and shall be in substantially the following form:

"BALLOT

On the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property in \_\_\_\_\_ county of New Mexico, and limited to an amount sufficient to provide funds budgeted and certified as necessary to pay claims pursuant to such act:

FOR THE LEVY ..... \_\_\_\_\_

AGAINST THE LEVY ..... \_\_\_\_\_".

D. If the electors vote in favor of an indigent hospital levy, the levy shall become effective in the same manner prescribed by law for all levies upon property within that county, and a levy for those purposes in such an amount as will provide sufficient money for the fund shall be made for each year thereafter.

E. Any board of county commissioners that has, prior to the effective date of this section, made a valid imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act shall not be required to hold an election on the existing tax, and that tax may be imposed and continue to be imposed in accordance with the provisions of law existing at the time of its imposition. However, if any such tax is not imposed in a given property tax year or if the authorization for its imposition terminates or expires, the election requirements of Subsections B and C of this section shall apply to any subsequent proposed imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act.

**History:** 1953 Comp., § 13-2-20, enacted by Laws 1965, ch. 234, § 9; 1981, ch. 37, § 85; 1993, ch. 321, § 9.

### ANNOTATIONS

**Cross-references.** - For constitutional provisions relating to limits on taxation, see N.M. Const., art. VIII, § 2.

**The 1993 amendment,** effective July 1, 1993, substituted "and County Health Care" for "Claims" in Subsection B, the first sentence of Subsection C, in the two forms in Subsection C, and in the first and second sentences of Subsection E; divided the former third sentence of Subsection C into the present third and fourth sentences by deleting "and"; and made stylistic changes throughout Subsections C, D, and E.

**Compiler's notes.** - Some of the annotations appearing below were taken from a case decided prior to the 1981 amendment of this section, which deleted references to the constitutional limitation of twenty mills on levies for public debt.

**It is required that the amount needed to care for the indigent in any year shall be estimated** and that a levy shall be made to raise sufficient money to cover the amounts estimated. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

**Limitations upon tax levy.** - The county commissioners are required to make a tax levy sufficient to raise the amount certified as needed by the county indigent hospital claims board provided the levy for that purpose and for all other purposes authorized by law does not exceed 20 mills. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

Constitutional provision permitting levies for public debts in excess of 20-mill limitation does not contemplate judgment for hospital against board of county commissioners for cost of care of indigent persons. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power of state or municipality to appropriate funds or incur indebtedness, in excess of poor fund, for relief of distress due to general unemployment or other unusual conditions, 73 A.L.R. 255.

### **27-5-10. Subrogation of claim.**

Payment to a hospital from the fund of any claim shall operate as an assignment to the board of any cause of action to the extent of the payment from the fund to the hospital.

**History:** 1953 Comp., § 13-2-22, enacted by Laws 1965, ch. 234, § 11.

### **27-5-11. Hospitals and ambulance services; health care providers; required to file data; sole community provider hospital duties.**

A. Any ambulance service, hospital or health care provider in New Mexico or licensed out-of-state hospital, prior to the filing of a claim with the board, shall have placed on file with the board:

- (1) current data, statistics, schedules and information deemed necessary by the board to determine the cost for all patients in that hospital or cared for by that health care provider or tariff rates or charges of an ambulance service;
- (2) proof that the hospital, ambulance service or health care provider is licensed, where required, under the laws of this state or the state in which the hospital operates; and
- (3) any other information or data deemed necessary by the board.

B. Every sole community provider hospital requesting or receiving medicaid sole community provider hospital payments shall:

- (1) accept indigent patients and request reimbursement for those patients through the appropriate county indigent fund. The responsible county shall approve requests meeting its eligibility standards and notify the hospital of such approval;
- (2) confirm the amount of payment authorized by each county for indigent patients, to that county for the previous fiscal year, by September 30 of each calendar year;
- (3) negotiate with each county the amount of indigent hospital payments anticipated for the following fiscal year by December 31 of each year; and
- (4) provide to the department prior to January 15 of each year the amount of the authorized indigent hospital payments anticipated for the following fiscal year after an agreement has been reached on the amount with each responsible county and such other related information as the department may request.

**History:** 1953 Comp., § 13-2-23, enacted by Laws 1965, ch. 234, § 12; 1983, ch. 234, § 4; 1993, ch. 321, § 10.

## ANNOTATIONS

**The 1993 amendment,** effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, inserted "health care providers" and added "sole community provider hospital duties" to the end in the catchline; designated the existing introductory language as Subsection A, redesignating former Subsections A through C as Paragraphs (1) through (3); in Subsection A, substituted "hospital or health care provider" for "or hospital", inserted "cared for by that health care provider or" in Paragraph (1), and substituted "ambulance service or health care provider" for "or ambulance service" in Paragraph (2); and added Subsection B.

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### **27-5-12. Payment of claims.**

A hospital, ambulance service or health care provider filing a claim with the board shall:

- A. file claim with the board of the county in which the indigent patient is domiciled;
- B. file claim for each patient separately, with an itemized detail of the total cost; and
- C. file with the claim a verified statement of qualification for ambulance service, indigent hospital care or care from a health care provider signed by the patient or by the parent or person having his custody to the effect that he qualifies under the provisions of the Indigent Hospital and County Health Care Act [this article] as an indigent patient and is unable to pay the cost for the care administered and listing all assets owned by the patient or any person legally responsible for his care. The statement shall constitute an oath of the person signing it, and any false statements in the statement made knowingly constitute a felony.

**History:** 1953 Comp., § 13-2-24, enacted by Laws 1965, ch. 234, § 13; 1983, ch. 234, § 5; 1984, ch. 101, § 2; 1993, ch. 321, § 11.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "ambulance service or health care provider" for "or ambulance service" in the introductory language and "ambulance service, indigent hospital care or care from a health care provider" for "indigent hospital care" and "and County health Care" for "Claims" in Subsection C.

### **27-5-12.1. Appeal.**

A. Any hospital or ambulance service aggrieved by any decision of the board may appeal to the district court for the county in which the board sits.

B. The appeal authorized in this section shall be filed within thirty days of the decision of the board from which the appeal is taken.

C. The Rules of Civil Procedure shall apply to any appeal filed pursuant to this section.

**History:** 1978 Comp., § 27-5-12.1, enacted by Laws 1979, ch. 146, § 3; 1983, ch. 234, § 6.

## ANNOTATIONS

**Cross-references.** - For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA 1997.

**Rules of Civil Procedure.** - See Rule 1-001 NMRA 1997 et seq.

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

### **27-5-12.2. Duties of the county; sole community provider hospital payments.**

Every county in New Mexico that authorizes payment for services to a sole community provider hospital shall:

A. determine eligibility for benefits and determine an amount payable on each claim for services to indigent patients from sole community provider hospitals;

B. notify the sole community provider hospital of its decision on each request for payment while not actually reimbursing the hospital for the services that are reimbursed with federal funds under the state medicaid program;

C. confirm the amount of the sole community provider hospital payments authorized for each hospital for the past fiscal year by September 30 of the current fiscal year;

D. negotiate agreements with each sole community provider hospital providing services for county residents on the anticipated amount of the payments for the following fiscal year; and

E. provide the human services department by January 15 of each year with the budgeted amount of sole community provider hospital payments, by hospital, for the following fiscal year.

**History:** Laws 1993, ch. 321, § 15.

### ANNOTATIONS

**Compiler's note.** - Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

### **27-5-13. Claim shall not expire because of lack of funds; priority of claims.**

A claim made to the board for payment for the care of an indigent patient shall not expire or become invalid because of the lack of money in the fund during any fiscal year but shall be carried over into the ensuing fiscal year and, notwithstanding the provisions of any other law, shall be paid in the ensuing year. Whenever the balance of the fund is inadequate to pay all qualified claims as they become due, the claims of in-state hospitals providing acute medical care shall have priority for payment over all other claims regardless of the dates the other claims were submitted. The board shall, however, on a regular basis, estimate future demands upon the fund, based on past experience, and set aside sufficient funds to assure payment for in-state hospitals providing acute medical care and shall then address, on a regular basis, the claims from other hospitals or ambulance services.

