

AN ACT

RELATING TO PUBLIC BENEFITS; AMENDING SECTIONS OF THE NEW MEXICO WORKS ACT AND THE EDUCATION WORKS ACT TO COMPLY WITH CHANGES IN FEDERAL LAW; MODIFYING ELIGIBILITY FOR BENEFITS, WORK REQUIREMENTS AND SUPERVISION FOR CLIENTS IN THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM AND OTHER RELATED PROGRAMS.

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

Section 1. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended by Laws 2003, Chapter 311, Section 2 and by Laws 2003, Chapter 432, Section 2) is amended to read:

"27-2B-3. DEFINITIONS.--As used in the New Mexico Works Act:

A. "applicant" means a person applying for cash assistance on behalf of a benefit group;

B. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half or adopted siblings or stepsiblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

C. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant

pursuant to the federal act and by state funds;

D. "department" means the human services department;

E. "dependent child" means a natural child, adopted child, stepchild or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department;

F. "director" means the director of the income support division of the department;

G. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

H. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

I. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

J. "immigrant" means alien as defined in the federal act;

K. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

L. "participant" means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority;

M. "person" means an individual;

N. "secretary" means the secretary of the department;

O. "services" means child care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment;

P. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income;

Q. "vehicle" means a conveyance for the

transporting of individuals to or from employment, for the activities of daily living or for the transportation of goods; "vehicle" does not include any boat, trailer or mobile home used as a principal place of residence; and

R. "vocational education" means an organized educational program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advanced degree. Vocational education must be provided by an educational or a training organization, such as a vocational-technical school, community college, post-secondary educational institution or proprietary school."

Section 2. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and Laws 1998, Chapter 9, Section 4, as amended by Laws 2001, Chapter 295, Section 2 and by Laws 2001, Chapter 326, Section 2) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant having custody of or residing with a dependent child who is a benefit group member and shall

contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that the applicant and other benefit group members have at the time of the filing of the application and other information required by the department.

B. The department shall assist an applicant in completing the application for cash assistance or services and shall evaluate an applicant to determine eligibility for all department programs for which the applicant is eligible. The department shall process all expedited food stamp applications within two business days of submission, and the department shall deliver expedited food stamps to an eligible applicant within seven days of the application.

C. At the time of application for cash assistance and services, an applicant and the department shall identify everyone who is to be counted in the benefit group. Once an application is approved, the participant shall advise the department if there are any changes in the membership of the benefit group.

D. No later than thirty days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain the applicant's immediate needs, assess financial and nonfinancial options, make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. No later than fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep the participant's school-age children in school, immunize the participant's children or engage in other

activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to participate in appropriate services, such as substance abuse, domestic violence or mental health services.

I. The participant and the department shall sign the participant's individual responsibility plan. The department shall not allow a participant to decline to participate in developing an individual responsibility plan. The department shall not waive the requirement that a participant develop an individual responsibility plan. The department shall emphasize the importance of the individual responsibility plan to the participant.

J. If a participant does not develop an individual responsibility plan, refuses to sign an individual responsibility plan or refuses to attend semiannual reviews of an individual responsibility plan, the participant shall be

required to enter into a conciliation process pursuant to Subsection C of Section 27-2B-14 NMSA 1978. If the participant persists in noncompliance with the individual responsibility plan process after the conciliation process, the participant shall be subject to sanctions pursuant to Section 27-2B-14 NMSA 1978.

K. The participant shall also sign a participation agreement that designates the number of hours that the participant must participate in work activities to meet participation standards.

L. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

M. The department shall meet semiannually with a participant to review and revise the participant's individual responsibility plan.

N. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

Section 3. Section 27-2B-5 NMSA 1978 (being Laws 1998, Chapter 8, Section 5 and Laws 1998, Chapter 9, Section 5, as amended) is amended to read:

"27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION RATES.--

A. The following qualify as work activities:

(1) unsubsidized employment, including self-employment;

(2) subsidized private sector employment, including self-employment;

(3) subsidized public sector employment;

(4) work experience;

(5) on-the-job training;

(6) job search and job readiness;

(7) community service programs;

(8) vocational education;

(9) job skills training activities directly related to employment;

(10) education directly related to employment;

(11) satisfactory attendance at a secondary school or course of study leading to a certificate of general equivalency in the case of a participant who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to a participant who is participating in a community service program.

B. The department shall recognize community service programs and job training programs that are operated by an Indian nation, tribe or pueblo.

C. The department may not require a participant to work more than four hours per week over the work requirement rate set pursuant to the federal act.

