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HOUSE BILL 210

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO PUBLIC ASSISTANCE; REQUIRING ANY APPLICANT FOR AND ANY ELIGIBLE RECIPIENT OF CERTAIN NEW MEXICO PUBLIC ASSISTANCE PROGRAMS TO SUBMIT TO DRUG TESTING AS A CONDITION OF ELIGIBILITY; REQUIRING THAT INDIVIDUALS WHO TEST POSITIVE FOR ILLEGAL DRUG USE UNDERGO TREATMENT AS A CONDITION OF PUBLIC ASSISTANCE ELIGIBILITY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

SECTION 1. A new section of the Public Assistance Act is enacted to read:

"[NEW MATERIAL] DRUG TESTING--TREATMENT--NONCOMPLIANCE.--

A. The department shall provide for drug testing of an applicant or recipient if it finds individualized suspicion that the recipient is engaged in illegal drug use.

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1 B. The department shall contract with or create
2 within the department a unit capable of screening a recipient's
3 blood, hair or urine to determine whether the recipient is
4 engaged in illegal drug use and shall provide by rule for
5 specific conditions under which a drug test shall be required
6 and specific tests to be administered.

7 C. If the result of a drug test indicates that a
8 recipient is engaged in illegal drug use, the department shall
9 refer the recipient to a treatment program, during which the
10 recipient shall remain eligible for assistance.

11 D. A recipient who fails to complete rehabilitation
12 in a treatment program is no longer eligible for public
13 assistance and shall be required to wait a minimum of one year
14 before becoming eligible and complying with the ordered
15 treatment.

16 E. For the purposes of the Public Assistance Act,
17 drug testing shall be conducted upon the department's finding
18 of individualized suspicion that a recipient is engaged in
19 illegal drug use for the following programs:

20 (1) the federal low-income home energy
21 assistance program or the Low Income Utility Assistance Act;
22 provided that the assistance is in the form of direct
23 assistance to the recipient and not through a third party;

24 (2) the cash assistance program pursuant to
25 the New Mexico Works Act or the Education Works Act; or

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1 (3) the general assistance program pursuant to
2 Section 27-2-7 NMSA 1978."

3 SECTION 2. Section 27-2-1 NMSA 1978 (being Laws 1973,
4 Chapter 376, Section 1) is amended to read:

5 "27-2-1. SHORT TITLE.--Sections [~~1 through 20 of this act~~
6 ~~and Sections 13-1-9, 13-1-10, 13-1-12, 13-1-13, 13-1-17,~~
7 ~~13-1-18, 13-1-18.1, 13-1-19, 13-1-20, 13-1-20.1, 13-1-21,~~
8 ~~13-1-22, 13-1-27, 13-1-27.2, 13-1-27.3, 13-1-27.4, 13-1-28,~~
9 ~~13-1-28.6, 13-1-29, 13-1-30, 13-1-34, 13-1-35, 13-1-37,~~
10 ~~13-1-39, 13-1-40, 13-1-41 and 13-1-42 NMSA 1953]~~ 27-2-1 through
11 27-2-34 NMSA 1978 may be cited as the "Public Assistance Act."

12 SECTION 3. Section 27-2-2 NMSA 1978 (being Laws 1973,
13 Chapter 376, Section 2, as amended) is amended to read:

14 "27-2-2. DEFINITIONS.--As used in the Public Assistance
15 Act:

- 16 A. "department" means the human services
17 department;
- 18 B. "board" means the [~~human services~~] department;
- 19 C. "director" means the secretary [~~of human~~
20 ~~services~~];
- 21 D. "drug testing" means analysis of an applicant's
22 or recipient's blood, hair or urine to screen for illegal drug
23 use;
- 24 E. "illegal drug use" means using or possessing a
25 controlled substance without a valid prescription or order of a

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1 practitioner while acting in the course of the practitioner's
2 professional practice or except as otherwise authorized by the
3 Controlled Substances Act;

4 F. "individualized suspicion" means a reasonable
5 impression of likelihood or probability based upon specific
6 observations concerning the appearance, behavior, speech or
7 breath odor of an individual;

8 [~~D.~~] G. "local office" means the county or district
9 office of the [~~human services~~] department;

10 [~~E.~~] H. "public welfare" or "public assistance"
11 means any aid or relief granted to or on behalf of an eligible
12 person under the Public Assistance Act and [~~regulations~~] rules
13 issued pursuant to that act;

14 [~~F.~~] I. "applicant" means a person who has applied
15 for assistance or services under the Public Assistance Act;

16 [~~G.~~] J. "recipient" means a person who is receiving
17 assistance or services under the Public Assistance Act;

18 [~~H.~~] K. "federal act" means the federal Social
19 Security Act, as may be amended from time to time, and
20 [~~regulations~~] rules issued pursuant to that act; and

21 [~~I.~~] L. "secretary" means the secretary of human
22 services."