**History:** 1953 Comp., § 13-2-25, enacted by Laws 1965, ch. 234, § 14; 1978, ch. 123, § 3; 1983, ch. 234, § 7.

## **27-5-14. Board to recover costs; presumption of payment.**

A. The payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient creates a preferred claim in favor of the fund against the estate of the indigent patient and a lien against all real property or interest in real property vested in or later acquired by the indigent patient or any person legally responsible for his debts for the amount of the payment made from the fund to the ambulance service, hospital or health care provider, without interest. Such claims shall be preferred over all claims except charges of the last sickness and funeral of the deceased and allowances made by the court for the maintenance of the widow and children, taxes, municipal levies, cost of administration and attorneys' fees.

B. Proceeds recovered from such claims shall be placed into the fund.

C. The board shall file a certificate of payment to the ambulance service, hospital or health care provider on behalf of the indigent patient. The certificate shall constitute notice to the public that the lien created by the Indigent Hospital and County Health Care Act [this article] has attached. County clerks shall receive, index and file certificates and releases of liens created by the certificate, free of charge.

D. In all cases where a lien has been created under Subsection A of this section and a period of fourteen years has passed from the date the lien was created by the payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient, the payment for which the lien is claimed shall be discharged due to the passage of time and the board shall file a certificate releasing the lien due to the lapse of time.

**History:** 1953 Comp., § 13-2-26, enacted by Laws 1965, ch. 234, § 15; 1975, ch. 178, § 1; 1987, ch. 88, § 4; 1993, ch. 321, § 12.

### **ANNOTATIONS**

**Cross-references.** - For payment of claims generally, see 27-5-12 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "an ambulance service, a hospital or health care provider" for "a hospital" near the beginning of Subsection A and in Subsection D; substituted "ambulance service, hospital or health care provider" for "hospital" near the end of the first sentence of Subsection A and near the beginning of Subsection C; substituted "attorneys'" for "attorney's" near the end of Subsection A; and substituted "and County Health Care" for "Claims" in the second sentence of Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality, construction, and application of statute releasing or authorizing release of claim or lien of public on account of aid extended to indigent person, 130 A.L.R. 1149.

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments, 29 A.L.R.2d 731.

### **27-5-15. Limitation on lien.**

The provisions of Subsections A through C of Section 27-5-14 NMSA 1978 shall not apply to any county having adopted a sales tax for the support of indigent hospital patients pursuant to the provisions of Sections 7-21-1 through 7-21-7 NMSA 1978.

**History:** 1953 Comp., § 13-2-26.1, enacted by Laws 1971, ch. 72, § 2; 1975, ch. 178, § 2.

### **ANNOTATIONS**

**Compiler's note.** - Sections 7-21-1 to 7-21-7 NMSA 1978, referred to in this section, were repealed by Laws 1986, ch. 20, § 136. For provisions relating to county gross receipts tax, see 7-20E-9 NMSA 1978.

### **27-5-16. Department; payments; cooperation.**

A. The department shall not decrease the amount of any assistance payments made to the hospitals or health care providers of this state pursuant to law because of any financial reimbursement made to ambulance services, hospitals or health care providers for indigent or medicaid eligible patients as provided in the Indigent Hospital and County Health Care Act [this article].

B. The department shall cooperate with each board in furnishing information or assisting in the investigation of any person to determine whether he meets the qualifications of an indigent patient as defined in the Indigent Hospital and County Health Care Act.

C. The department shall ensure that the sole community provider payment and the reimbursement to hospitals made under the state medicaid program do not exceed what would have been paid for under medicare payment principles. In the event the sole community provider payment and medicaid reimbursement to hospitals would exceed medicare payment principles, the department shall reduce the sole community provider payment prior to making any reduction in reimbursement to hospitals made under the state medicaid program.

**History:** 1953 Comp., § 13-2-27, enacted by Laws 1965, ch. 234, § 16; 1987, ch. 88, § 5; 1993, ch. 321, § 13.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, deleted "human services" before "department" near the beginning and substituted "and County Health Care" for "Claims" near the end in Subsections A and B; inserted "or health care providers" before "of this



state" and substituted "ambulance services, hospitals or health care providers for indigent or medicaid eligible patients" for "hospitals for indigent or welfare patients" in Subsection A; and added Subsection C.

### **27-5-17. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 20, § 136A repeals former 27-5-17 NMSA 1978, as amended by Laws 1975, ch. 44, § 2, relating to exclusion of class A counties from the provisions of the Indigent Hospital Claims Act, effective July 1, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

### **27-5-18. Date of implementation.**

No money shall be paid from the fund, and no judgment shall be rendered under the Indigent Hospital and County Health Care Act [this article], for any services rendered to any indigent patient prior to the effective date of the Indigent Hospital and County Health Care Act.

**History:** 1953 Comp., § 13-2-29, enacted by Laws 1965, ch. 234, § 20; 1993, ch. 321, § 14.

#### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, deleted "created by the Indigent Hospital Claims Act" after "paid from the fund" and substituted "and County Health Care" for "Claims" in two places.

## **ARTICLE 6 UTILITY SUPPLEMENTS AND ASSISTANCE**

### **27-6-1. Short title.**

This act [27-6-1 to 27-6-10 NMSA 1978] may be cited as the "Utility Supplement Act".

**History:** 1953 Comp., § 13-20-1, enacted by Laws 1975, ch. 300, § 1.

#### **ANNOTATIONS**

**Law reviews.** - For note, "Taxing of Electrical Energy: An Analysis of Arizona Public Service Company v. Snead," see 9 N.M.L. Rev. 349 (1979).

### **27-6-2. Definition.**

As used in the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] "health and social services department" or "department" mean the income support division of the human services department.

**History:** 1953 Comp., § 13-20-1.1, enacted by Laws 1977, ch. 252, § 23.

### **27-6-3. Legislative intent.**

It is the intent of the legislature that the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] be used to assist recipients of federal supplemental security income benefits and recipients of aid to families with dependent children in meeting increased costs for gas and electrical utilities to the maximum extent possible. The appropriation made in the Utility Supplement Act shall be used to generate those federal funds which may be available.

**History:** 1953 Comp., § 13-20-2, enacted by Laws 1975, ch. 300, § 2.

### **27-6-4. Administration of Utility Supplement Act.**

The health and social services department is hereby authorized to determine eligibility, compute grants, make payments as provided in the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] and otherwise administer that act.

**History:** 1953 Comp., § 13-20-3, enacted by Laws 1975, ch. 300, § 3.

### **27-6-5. Persons eligible for utility assistance.**

A. A utility supplement, pursuant to the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978], shall be provided to or on behalf of:

(1) those individuals who are identified to the health and social services department by the bureau of supplemental security income as recipients of supplemental security income under Title XVI of the Social Security Act, and who are not living in nursing homes or intermediate care facilities; and

(2) those individuals who are identified by the health and social services department as recipients of aid to families with dependent children, under Section 27-2-6 NMSA 1978, unless the individuals are living in circumstances which do not require them to pay, either directly or indirectly, utility costs.

B. No more than one utility supplement per household may be paid under the Utility Supplement Act; provided, however, supplemental security income recipients and recipients of aid to families with dependent children living in boarding home facilities shall be paid on an individual basis.

**History:** 1953 Comp., § 13-20-4, enacted by Laws 1975, ch. 300, § 4.

## ANNOTATIONS

**Cross-references.** - For adjustment of supplements, see 27-6-8 NMSA 1978.

For effect of court suits upon payments, see 27-6-10 NMSA 1978.

**Social Security Act.** - Title XVI of the Social Security Act, referred to in Subsection A(1), is compiled as 42 U.S.C. § 1381 et seq.