D. The department shall require a parent, caretaker or other adult who is a member of a benefit group to engage in a work activity.

E. Where best suited for the participant to address barriers, the department may require the following work activities:

(1) participating in parenting classes, money management classes or life skills training;

(2) participating in a certified alcohol or drug addiction program;

(3) in the case of a homeless benefit group, finding a home;

(4) in the case of a participant who is a victim of domestic violence residing in a domestic violence shelter or receiving counseling or treatment or participating in criminal justice activities directed at prosecuting the domestic violence perpetrator for no longer than twenty-four weeks; and

(5) in the case of a participant who does not speak English, participating in a course in English as a second language.

F. Subject to the availability of funds, the

department in cooperation with the labor department, Indian affairs department and other appropriate state agencies may develop projects to provide for the placement of participants in work activities, including the following:

(1) participating in unpaid internships with private and government entities;

(2) refurbishing publicly assisted housing;

(3) volunteering at a head start program or a school;

(4) weatherizing low-income housing; and

(5) restoring public sites and buildings, including monuments, parks, fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices and city halls.

G. If a participant is engaged in full-time vocational education studies or an activity set out in Paragraphs (9) through (11) of Subsection A of this section, the participant shall engage in another work activity at the same time. Additionally, for two-parent families that receive federally funded child-care assistance, the participant's spouse shall engage in a work activity set out in Paragraphs (1) through (5) or (7) of Subsection A of this section unless the participant suffers from a temporary or complete disability that bars the participant from engaging in a work

activity or the participant is barred from engaging in a work activity because the participant provides sole care for a disabled person.

H. A participant engaged in vocational education studies shall make reasonable efforts to obtain a loan, scholarship, grant or other assistance to pay for costs and tuition, and the department shall disregard those amounts in the eligibility determination.

I. For as long as the described conditions exist, the following are exempt from the work requirement:

(1) a participant barred from engaging in a work activity because the participant is temporarily or completely disabled;

(2) a participant over age sixty;

(3) a participant barred from engaging in a work activity because the participant provides the sole care for a disabled person;

(4) a single custodial parent caring for a child less than twelve months old for a lifetime total of twelve months;

(5) a single custodial parent caring for a child under six years of age if the parent is unable to obtain child care for one or more of the following reasons:

(a) unavailability of appropriate child care within a reasonable distance from the parent's home or

work as defined by the children, youth and families department;

(b) unavailability or unsuitability of informal child care by a relative under other arrangements as defined by the children, youth and families department; or

(c) unavailability of appropriate and affordable formal child-care arrangements as defined by the children, youth and families department;

(6) a pregnant woman during her last trimester of pregnancy;

(7) a participant prevented from working by a temporary emergency or a situation that precludes work participation for thirty days or less;

(8) a participant who demonstrates by reliable medical, psychological or mental reports, court orders or police reports that family violence or threat of family violence effectively bars the participant from employment; and

(9) a participant who demonstrates good cause of the need for the exemption.

J. As a condition of the exemptions identified in Subsection I of this section, the department may establish participation requirements specific to the participant's condition or circumstances, such as substance abuse services, mental health services, domestic violence services, pursuit of

disability benefits, job readiness or education directly related to employment. The activities are established to improve the participant's capacity to improve income and strengthen family support."

Section 4. Section 27-2B-6 NMSA 1978 (being Laws 1998, Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6, as amended by Laws 2003, Chapter 311, Section 3 and Laws 2003, Chapter 432, Section 3) is amended to read:

"27-2B-6. DURATIONAL LIMITS.--

A. Pursuant to the federal act, on or after July 1, 1997 a participant may receive federally funded cash assistance or state-funded cash assistance and services pursuant to the New Mexico Works Act for up to sixty months.

B. During a participant's semi-annual review, the department shall examine the participant's progress to determine if the participant has successfully completed an educational or training program or increased the number of hours the participant is working as required by the federal act. The department may refer the participant to alternative work activities or provide additional services to address barriers to employment facing the participant.

C. Up to twenty percent of the population of participants may be exempted from the sixty-month durational limit set out in Subsection A of this section because of hardship or because those participants are battered or subject

to extreme cruelty.