### **27-6-6. Time of payments.**

A. The initial payment under the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] shall be made by the health and social services department between December 1, 1975 and December 15, 1975 to those eligible under the Utility Supplement Act as of December 1, 1975. The initial payment shall be the equivalent of six months of benefits under the Utility Supplement Act. In no case shall the initial payment be greater than fifty-nine dollars (\$59.00).

B. Beginning with the month of January, 1976, and monthly thereafter, payments shall be made to those eligible for benefits under the Utility Supplement Act.

**History:** 1953 Comp., § 13-20-5, enacted by Laws 1975, ch. 300, § 5.

### **27-6-7. Amount of payment.**

The amount of the utility supplement payment shall be calculated by the health and social services department so that the entire amount of state and federal funds available to it under the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] shall be expended.

**History:** 1953 Comp., § 13-20-6, enacted by Laws 1975, ch. 300, § 6.

### **27-6-8. Adjustments to meet rate increases.**

A. The income support division of the human services department shall annually review the rate schedules of gas and electric companies in this state provided by the New Mexico public utility commission and, if necessary, shall recommend to the legislature adjustments in the amount of state utility supplements to reflect any increases or decreases in gas or electricity rates, or both.

B. The income support division shall conduct its first rate review during the month of December, 1975 and shall conduct a review during December annually thereafter.

**History:** 1953 Comp., § 13-20-7, enacted by Laws 1975, ch. 300, § 7; 1993, ch. 282, § 16.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "income support division of the human services" for "health and social services" and substituted "New Mexico public utility commission" for "New Mexico public service commission"; and rewrote Subsection B.

### **27-6-9. Termination of state supplemental program.**

The right to benefits under the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] shall terminate when any similar federal program becomes effective and the state participates in that program or the program shall terminate in 1984, whichever occurs first.

**History:** 1953 Comp., § 13-20-8, enacted by Laws 1975, ch. 300, § 8.

### **27-6-10. No payment during injunction.**

If the state should be sued by a party seeking to prohibit the collection of the tax provided for in the Electrical Energy Tax Act, no payments shall be made under the Utility Supplement Act [27-6-1 to 27-6-10 NMSA 1978] during the pendency of the suit and no payments shall be made if the Electrical Energy Tax Act is ultimately held invalid in any suit.

**History:** 1953 Comp., § 13-20-9, enacted by Laws 1975, ch. 300, § 10.

## ANNOTATIONS

**Electrical Energy Tax Act.** - Laws 1982, ch. 18, § 27, repeals the Electrical Energy Tax Act, compiled as 7-18-1 to 7-18-6 NMSA 1978, effective July 1, 1982.

### **27-6-11. Short title.**

This act [27-6-11 to 27-6-16 NMSA 1978] may be cited as the "Low Income Utility Assistance Act".

**History:** Laws 1979, ch. 290, § 1.

### **27-6-12. Legislative intent and purpose.**

It is the intent of the legislature and the purpose of the Low Income Utility Assistance Act [27-6-11 to 27-6-16 NMSA 1978] to assist indigent residents to meet the increased costs for gas and electrical utilities, liquefied petroleum fuel, wood and coal to the maximum extent possible, particularly the cost of fuel adjustments and the cost of service indexing.

**History:** Laws 1979, ch. 290, § 2; 1980, ch. 118, § 1.

### **27-6-13. Administration of Low Income Utility Assistance Act.**

A. As used in the Low Income Utility Assistance Act [27-6-11 to 27-6-16 NMSA 1978], "department" means the agency of the state designated by the governor.

B. The department is authorized to determine eligibility, establish payment amounts, make utility assistance payments to or on behalf of eligible recipients and otherwise administer the Low Income Utility Assistance Act.

C. The department is also called upon to utilize funds appropriated under the Low Income Utility Assistance Act to the maximum extent to generate available federal and local government funds and to mobilize other resources which may be applied to the concepts of that act.

**History:** Laws 1979, ch. 290, § 3; 1980, ch. 118, § 2.

### **27-6-14. Persons eligible for utility assistance.**

A. Utility assistance supplements shall be paid to or on behalf of those individuals who are determined to be eligible by regulation of the department.

B. The department shall determine the amount of payment to be made; provided that no payment shall be made if a payment for the same services or incurred bills has been made to the household under a federal program for a similar purpose.

**History:** Laws 1979, ch. 290, § 4; 1980, ch. 118, § 3; 1984, ch. 94, § 1.

### **27-6-15. Utility assistance supplement program established; distribution to eligible recipients.**

A. The department is authorized to establish a utility assistance supplement program for purposes of the Low Income Utility Assistance Act [27-6-11 to 27-6-16 NMSA 1978].

B. Beginning on July 1, 1980 and each year thereafter the department shall pay utility assistance supplement payments, subject to the availability of funds from the low income utility assistance fund created under the provisions of Section 27-6-16 NMSA 1978.

**History:** Laws 1979, ch. 290, § 5; 1980, ch. 118, § 4.

### **27-6-16. Fund created.**

There is created in the state treasury the "low income utility assistance fund." Payments shall be made from the low income utility assistance fund upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the head of the department. Such payments shall be made for the costs and administration of the Low Income Utility Assistance Act [27-6-11 to 27-6-16 NMSA 1978].

**History:** Laws 1979, ch. 290, § 6; 1980, ch. 118, § 5.

### **ANNOTATIONS**

**Partial veto valid.** - Governor's partial veto of the provision in Laws 1981, ch. 168, designating the income support division of the human services department as the agency responsible for administering this fund, is valid. 1981 Op. Att'y Gen. No. 81-12.

### **27-6-17. Utility service; procedures to follow prior to service being discontinued.**

A. Unless requested by the customer, no gas or electric utility shall discontinue service to any residential customer for nonpayment during the period from November 15 through March 15 unless the following procedures are followed:

(1) at least fifteen days prior to the date scheduled for utility service to be discontinued, unless the New Mexico public utility commission provides for a shorter period, the utility shall mail or hand-deliver to the customer a notice printed in both English and Spanish and in simple language, which notice clearly explains that:

(a) utility service shall stop on a specific date;

(b) the customer may be eligible for financial assistance to pay for the utility service; and

(c) for assistance, the customer should contact the utility or the department;

(2) any utility subject to this section shall attempt to advise customers who contact the utility seeking financial assistance of the program administered under the Low Income Utility Assistance Act [27-6-11 to 27-6-17 NMSA 1978] and of assistance programs the utility may administer on its own or in conjunction with others;

(3) the utilities subject to this section and the department shall provide application forms for utility service payment assistance at billing and agency offices; and

(4) before the service is actually discontinued, the utility shall attempt to make contact in person or by telephone to remind the customer of the pending date of discontinuance of service and that financial assistance for utility payments may be available.

B. Unless requested by the customer, no gas or electric utility shall discontinue service to any residential customer for nonpayment during the period from November 15

through March 15 until at least fifteen days after the date scheduled for discontinuance of service if the department has certified to the utility that a customer is eligible for utility payment assistance under the Low Income Utility Assistance Act and that payment for the utility service provided to the customer will be made within the fifteen-day period.

C. The department and the New Mexico public utility commission shall coordinate and adopt, as they deem appropriate, either separate or joint rules and regulations necessary to implement the provisions of this section; provided that nothing in this section authorizes the department to revise tariffs or rate filings subject to the jurisdiction of the New Mexico public utility commission.

**History:** Laws 1991, ch. 81, § 1; 1993, ch. 282, § 17.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in Subsection A(1) and Subsection C.

## **ARTICLE 6A LOW INCOME WATER, SEWER AND SOLID WASTE SERVICE ASSISTANCE**

### **27-6A-1. Short title.**

This act [27-6A-1 to 27-6A-5 NMSA 1978] may be cited as the "Low Income Water, Sewer and Solid Waste Service Assistance Act".

**History:** Laws 1993, ch. 206, § 1.

### **27-6A-2. Purpose.**

It is the purpose of the Low Income Water, Sewer and Solid Waste Service Assistance Act [27-6A-1 to 27-6A-5 NMSA 1978]:

A. to assure that water, sewer or solid waste user rate increases do not force many low-income individuals to discontinue necessary water, sewer or solid waste service; and

B. to increase the availability or affordability of basic water, sewer and solid waste service to low-income individuals by providing assistance to meet the cost of basic water, sewer and solid waste service.

**History:** Laws 1993, ch. 206, § 2.

### **27-6A-3. Definitions.**

As used in the Low Income Water, Sewer and Solid Waste Service Assistance Act [27-6A-1 to 27-6A-5 NMSA 1978]:

A. "department" means the human services department; and

B. "utility" means any individual, firm, partnership, company, district, including but not limited to solid waste district, water and sanitation district and special district, cooperative, association, public or private corporation, lessee, trustee or receiver appointed by any court, municipality and municipal utility as defined in the Municipal Code, incorporated county or county that may or does own, operate, lease or control any plant, property or facility for:

(1) the supply, storage, distribution or furnishing of water to or for the public;

(2) the supply and furnishing of sanitary sewer service to or for the public; or

(3) the supply and furnishing of collection, transportation, treatment or disposal of solid waste to or for the public. "Utility" does not include a public utility subject to the jurisdiction of the New Mexico public service commission.

**History:** Laws 1993, ch. 206, § 3.

### **27-6A-4. Low income assistance rates.**

A utility may provide assistance in the form of reduced or subsidized rates to or on behalf of those individuals who meet the eligibility criteria of one or more need-based assistance programs administered by the department and who are not living in nursing homes or intermediate care facilities or not living in circumstances that do not require them to pay, directly or indirectly, for water, sewer or solid waste service.

**History:** Laws 1993, ch. 206, § 4.

### **27-6A-5. Department cooperation.**

Subject to state and federal statutes and regulations governing the sharing of confidential information, the department shall cooperate with a participating utility in identifying those persons eligible for assistance pursuant to the Low Income Water, Sewer and Solid Waste Service Assistance Act [27-6A-1 to 27-6A-5 NMSA 1978].

**History:** Laws 1993, ch. 206, § 5.

## **ARTICLE 7 ADULT PROTECTIVE SERVICES**



## **27-7-1 to 27-7-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1989, ch. 389, § 20 repeals 27-7-1 through 27-7-13 NMSA 1978, as enacted by Laws 1982, ch. 36, §§ 1, 2, and 4 to 13, and as amended by Laws 1987, ch. 72, § 1, relating to adult protective services, effective June 16, 1989. For provisions of former sections, see 1984 Replacement Pamphlet and 1988 Cumulative Supplement. For present comparable provisions, see 27-7-14 NMSA 1978 et seq.

## **27-7-14. Short title.**

Sections 27-7-14 through 27-7-31 NMSA 1978 may be cited as the "Adult Protective Services Act".

**History:** Laws 1989, ch. 389, § 1; 1990, ch. 79, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Incompetent Persons § 31 et seq.

57 C.J.S. Mental Health §§ 45 et seq., 108 et seq.

## **27-7-15. Legislative findings; purpose.**

A. The legislature recognizes that many adults in the state are unable to manage their own affairs or protect themselves from exploitation, abuse or neglect. Often such adults cannot find others able or willing to render assistance.

B. It is the purpose of the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978] to establish a system of protective services designed to fill this need and to assure the availability of those services to all adults. It is also the purpose of the Adult Protective Services Act to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the adult's need for services and to require that due process be followed in imposing those restrictions.

**History:** Laws 1989, ch. 389, § 2.

## **27-7-16. Definitions.**

As used in the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978]:

A. "abuse" means:

(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult;

B. "adult" means a person eighteen years of age or older;

C. "appropriate facility" means any facility other than a jail or detention facility;

D. "caretaker" means an individual or institution that has assumed the responsibility for the care of an adult;

E. "conservator" means a person who is appointed by a court to manage the estate of a protected adult;

F. "court" means the district court having jurisdiction;

G. "department" means the human services department;

H. "emergency" means that an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to himself or others;

I. "exploitation" means an unjust or improper use of an adult's resources for another's profit or advantage, pecuniary or otherwise;

J. "guardian" means a person who is a guardian of an incapacitated adult pursuant to a court order;

K. "incapacitated adult" means any adult who demonstrates over time partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other causes to the extent that he is unable to manage his personal care or he is unable to manage his personal property and financial affairs;

L. "independent living arrangements" means a mode of life maintained on a continuing basis outside of a hospital, veterans' administration hospital, nursing home or other facility licensed by or under the jurisdiction of any state agency;

M. "interested person" means any adult relative, any person who has an interest in the welfare of the adult to be protected under the Adult Protective Services Act or any official or representative of a protective services agency or of any public or nonprofit agency, corporation, board or organization eligible for designation as a protective services agency;

N. "neglect" means failure of the caretaker of an adult to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health for that adult or failure by an adult to provide such basic needs for himself;

O. "protected adult" means an adult for whom a guardian or conservator has been appointed or other protective order has been made;

P. "protective placement" means the transfer of an adult from independent living arrangements to a hospital, nursing home, domiciliary or residential care facility, or from one such institution to another;

Q. "protective services" means the services furnished by the department or a protective services agency or its delegate, as described in Section 27-7-21 NMSA 1978; and

R. "protective services agency" means a corporation, board or organization authorized by the department pursuant to the Adult Protective Services Act to furnish protective services to protected or incapacitated adults or to serve as conservators or guardians of protected or incapacitated adults upon appointment by a court.

**History:** Laws 1989, ch. 389, § 3; 1990, ch. 79, § 2.

### **27-7-17. Adult protective services system.**

A. The department shall develop a coordinated system of protective services for incapacitated adults. In planning this system, the department shall obtain the advice of agencies, corporations, boards and associations involved in the provision of social, health, legal, nutritional and other services to adults, as well as of organizations of adults.

B. Upon establishment of the adult protective services system, the department shall be responsible for continuing coordination and supervision of the system. In carrying out these duties, the department shall:

(1) adopt rules and regulations necessary to implement and operate the system;

(2) monitor and evaluate the effectiveness of the system; and

(3) use to the extent available grants from federal, state and other public and private sources to support the system.

C. The department shall administer a public information program regarding the problem, reporting and prevention of adult abuse, neglect and exploitation and the availability of treatment and protective services for those adults.

**History:** Laws 1989, ch. 389, § 4.

## ANNOTATIONS

**Task force for adult services.** - Laws 1993, ch. 276, § 1, effective April 7, 1993, creates the task force for adult services; provides for appointment and composition of the 15 members; specifies that the task force is to establish policies on issues confronting the state's adults, develop a unified continuum of services that avoids unnecessary duplication, investigate restructuring and reorganization of current state services directed towards adults, solicit input from consumers, advocates, providers of adult services, and the general public, and report its findings and recommendations to the health and human services legislative interim committee by October 15, 1993; and provides for reimbursement of the task force members for their services.

Laws 1994, ch. 26, § 1, effective May 18, 1994, provides that the task force for adult services created by Laws 1993, ch. 276 shall continue through the eighty-third fiscal year, and that it shall establish policies on issues confronting the state's adults, develop a plan for implementing the continuum of services for adults, make recommendations relating to the structure and organization of state services provided to adults, identify and recommend methods of obtaining local community involvement in the planning and delivery of services to adults, and report its finding and recommendations to the health and human services committee by October 15, 1994.

### **27-7-18. Adult protective services advisory board created.**

The "adult protective services advisory board" is created, consisting of nine members appointed by the secretary of human services. At least four members shall be involved in the direct provision of adult protective services. The advisory board shall provide continuing advice to the department concerning the protective services system.

**History:** Laws 1989, ch. 389, § 5.

### **27-7-19. Department; investigations; orders; services and contracts.**

A. The department shall investigate all reports of suspected abuse, neglect or exploitation of adults. Upon receipt of a report, the department shall determine whether the adult is in need of protective services and what services are needed, unless the department determines that the report is frivolous or is patently without a factual basis. In determining the need for protective services, the department shall visit the person and consult with others having knowledge of the facts of the particular case. After making the determination, the department or the protective services agency shall make a written report of its findings and take whatever action is necessary.