D. For the purposes of this section, a participant has been battered or subjected to extreme cruelty if the participant can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that the participant has been subjected to and currently is affected by:

- (1) physical acts that result in physical injury;
- (2) sexual abuse;
- (3) being forced to engage in nonconsensual sexual acts or activities;
- (4) threats or attempts at physical or sexual abuse;
- (5) mental abuse; or
- (6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

E. For the purposes of this section, a hardship exception applies to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, police reports or department records that the person is a person:

- (1) who is barred from engaging in a work activity because the person is temporarily or completely

disabled;

(2) who is the sole provider of home care to an ill or disabled family member;

(3) whose ability to be gainfully employed is affected by domestic violence;

(4) whose application for supplemental security income is pending in the application or appeals process and who:

(a) meets the criteria of Paragraph (1) of this subsection; or

(b) was granted a waiver from the work requirement or was granted a limited participation requirement pursuant to Paragraph (1) of Subsection I of Section 27-2B-5 NMSA 1978 in the last twenty-four months; or

(5) who otherwise qualifies for a hardship exception as defined by the department.

F. Pursuant to the federal act, the department shall not count a month of receipt of cash assistance or services toward the sixty-month durational limit if during the time of receipt the participant:

(1) was a minor and was not the head of a household or married to the head of a household; or

(2) lived in Indian country, as defined in the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of

the adults living in Indian country or in the village were not employed."

Section 5. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

- (1) cash assistance;
- (2) child care services;
- (3) other services; and
- (4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to the federal act. Within the New Mexico works program, the department may provide cash assistance or services to specific categories of benefit groups from general funds appropriated to cash assistance or services. The department may exclude these funds from temporary assistance for needy families maintenance of effort. The department shall identify

alternative state spending to claim as maintenance of effort and make necessary arrangements to allow reporting of that spending.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) child support passed through to the participant by the child support enforcement division of the department in the following amounts:

- (a) fifty dollars (\$50.00) per month

through December 31, 2008; and

(b) no later than January 1, 2009, a minimum of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children as based on the availability of state or federal funds;

(11) earned income deposited in a family opportunity account by a member of the benefit group or money received as matching funds for allowable uses by the owner of the family opportunity account pursuant to the Family Opportunity Accounts Act; and

(12) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) gross countable income that belongs to the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs

(1) through (4) of Subsection E of this section.

E. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

F. In addition to the disregards specified in Subsection E of this section, and between the effective date of this 2007 act and June 30, 2008, or until implementation of the employment retention and advancement bonus program described in Subsection G of this section, the department shall apply the following income disregards to the benefit group's earned income and then subtract that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate; and

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department.

G. No later than July 1, 2008, New Mexico employment incentives shall be as follows:

(1) the department shall implement an employment retention and advancement bonus program based on availability of state or federal funds that includes financial incentives to encourage a participant to:

(a) leave the New Mexico works program and move into an employment retention and advancement bonus incentive program;

(b) maintain a minimum of thirty hours per week employment; and

(c) leave the employment retention and advancement bonus incentive program due to increased earnings above the income eligibility standard and continue

employment;

(2) the employment retention and advancement bonus incentive program shall provide a cash bonus and employment services to a former participant who, upon application:

(a) is currently engaged in paid work for a minimum of thirty hours per week;

(b) has received cash assistance for at least three months and one of the last three months;

(c) has had a gross income of less than one hundred fifty percent of the federal poverty guidelines; and

(d) has participated in the employment retention and advancement bonus incentive program for no longer than eighteen months;

(3) for continued eligibility in the employment retention and advancement bonus incentive program, a participant shall:

(a) be engaged in paid work for thirty hours per week for at least one of the past three months;

(b) be engaged in paid work for thirty hours per week for at least four of the past six months;

(c) have had gross income less than one hundred fifty percent of the federal poverty guidelines; and

(d) have participated in the program no

more than eighteen months;

(4) the department shall provide employment services to assist participants to access available work supports, maintain employment and advance to higher-paying employment; and

(5) the department shall:

(a) establish the amount of bonus to be paid to participants in the employment retention and advancement bonus program based on availability of state and federal funds;

(b) propose rules to implement the employment retention and advancement bonus incentive program of this subsection no later than January 1, 2008; and

(c) begin implementation of the employment retention and advancement bonus incentive program of this subsection no later than July 1, 2008.

H. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

I. Based upon the availability of funds and in accordance with the federal act, the secretary may establish a separate temporary assistance for needy families cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation."