B. The department may petition the court for a protective order or an order for appointment of a guardian or conservator.

C. The department may provide direct protective services and may contract with any protective services agency for the provision of protective services. To the extent appropriate and available, the department shall utilize existing resources and services of public and nonprofit private agencies in providing protective services.

**History:** Laws 1989, ch. 389, § 6.

### **27-7-20. Protective services agencies designation; powers.**

A. The department may designate any corporation, board or organization as a protective services agency. The department shall adopt and promulgate regulations establishing criteria and procedures for the designation of protective services agencies.

B. A protective services agency is authorized to:

(1) furnish protective services to an adult with his consent;

(2) petition the court for an appointment of a conservator or guardian, issuance of an emergency order for protective services or an order for protective placement;

(3) furnish protective services to an adult without his consent in an emergency pursuant to Section 27-7-25 NMSA 1978;

(4) furnish protective services to an incapacitated or protected adult with the consent of the person or his guardian;

(5) serve as conservator, guardian or temporary guardian of a protected or incapacitated adult; and

(6) make such reports as the department or a court may require.

C. No corporation, board or organization, other than one designated by the department as a protective services agency, shall furnish protective services to an adult.

D. The department shall designate for each county the department itself or at least one protective services agency that shall be responsible for rendering protective services in an emergency.

**History:** Laws 1989, ch. 389, § 7; 1990, ch. 79, § 3.

### **27-7-21. Nature of protective services; costs.**

A. Protective services are services furnished by the department or a protective services agency or its delegate to an incapacitated or protected person with the person's consent or appropriate legal authority.

B. The services furnished in a protective services system may include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship and other services consistent with the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978].

C. In order to provide the services listed in Subsection B of this section, the adult protective services system established by the department may include, but is not limited to, outreach, identifying persons in need of services, counseling, referring persons for services, evaluating individuals, arranging for services, tracking and following up cases, petitioning the courts for the appointment of a conservator or guardian of the person and other activities consistent with the Adult Protective Services Act.

D. The costs of providing protective services shall be borne by the provider of those services or the department or other appropriate agency, subject to available appropriations and resources, unless the adult agrees to pay for them or a court authorizes the provider to receive reasonable reimbursement from the adult's assets after a finding that the person is financially able to make payment.

**History:** Laws 1989, ch. 389, § 8; 1990, ch. 79, § 4.

## **27-7-22. Evaluation.**

A. The department shall establish an evaluation process for the conduct of a comprehensive physical, mental and social evaluation of an adult for whom a petition has been filed in a court for an order for non-emergency protective placement or for whom an application for renewal of an original emergency order has been made.

B. The evaluation of an adult shall include at a minimum:

(1) the name and address of the place where the adult is residing and of the person or agency, if any, who is currently providing care, treatment or services;

(2) a summary description of the care, treatment and services, if any, currently being provided to the adult in connection with the problem creating the need for protective services or protective placement;

(3) an evaluation of the adult's present physical, mental and social conditions, including, as necessary, a medical, psychological, psychiatric or social evaluation and review; and

(4) a recommendation for the least restrictive alternatives for services, care, treatment or placement consistent with the person's needs.

C. Unless the adult can afford to pay, the cost of the evaluation provided for in this section shall be borne by the provider or the department or other appropriate agency, subject to available appropriations and resources.

**History:** Laws 1989, ch. 389, § 9; 1990, ch. 79, § 5.

### **27-7-23. Voluntary protective services.**

A. Any adult who has been abused, neglected or exploited and is in need of protective services as determined by the department and who requests those services, shall receive them, subject to available appropriations and resources. If the person withdraws or refuses consent, voluntary protective services shall not be provided.

B. No person shall interfere with the provision of protective services to an adult who requests and consents to receive those services. In the event that interference occurs on a continuing basis, the department or a protective services agency may petition the court to enjoin that interference.

**History:** Laws 1989, ch. 389, § 10.

### **27-7-24. Involuntary protective services.**

A. If an adult is unable to consent to receive protective services, those services may be ordered by a court on an involuntary basis through an emergency order pursuant to the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978] or through appointment of a guardian.

B. In ordering involuntary protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights consistent with the adult's welfare and safety. The basis for such a finding shall be stated in the record by the court.

C. The incapacitated or protected adult shall not be required to pay for involuntary protective services unless that payment is authorized by the court upon a showing that the adult is financially able to pay. In this event the court shall provide for reimbursement of the reasonable costs of the services. The costs of involuntary protective services shall be borne by the provider of those services or the department or other appropriate agency, subject to available appropriations and resources, if the adult is not financially able to cover those costs.

**History:** Laws 1989, ch. 389, § 11.

### **27-7-25. Ex-parte orders for emergency protective services or emergency protective placement; notice; petition.**

A. Upon petition by the department, the court may issue an order authorizing the provision of involuntary protective services or protective placement on an emergency basis to an adult under the criteria set forth in Subsection B of this section.

B. At the time a petition is filed or any time thereafter, the court may issue an ex-parte order authorizing the provision of involuntary protective services or involuntary protective placement upon a sworn written statement of facts showing probable cause exists to believe that:

(1) the adult is incapacitated;

(2) an emergency exists;

(3) the adult lacks the capacity to consent to receive protective services; and

(4) no person authorized by law or court order to give consent for the adult is available or willing to consent to the provision of protective services or protective placement on an emergency basis.

C. An affidavit for an ex-parte order for emergency protective services or emergency protective placement may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.

D. The Rules of Evidence do not apply to the issuance of an emergency ex-parte protective services or protective placement order or to hearings held on an application for renewal of the original emergency order.

E. In issuing an emergency ex-parte order, the court shall adhere to the following limitations:

(1) only the protective services or protective placement necessary to remove the conditions creating the emergency shall be ordered, and the order shall specifically designate the proposed protective services or protective placement;

(2) protective services or protective placement authorized by an emergency ex-parte order shall not include hospitalization or a change of residence, unless the order gives specific approval for the action;

(3) protective services or protective placement may be provided by emergency ex-parte order only for ten days; provided that the original order may be renewed once for a period of twenty additional days upon application to the court showing that continuation of the original order is necessary to remove the conditions creating the emergency. An application for renewal of the original order shall be supported by a written report of the results of the evaluation required by Section 27-7-22 NMSA 1978 and copies of the actual evaluations;

(4) the issuance of an emergency ex-parte order shall not deprive the adult of any rights except those provided for in the order;



(5) the department and its employees are prohibited from acting as guardians or conservators for any adult in need of protective services, except that an employee may serve in that capacity when related by affinity or consanguinity to an adult;

(6) to implement an emergency ex-parte order, the court may authorize forcible entry of premises for the purposes of rendering protective services or transporting the adult to another location for the provision of services only if facts contained in the affidavit supporting the petition for ex-parte order show that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. Persons making an authorized forcible entry shall be accompanied by a law enforcement officer; and

(7) service of an ex-parte order authorizing forcible entry shall be according to the following procedure: The order shall be served on the alleged incapacitated adult by a person authorized to serve arrest warrants and shall direct the officer to advise the adult of the nature of the protective services that have been ordered by the court. If the order authorizes emergency protective placement, the order shall direct the officer to assist in transfer of the adult to a place designated by the court.

F. The petition for an emergency ex-parte order shall set forth:

(1) the name, address and interest of the petitioner;

(2) the name, age and address of the adult in need of protective services;

(3) facts describing the nature of the emergency;

(4) facts describing the nature of the adult's incapacity;

(5) the proposed protective services;

(6) the petitioner's reasonable belief, together with supporting facts, about the need for emergency intervention; and

(7) facts showing the petitioner's attempts to obtain the adult's consent to the proposed services and the outcome of those attempts.