Section 6. Section 27-2B-11 NMSA 1978 (being Laws 1998, Chapter 8, Section 11 and Laws 1998, Chapter 9, Section 11, as amended by Laws 2002, Chapter 5, Section 1 and by Laws 2002, Chapter 6, Section 1) is amended to read:

"27-2B-11. INELIGIBILITY.--

A. The following are ineligible to be members of a benefit group:

(1) an inmate or patient of a nonmedical institution;

(2) a person who, in the two years preceding application, assigned or transferred real property unless the person:

(a) received or receives a reasonable return;

(b) attempted to or attempts to receive a reasonable return; or

(c) attempted to or attempts to regain title to the real property;

(3) a minor unmarried parent who has not successfully completed a high school education and who has a child at least twelve weeks of age in the minor unmarried parent's care unless the minor unmarried parent:

(a) participates in educational activities directed toward the attainment of a high school diploma or its equivalent; or

(b) participates in an alternative educational or training program that has been approved by the department;

(4) a minor unmarried parent who is not residing in a place of residence maintained by a parent, legal guardian or other adult relative unless the department:

(a) refers or locates the minor unmarried parent to a second-chance home, maternity home or other appropriate adult-supervised supportive living arrangement, and takes into account the needs and concerns of the minor unmarried parent;

(b) determines that the minor unmarried parent has no parent, legal guardian or other appropriate adult relative who is living or whose whereabouts are known;

(c) determines that a minor unmarried parent is not allowed to live in the home of a living parent, legal guardian or other appropriate adult relative;

(d) determines that the minor unmarried parent is or has been subjected to serious physical or emotional harm, sexual abuse or exploitation in the home of the parent, legal guardian or other appropriate adult relative;

(e) finds that substantial evidence exists of an act or a failure to act that presents an imminent or serious harm to the minor unmarried parent and the child of

the minor unmarried parent if they live in the same residence with the parent, legal guardian or other appropriate adult relative; or

(f) determines that it is in the best interest of the unmarried minor parent to waive this requirement;

(5) a minor child who has been absent or is expected to be absent from the home for forty-five days;

(6) a person who does not provide a social security number or who refuses to apply for one;

(7) a person who is not a resident of New Mexico;

(8) a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously, except that the person shall be ineligible only for ten years;

(9) a person who is a fleeing felon or a probation and parole violator; and

(10) a person concurrently receiving supplemental security income, tribal temporary assistance for needy families or bureau of Indian affairs general assistance.

B. For the purposes of this section, "second-chance home" means an entity that provides a supportive and supervised living arrangement to a minor unmarried parent where the minor unmarried parent is required to learn

parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of children.

C. Pursuant to the authorization provided to the states in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. Section 862a(d)(1)(A), New Mexico elects to exempt all persons domiciled in the state from application of 21 U.S.C. Section 862a(d)(1)(A) concerning the restriction of eligibility for benefits on the basis of a conviction for distribution of a controlled substance."

Section 7. Section 27-2B-19 NMSA 1978 (being Laws 1998, Chapter 8, Section 19 and Laws 1998, Chapter 9, Section 19) is amended to read:

"27-2B-19. SUBSIDIZED EMPLOYMENT.--

A. The department may administer a wage subsidy program based on availability of federal and state funds.

B. The wage subsidy program shall include the following requirements:

(1) participating employers shall hire participants who receive cash assistance for subsidized job slots that are full time and that offer a reasonable possibility of unsubsidized employment after the subsidy period;

(2) participating employers shall receive a

subsidy for up to twelve months;

(3) subsidized employees shall not be required to work in excess of forty hours per week;

(4) subsidized employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage;

(5) subsidized employment does not impair an existing contract or collective bargaining agreement;

(6) subsidized employment does not displace currently employed workers or fill positions that are vacant due to a layoff;

(7) wage subsidy employers shall:

(a) maintain health, safety and working conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

(b) provide on-the-job training necessary for subsidized employees to perform their duties;

(c) sign an agreement for each placement outlining the specific job offered to a subsidized employee and agree to abide by all of the requirements of the program;

(d) provide workers' compensation

coverage for each subsidized employee; and

(e) provide the subsidized employee with benefits equal to those for new employees or as required by state and federal law, whichever is greater;

(8) the department shall determine whether a participant is eligible to be a subsidized employee by establishing:

(a) that the participant has sufficient work experience to obtain unsubsidized employment;

(b) that the participant has completed an employment preparation program; or

(c) that the department or participant may benefit from this employment strategy;

(9) a disregard of income earned by the subsidized employee in the subsidized job shall be applied in the eligibility determination for services;

(10) the department shall suspend regular payments of cash assistance to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a subsidized employee who is otherwise eligible for cash assistance and food stamps;

(11) the department shall pay employers each month, from cash assistance;

(12) a subsidized employee shall be eligible for supplemental payments if the net monthly full-time wage

paid to the subsidized employee is less than the monthly total of the cash assistance the participant is eligible to receive. The department shall authorize issuance of a supplemental cash payment to compensate for the deficit. To determine if a deficit exists, the department shall adopt an equivalency scale that is adjustable to household size and other factors; and

(13) the department shall determine monthly and pay in advance supplemental payments to eligible subsidized employees. In calculating the payment, the department shall assume that the subsidized employee will work forty hours per week during the month unless an employer provides information that the number of hours to be worked by the subsidized employee will be reduced.