G. Notice of the filing of the petition and the issuance of the emergency ex-parte order, including a copy of the petition and the affidavit for ex-parte order, shall be given to the adult and the adult's spouse, or if none, his adult children or next of kin, or guardian, if any. The notice shall be given in language reasonably understandable by its intended recipients within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time that the ex-parte order authorizing protective services is served upon the incapacitated adult. The notice shall inform the recipients that a hearing will be held no later than ten days after the date the petition is filed to determine whether the conditions creating the emergency have been removed, and whether the adult should be released from the court's order for protective services.

H. Within ten days from the filing of a petition for an emergency order for protective services or protective placement, the court shall hold a hearing upon any application for renewal of the emergency order. The hearing upon an application for renewal shall be held pursuant to the provisions of Section 27-7-27 NMSA 1978.

I. The protected adult or any interested person may petition the court to have the emergency order set aside or modified at any time, notwithstanding any prior findings by the court that the adult is incapacitated.

J. If the adult continues to need protective services or protective placement after the renewal order provided in Paragraph (3) of Subsection E of this section has expired, the department or original petitioner shall immediately petition the court to appoint a conservator or guardian or to order non-emergency protective placement pursuant to Section 27-7-26 NMSA 1978.

K. The petitioner shall not be liable for filing the petition if he acted in good faith.

**History:** 1978 Comp., § 27-7-25, enacted by Laws 1990, ch. 79, § 6.

### **ANNOTATIONS**

**Cross-references.** - For Rules of Evidence, see Rule 11-101 NMRA 1997 et seq.

**Repeals and reenactments.** - Laws 1990, ch. 79, § 6 repeals former 27-7-25 NMSA 1978, as enacted by Laws 1989, ch. 389, § 12, effective March 2, 1989. For provisions of former section, see 1989 Replacement Pamphlet.

#### **27-7-25.1. Emergency placement by a law enforcement officer without a court order.**

A. When, from personal observation of a law enforcement officer, it appears probable that an incapacitated adult will suffer immediate and irreparable physical injury or death if not immediately placed in an appropriate facility, that the adult is unable to give consent and that it is not possible to follow the procedures of Section 27-7-25 NMSA 1978, the law enforcement officer making that observation may transport the adult to an appropriate facility. No court order is required to authorize the law enforcement officer to act upon his observation pursuant to this section.

B. A law enforcement officer who transports an incapacitated adult to an appropriate facility pursuant to the provisions of this section shall immediately notify the department of the placement.

C. The department shall file a petition pursuant to Subsection A of Section 27-7-25 NMSA 1978 within two working days after the placement of the adult by the law enforcement officer has occurred.

D. Upon receipt of notice from a law enforcement officer that an adult has been placed in a facility pursuant to the authority of this section, the department shall give notice pursuant to Subsection G of Section 27-7-25 NMSA 1978 within two working days after the transfer of the adult has taken place.

E. The court shall hold a hearing on the petition filed by the department as a result of the law enforcement officer's emergency placement within ten days of the filing of the petition, pursuant to the provisions of Section 27-7-27 NMSA 1978, to determine whether the conditions creating the need for the emergency placement have been removed, and whether the adult should be released from the protective placement.

**History:** 1978 Comp., § 27-7-25.1, enacted by Laws 1990, ch. 79, § 7.

### **27-7-26. Non-emergency protective placement; findings; petition; order.**

A. If the adult refuses to consent, non-emergency protective placement shall not take place unless ordered by a court after a finding on the record based on clear and convincing evidence that:

(1) the adult is incapacitated;

(2) the adult is incapable of providing for his own care or custody and his condition creates a substantial risk of serious physical harm to himself or others;

(3) the adult needs care or treatment;

(4) the proposed order is substantially supported by the evaluation provided for in Subsection F of this section or, if not so supported, there are compelling reasons for ordering that placement; and

(5) no less restrictive alternative course of care or treatment is available that is consistent with the incapacitated person's welfare and safety.

B. The department, a protective services agency, a conservator, a guardian or any interested person may petition the court for non-emergency protective placement.

C. The petition for non-emergency protective placement shall state with particularity the factual basis for the allegations specified in Subsection A of this section and shall be based on the most reliable information available to the petitioner.

D. Written notice of a petition for non-emergency protective placement shall be served upon the adult by personal service at least ten days prior to the time set for a hearing. Notice shall also be given to the adult's legal counsel and persons having physical custody of the adult whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained. The person serving the notice shall certify to

the court that the petition has been delivered and how the required notice was given. The notice shall be in language reasonably understandable by the adult who is the subject of the petition, and also shall be given orally if necessary. The notice shall include:

- (1) the names of all petitioners;
- (2) the factual basis of the belief that protective placement is needed;
- (3) the rights of the adult in the court proceedings; and
- (4) the name and address of the proposed placement.

E. Upon the filing of a petition for non-emergency protective placement, the court shall hold a hearing pursuant to the provisions of Section 27-7-27 NMSA 1978.

F. In order to make the findings required in Paragraphs (2) through (5) of Subsection A of this section, the court shall direct that a comprehensive evaluation of the adult alleged to be in need of placement be conducted as provided in Section 27-7-22 NMSA 1978.

G. In ordering non-emergency protective placement, the court shall give consideration to the choice of residence of the adult. The court may order placement in facilities such as hospitals, nursing homes, domiciliary or personal care facilities, sheltered care residences or other appropriate facilities licensed by the state.

H. The court may authorize non-emergency protective placement of an adult for a period not to exceed six months.

I. At the time of expiration of an order for non-emergency protective placement, the guardian, the original petitioner or any interested person may petition the court to extend its order for protective placement for an additional period not to exceed six months. The contents of the petition shall conform to the provisions of Subsections A and C of this section. Notice of the petition for the extension of placement shall be made in conformity with Subsection D of this section. The court shall hold a hearing to determine whether to renew the order. Any person entitled to a notice under Subsection D of this section may appear at the hearing and challenge the petition. In this event, the court shall conduct the hearing pursuant to the provisions in Section 27-7-27 NMSA 1978.

J. The residence of an adult that had been established pursuant to an order for non-emergency protective placement shall not be changed unless the court authorizes the transfer of residence after finding compelling reasons to justify the transfer.

K. Prior to the expiration of the non-emergency protective placement, the department shall review the need for continued protective services, including the necessity for

appointment of a conservator or guardian. That recommendation and report shall be made to the department, the protective services agency, the adult's conservator or guardian and all persons notified of the original petition for protective placement and the court, where appropriate.

L. Any adult may request non-emergency protective placement under the Adult Protective Services Act. No legal rights are relinquished or modified as a result of that placement.

**History:** Laws 1989, ch. 389, § 13; 1990, ch. 79, § 8.

### **27-7-27. Hearing on petition.**

A. The hearing on a petition for renewal of an emergency ex-parte order for protective services or for an order for non-emergency protective placement shall be held under the following conditions:

(1) the adult shall be present unless the court determines it is impossible for the adult to be present or it is not in the adult's best interest because of a threat to that adult's health and safety;

(2) the adult has the right to counsel whether or not the adult is present at the hearing. If the person is indigent, the court shall appoint counsel no later than the time of the filing of the petition;

(3) counsel appointed by the court pursuant to Paragraph (2) of this subsection shall interview the allegedly incapacitated adult prior to any hearing on the petition or any application for renewal of the original emergency order;

(4) the adult shall have the right to trial by jury upon request by the adult or his counsel only in hearings held on petitions for non-emergency protective placement; and

(5) the adult has the right at his own expense or, if indigent, at the expense of the state to secure an independent medical, psychological or psychiatric examination relevant to the issue involved in any hearing under this section and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

B. The duty of counsel representing an adult for whom a petition for an order for emergency protective services or for non-emergency protective placement has been filed shall be to represent the adult by presenting his declared position to the court.

C. The court shall issue for the record a statement of its findings in support of any order for renewal of emergency protective services or for non-emergency protective placement.

**History:** Laws 1989, ch. 389, § 14; 1990, ch. 79, § 9.

### **27-7-28. Legal proceedings; filing.**

For all legal proceedings called for in the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978], attorneys for the department or the district attorney's office shall file all proceedings on behalf of the petitioner.

**History:** Laws 1989, ch. 389, § 15.

### **27-7-29. Confidentiality of records; penalty.**

A. All records of the department that are protected under the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978] or for whom application has ever been made for protection shall be confidential and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be open to inspection only by court personnel, department personnel, personnel of any state agency with a legitimate interest in the records and any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Records of cases involving substantiated abuse, neglect or exploitation shall be provided as appropriate to the health and environment department [department of health], the medicaid fraud control unit in New Mexico and the office of the long-term care ombudsman for appropriate additional action.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor.

**History:** Laws 1989, ch. 389, § 16.

## **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

### **27-7-30. Duty to report.**

A. Any person having reasonable cause to believe that an adult is being abused, neglected or exploited shall report that information to the department or other appropriate agency.

B. The report required in Subsection A of this section may be made orally or in writing. The report shall include the name, age and address of the adult, the name and address of any other person responsible for the adult's care, the nature and extent of the adult's condition, the basis of the reporter's knowledge and other relevant information.

C. Any person failing or refusing to report as required by Subsection A of this section is guilty of a misdemeanor.

**History:** Laws 1989, ch. 389, § 17; 1990, ch. 79, § 10.

### **27-7-31. Immunity.**

Any person making a report pursuant to Section 17 [27-7-30 NMSA 1978] of the Adult Protective Services Act, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to that act [27-7-14 to 27-7-31 NMSA 1978], or any law enforcement officer carrying out his responsibilities under that act, shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose.

**History:** Laws 1989, ch. 389, § 18.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1989, ch. 389, § 19, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 8 COMMUNITY ACTION**

### **27-8-1. Short title.**

This act [27-8-1 to 27-8-9 NMSA 1978] may be cited as the "Community Action Act".

**History:** Laws 1983, ch. 139, § 1.

#### **ANNOTATIONS**

**Legislator contracting with agency must ascertain how agency organized.** - A legislator contracting with a community action agency will have to ascertain how the agency is organized to determine whether the prohibitions of N.M. Const., art. IV, § 28 will apply. If it is a county, county agency or a private agency, the contract will not be covered by the provision, but if it is a municipality or municipal agency, the contract will be prohibited if it was authorized by law during the legislator's term. 1989 Op. Att'y Gen. No. 89-34.

## **27-8-2. Policy; purpose.**

Although in recent years New Mexico has shown improvement in indices such as personal income and the number of families below the poverty level, the state continues to compare poorly with other states. New Mexico has risen from 48th in 1974 to 41st in per capita personal income; however, poverty continues to be the lot of a substantial number of New Mexicans. New Mexico can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the working of our society. It is, therefore, the policy of this state to eliminate the paradox of poverty in the midst of plenty in this state by opening to everyone the opportunity to live in decency and dignity. It is the purpose of the Community Action Act [27-8-1 to 27-8-9 NMSA 1978] to strengthen, supplement and coordinate efforts in furtherance of that policy.

**History:** Laws 1983, ch. 139, § 2.

## **27-8-3. Definitions.**

As used in the Community Action Act [27-8-1 to 27-8-9 NMSA 1978]:

A. "poverty level" means the official poverty level established by the federal director of the office of management and budget and revised periodically by the federal secretary of health and human services; and

B. "secretary" means the secretary of human services.

**History:** Laws 1983, ch. 139, § 3.

## **27-8-4. Financial assistance for community action agencies.**

A. The secretary may provide financial assistance to community action agencies for the planning, conduct, administration and evaluation of community action programs as described in the Community Action Act [27-8-1 to 27-8-9 NMSA 1978] in accordance with state and federal law and regulations.

B. No funds provided pursuant to Subsection A of this section shall be distributed to a community action agency unless the agency has submitted to the secretary a plan on the proposed use of the funds and the secretary has approved that plan.

C. Subject to applicable federal law or regulation, community action agencies shall be eligible to receive federal funds, including but not limited to community services block grant funds, which have been previously designated as antipoverty funds.

D. Each community action agency receiving funds pursuant to this section shall report annually to the secretary concerning the use of the funds.



E. The secretary shall provide annually for an audit of funds distributed pursuant to this section to community action agencies and shall make any requirements necessary to insure fiscal responsibility and accountability and effective, efficient handling of funds.

**History:** Laws 1983, ch. 139, § 4.

### **27-8-5. Community action agencies; designation; powers.**

A. A community action agency is a political subdivision of the state, a combination of political subdivisions or a public or private nonprofit agency that:

(1) has the power and authority to enter into contracts with public and private nonprofit agencies and organizations in fulfilling the purposes of the Community Action Act [27-8-1 to 27-8-9 NMSA 1978];

(2) is capable of planning, conducting, administering and evaluating a community action program;

(3) has a service area at least equivalent to the geographic boundaries of a county; and

(4) is designated a community action agency by the governor or by federal law or was officially designated a community action agency, community action program or limited purpose agency under the provisions of the federal Economic Opportunity Act of 1964 on September 30, 1981.

B. The governor is empowered to declare that an entity designated as a community action agency under Subsection A of this section is no longer a community action agency upon a determination that such entity is unable or unwilling to carry out its responsibilities under the Community Action Act.

C. A community action agency is empowered to:

(1) receive, administer and transfer funds in support of a community action program under the Community Action Act; and

(2) delegate powers to other agencies and programs subject to the powers of its governing board and its overall program responsibilities.

**History:** Laws 1983, ch. 139, § 5.

### **ANNOTATIONS**

**Economic Opportunity Act.** - The federal Economic Opportunity Act of 1964, referred to in Subsection A(4), appears as 42 U.S.C. § 2704 et seq.

### **27-8-6. Community action agencies; board; local participation.**

A. Each community action agency shall administer its community action program through a community action board consisting of fifteen members. Board members shall be selected as follows:

(1) one-third of the members of the board shall be elected public officials currently holding office in the geographical area to be served by the community action agency or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive officials may be counted in meeting this one-third requirement;

(2) at least one-third of the members shall be persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and

(3) the other members shall be officials or members of business, industry, labor, religious, welfare, education or other major groups and interests in the community.

B. Each member of the board selected to represent a specific geographic area within a community shall reside in the area represented.

C. No person selected under Paragraph (2) or (3) of Subsection A of this section shall serve for more than five consecutive years or more than a total of ten years.

**History:** Laws 1983, ch. 139, § 6.

### **27-8-7. Community action programs.**

Each community action agency shall use available funds for a community action program which:

A. provides a range of services and activities which have a measurable and potentially major impact on causes of poverty in the community;

B. provides activities designed to assist low-income participants, including the elderly poor, to:

(1) secure and retain meaningful employment;

(2) attain an adequate education;

(3) make better use of available income;

(4) provide and maintain adequate housing and a suitable living environment;

(5) obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing and employment-related assistance;

(6) remove obstacles and solve problems which block the achievement of self-sufficiency;

(7) achieve greater participation in the affairs of the community; and

(8) make more effective use of other programs related to the purposes of the Community Action Act [27-8-1 to 27-8-9 NMSA 1978];

C. provides on an emergency basis for the provision of such supplies and services, nutritious food and related services as may be necessary to counteract conditions of starvation and malnutrition among the poor;

D. coordinates and establishes linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals;

E. encourages the use of entities in the private sector of the community in efforts to alleviate poverty in the community; and

F. furthers any other purpose consistent with federal or state law or regulations.

**History:** Laws 1983, ch. 139, § 7.

### **27-8-8. Regulations.**

The secretary shall adopt such rules and regulations as may be necessary to carry out the provisions of the Community Action Act [27-8-1 to 27-8-9 NMSA 1978].