C. For the purposes of this section, "benefits" includes health care coverage, paid sick leave and holiday and vacation pay.

D. For the purposes of this section, "subsidized employee" means a participant engaged in a subsidized employment activity.

E. For the purposes of this section, "net monthly full-time wage" means a subsidized employee's wages after the required payroll deductions."

Section 8. Section 27-2D-2 NMSA 1978 (being Laws 2003, Chapter 317, Section 2) is amended to read:

"27-2D-2. DEFINITIONS.--As used in the Education Works Act:

A. "applicant" means a person applying for cash assistance on behalf of a benefit group;

B. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

C. "cash assistance" means cash payments distributed by the department pursuant to the Education Works Act;

D. "department" means the human services department;

E. "dependent child" means a natural, adopted step-child or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department;

F. "director" means the director of the income support division of the department;

G. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

H. "education works program" means the cash assistance, activities and services available to a recipient pursuant to the Education Works Act;

I. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

J. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

K. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

L. "person" means an individual;

M. "recipient" means a person who receives cash assistance or services or a member of a benefit group who has reached the age of majority;

N. "secretary" means the secretary of human services;

O. "services" means child-care assistance; payment for education- or employment-related transportation costs; job

search assistance; employment counseling; employment, education and job training placement; an annual payment for education-related costs; case management; or other activities whose purpose is to assist transition into employment;

P. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

Q. "vehicle" means a conveyance for the transporting of persons to or from employment or education for the activities of daily living or for the transportation of goods; "vehicle" does not include boats, trailers or mobile homes used as a principal place of residence."

Section 9. Section 27-2D-3 NMSA 1978 (being Laws 2003, Chapter 317, Section 3) is amended to read:

"27-2D-3. APPLICATION--RESOURCE PLANNING SESSION--
INDIVIDUAL EDUCATION PLAN--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made

under oath by an applicant with whom a dependent child resides and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that the applicant and other benefit group members have at the time of the filing of the application and other information required by the department.

B. The department shall assist applicants in completing the application for cash assistance or services and shall evaluate applicants to determine all department programs for which the applicant may be eligible. The department shall process all expedited food stamp applications within two business days of submission, and the department shall deliver expedited food stamps to eligible applicants within seven days of the application.

C. At the time of application for cash assistance and services, an applicant shall identify everyone who is to be counted in the benefit group. Once an application is approved, the recipient shall advise the department if there are any changes in the membership of the benefit group.

D. No later than thirty days after an application is filed, the department shall make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child

care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. The department shall work with the recipient to develop an individual educational plan that:

(1) sets forth the educational goal for the recipient, identifies barriers to that goal and identifies the steps to be taken by the recipient to achieve that goal;

(2) describes the services the department may provide so that the recipient may complete the recipient's educational goal; and

(3) provides for meetings with the recipient every six months or at the end of each academic term to review the eligibility of the benefit group and to review and revise the recipient's individual education plan.

H. The recipient and the department shall sign the recipient's individual education plan. The department shall:

(1) not allow a recipient to decline to participate in developing an individual education plan;

(2) not waive the requirement that a

recipient develop an individual education plan; and

(3) emphasize the importance of the individual education plan to the recipient."

Section 10. Section 27-2D-5 NMSA 1978 (being Laws 2003, Chapter 317, Section 5) is amended to read:

"27-2D-5. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of state funds.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of

household;

(10) child support passed through to the participant by the child support enforcement division of the department in the following amounts:

(a) fifty dollars (\$50.00) per month through December 31, 2008; and

(b) no later than January 1, 2009, a minimum of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children as based on availability of state and federal funds; and

(11) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) earned and unearned income that belongs to the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) earned and unearned income that belongs to the benefit group shall not equal or exceed the financial standard of need after applying the disregards set out in

Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

F. In addition to the disregards specified in Subsection E of this section, and between the effective date of this 2007 act and June 30, 2008, or until implementation of the employment retention and advancement bonus program in the New Mexico Works Act, the department shall apply the following income disregards to the benefit group's earned income and then subtract that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate; and

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department.

G. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group."

Section 11. REPEAL.--Section 27-2B-7.1 NMSA 1978 (being Laws 2003, Chapter 160, Section 1) is repealed. _____