**History:** Laws 1983, ch. 139, § 8.

### **27-8-9. Financial assistance; limitations.**

The secretary, consistent with federal law, shall make grants of not less than ninety percent of the annual allocation of funds available under the community services block grant to community action agencies defined in Subsection A of Section 5 [27-8-5 NMSA 1978] of the Community Action Act. The human services department is authorized to implement, by regulation or contract, a limitation on the amount of community services block grant funds allocated to administrative costs.

**History:** Laws 1983, ch. 139, § 9.

## **ARTICLE 9 COMMUNITY CARE**

### **27-9-1. Program; demonstrations.**

The human services department, in cooperation with the health and environment department [department of health], is authorized to administer demonstration programs which provide in-home and coordinated community care services to the frail elderly and to disabled individuals who would otherwise require institutionalization. The programs authorized by this section shall serve both those eligible and not eligible for federal medical assistance programs.

**History:** Laws 1983, ch. 323, § 1.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

### **27-9-2. Implementation.**

The secretary of human services shall, by regulation, specify the areas in which the programs shall operate, specify the services to be provided, establish eligibility criteria of persons to be served and provide for cost sharing, where possible, with individuals and participating communities.

**History:** Laws 1983, ch. 323, § 2.

## **ARTICLE 10 STATEWIDE HEALTH CARE**

### **27-10-1. Short title.**

Sections 1 through 4 [27-10-1 to 27-10-4 NMSA 1978] of this act may be cited as the "Statewide Health Care Act".

**History:** Laws 1991, ch. 212, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For County Health Care Gross Receipts Tax Act, see ch. 7, art. 20D NMSA 1978.

For imposition of intermediate sanctions and civil penalty for health facility's noncompliance with any departmental licensing requirement, see 24-1-5.2 NMSA 1978.

### **27-10-2. Findings and purpose.**

A. Access to health care reduces long-term medical and social costs. The effectiveness of statewide health care has been decreased by excessive fragmentation and failure to maximize the use of existing in-state revenues and to develop effective ways of drawing upon potential federal revenue sources. An effective statewide health care system must retain local health care efforts, stimulate local innovations for meeting particular health care needs and use existing resources to expand health care options, especially for those citizens unable to pay for their own care.

B. The purpose of the county-supported medicaid fund is to leverage existing resources to better address the state's health care needs. The county-supported medicaid fund will be used to accomplish this purpose by using local revenues to support the state medicaid program and to institute or support primary care health care services pursuant to Section 24-1A-3.1 NMSA 1978. Money appropriated from the county-supported medicaid fund to institute or support primary care health care services pursuant to Section 24-1A-3.1 NMSA 1978 shall be supplemental to general fund appropriations.

**History:** Laws 1991, ch. 212, § 2; 1993, ch. 321, § 19; 1996, ch. 29, § 5.

### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "to support the state medicaid program" for "solely to expand eligibility for federal medicaid optional coverages in supplementation to mandated federal medicaid services" in the second sentence of Subsection B.

**The 1996 amendment,** in Subsection B, inserted "or support" in the second sentence and added the last sentence. Laws 1996, ch. 29 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **27-10-3. County-supported medicaid fund created; use; appropriation by the legislature.**

A. There is created in the state treasury the "county-supported medicaid fund". The fund shall be invested by the state treasurer as other state funds are invested. Income earned from investment of the fund shall be credited to the county-supported medicaid fund. The fund shall not revert in any fiscal year.

B. Money in the county-supported medicaid fund is subject to appropriation by the legislature to support the state medicaid program and to institute or support primary care health care services pursuant to Subsections D and E of Section 24-1A-3.1 NMSA 1978. Of the amount appropriated each year, nine percent shall be appropriated to the department of health to institute or support primary care health care services pursuant to Subsections D and E of Section 24-1A-3.1 NMSA 1978.

C. Up to three percent of the county-supported medicaid fund each year may be expended for administrative costs related to medicaid or developing new primary care health care centers or facilities.

D. In the event federal funds for medicaid are not received by New Mexico for any eighteen-month period, the unencumbered balance remaining in the county-supported medicaid fund and the sole community provider fund at the end of the fiscal year following the end of any eighteen-month period shall be paid within a reasonable time to each county for deposit in the county indigent hospital claims fund in proportion to the payments made by each county through tax revenues or transfers in the previous fiscal year as certified by the local government division of the department of finance and administration. The department will provide for budgeting and accounting of payments to the fund.

**History:** Laws 1991, ch. 212, § 3; 1992, ch. 31, § 2; 1993, ch. 321, § 20; 1996, ch. 29, § 6.

## ANNOTATIONS

**Cross-references.** - For the sole community provider fund, see 27-5-6.1 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, in Subsection B, substituted "department of health" for "health and environment department"; in Subsection D, substituted references to "any" eighteen-month period for references to "the" eighteen-month period in two places, inserted "in the county-supported medicaid fund", and made stylistic changes.

**The 1993 amendment**, effective July 1, 1993, in Subsection B, substituted "to support the state medicaid program" for "for expanding eligibility for federal medicaid optional coverages in supplementation to mandated federal medicaid services" in the first sentence and the language beginning "nine percent shall be appropriated" for "up to nine percent may be appropriated to the department of health" in the second sentence; in Subsection C, deleted "amounts appropriated and expended from" after "three percent of"; and in Subsection D, deleted "optional coverages" after "federal funds for medicaid" and inserted "and the sole community provider fund" in the first sentence and substituted "budgeting and accounting of payments" for "accounting and enforcing the deposits" in the second sentence.

**The 1996 amendment**, in Subsection B, inserted "or support" twice and substituted "Subsections D and E" for "Subsection E" in two places. Laws 1996, ch. 29 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **27-10-4. Alternative revenue source to imposition of county health care gross receipts tax; transfer to county-supported medicaid fund.**

A. In the event a county does not enact an ordinance imposing a county health care gross receipts tax pursuant to Section 7-20D-3 NMSA 1978, the county shall, by ordinance to be effective July 1, 1993, dedicate to the county-supported medicaid fund an amount equal to a gross receipts tax rate of one-sixteenth of one percent applied to the taxable gross receipts reported during the prior fiscal year by persons engaging in business in the county. For purposes of this subsection, a county may use funds from any existing authorized revenue source of the county.

B. For each county that has in effect an ordinance enacted pursuant to Subsection A of this section on July 1 of each year, the taxation and revenue department shall certify to the county by September 15, 1993 and by September 15 of each subsequent fiscal year the amount of gross receipts reported for the county for purposes of the gross receipts tax during the prior fiscal year. Upon certification by the department, any county enacting an ordinance pursuant to Subsection A of this section shall transfer to the county-supported medicaid fund by the last day of March, June, September and December of each year an amount equal to a rate of one-sixty-fourth of one percent applied to the certified amount.

C. The requirements of an ordinance enacted pursuant to this section may be terminated for a county only on the effective date of an ordinance enacted by the county imposing the county health care gross receipts tax; provided that if the effective date of the ordinance imposing the tax is January 1, the termination does not apply to the payments required for September and December of that year.

**History:** Laws 1991, ch. 212, § 4; 1992, ch. 31, § 3; 1993, ch. 321, § 21.

#### **ANNOTATIONS**

**The 1992 amendment**, effective May 20, 1992, substituted references to fiscal year for calendar year in three places; in Subsection A, substituted "pursuant to Section 7-20D-3 NMSA 1978" for "pursuant to Section 3 of the County Health Care Gross Receipts Tax Act and if no balance remains in the county indigent hospital claims fund for the current fiscal year" and "July 1, 1993" for "January 1, 1992"; in Subsection B, substituted "July 1 of each year" for "January 1 of each year", "by September 15, 1993 and by September 15" for "by March 15, 1992 and by March"; and, in Subsection C, substituted "January

1" for "July 1" and "payments required for September and December" for "payments required for March and June".

**The 1993 amendment**, effective July 1, 1993, deleted "except as may be otherwise provided in Section 27-5-7 NMSA 1978" from the end of Subsection A.

**Compiler's note.** - The words "county health care" preceding "gross receipts tax" in Subsection B were line item vetoed by the governor.