23 SECTION 4. Section 27-2-4 NMSA 1978 (being Laws 1973,
24 Chapter 376, Section 4, as amended) is amended to read:

25 "27-2-4. ELIGIBILITY REQUIREMENTS.--Consistent with the
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1 federal act, a person is eligible for public assistance grants
2 under the Public Assistance Act if:

3 A. pursuant to Section [~~13-17-3 NMSA 1953~~] 27-2-3
4 NMSA 1978, the total amount of [~~his~~] the person's nonexempt
5 income is less than the applicable standard of need; [~~and~~]

6 B. nonexempt specific and total resources are less
7 than the level of maximum permissible resources established by
8 the [~~board; and~~] income support division of the department;

9 C. [~~he~~] the person meets all qualifications for one
10 of the public assistance programs authorized by the Public
11 Assistance Act; [~~and~~]

12 D. within two years immediately prior to the filing
13 of an application for assistance, [~~he~~] the person has not made
14 an assignment or transfer of real property unless [~~he~~] the
15 person has received a reasonable return for the real property
16 or, if [~~he~~] the person has not received [~~such~~] a reasonable
17 return, [~~he~~] the person is willing to attempt to obtain such
18 return and, if [~~such~~] that attempt proves futile, [~~he~~] the
19 person is willing to attempt to regain title to the property;
20 [~~and~~]

21 E. [~~he~~] the person is not an inmate of any public
22 nonmedical institution at the time of receiving assistance;
23 [~~and~~]

24 F. [~~he~~] the person is a resident of New Mexico; and

25 G. upon the department's finding of individualized

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1 suspicion that the person is engaged in illegal drug use, the
2 person consents to drug testing as a condition of receiving
3 public assistance. If the person tests positive for illegal
4 drug use, the person shall undergo, as a condition of
5 eligibility, treatment pursuant to the provisions of
6 Subsections C and D of Section 1 of this 2011 act."

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

10 "27-2B-1. SHORT TITLE.--Chapter 27, Article 2B NMSA 1978
11 may be cited as the "New Mexico Works Act"."

12 SECTION 6. Section 27-2B-3 NMSA 1978 (being Laws 1998,
13 Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as
14 amended) is amended to read:

15 "27-2B-3. DEFINITIONS.--As used in the New Mexico Works
16 Act:

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

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

25 C. "cash assistance" means cash payments funded by

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1 the temporary assistance for needy families block grant
2 pursuant to the federal act and by state funds;

3 D. "department" means the human services
4 department;

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

7 (1) seventeen years of age or younger;

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

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

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

15 G. "drug test" means an analysis of an applicant's
16 or participant's blood, hair or urine to screen for illegal
17 drug use;

18 [~~G.~~] H. "earned income" means cash or payment in
19 kind that is received as wages from employment or payment in
20 lieu of wages; and earnings from self-employment or earnings
21 acquired from the direct provision of services, goods or
22 property, production of goods, management of property or
23 supervision of services;

24 [~~H.~~] I. "federal act" means the federal Social
25 Security Act and rules promulgated pursuant to the Social

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1 Security Act;

2 [F.] J. "federal poverty guidelines" means the
3 level of income defining poverty by family size published
4 annually in the federal register by the United States
5 department of health and human services;

6 K. "illegal drug use" means using or possessing a
7 controlled substance without a valid prescription or order of a
8 practitioner while acting in the course of the practitioner's
9 professional practice or except as otherwise authorized by the
10 Controlled Substances Act;

11 L. "individualized suspicion" means a reasonable
12 impression of likelihood or probability based upon specific
13 observations concerning the appearance, behavior, speech or
14 breath odor of an individual;

15 [J.] M. "immigrant" means alien as defined in the
16 federal act;

17 [K.] N. "parent" means natural parent, adoptive
18 parent or stepparent;

19 [L.] O. "participant" means a recipient of cash
20 assistance or services or a member of a benefit group who has
21 reached the age of majority;

22 [M.] P. "person" means an individual;

23 [N.] Q. "secretary" means the secretary of the
24 department;

25 [O.] R. "services" means child care assistance;

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1 payment for employment-related transportation costs; job search
2 assistance; employment counseling; employment, education and
3 job training placement; one-time payment for necessary
4 employment-related costs; case management; or other activities
5 whose purpose is to assist transition into employment;

6 [P-] S. "unearned income" means old age, survivors
7 and disability insurance; railroad retirement benefits;
8 veterans administration compensation or pension; military
9 retirement; pensions, annuities and retirement benefits; lodge
10 or fraternal benefits; shared shelter payments; settlement
11 payments; individual Indian money; child support; unemployment
12 compensation benefits; union benefits paid in cash; gifts and
13 contributions; and real property income;

14 [Q-] T. "vehicle" means a conveyance for the
15 transporting of individuals to or from employment, for the
16 activities of daily living or for the transportation of goods;
17 "vehicle" does not include any boat, trailer or mobile home
18 used as a principal place of residence; and

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

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1 institution or proprietary school."

2 SECTION 7. Section 27-2B-4 NMSA 1978 (being Laws 1998,
3 Chapter 8, Section 4 and Laws 1998, Chapter 9, Section 4, as
4 amended) is amended to read:

5 "27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--
6 INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--
7 REVIEW PERIODS.--

8 A. Application for cash assistance or services
9 shall be made to the department. The application shall be in
10 writing or reduced to writing in the manner and on the form
11 prescribed by the department. The application shall be made
12 under oath by an applicant having custody of or residing with a
13 dependent child who is a benefit group member and shall contain
14 a statement of the age of the child, residence, a complete
15 statement of the amount of property in which the applicant has
16 an interest, a statement of all income that the applicant and
17 other benefit group members have at the time of the filing of
18 the application and other information required by the
19 department. The applicant shall undergo a drug test as a
20 condition of eligibility. If the applicant tests positive for
21 illegal drug use, as a condition of eligibility for cash
22 assistance or services, the applicant shall undergo treatment
23 pursuant to the provisions of Subsections C and D of Section 1
24 of this 2011 act.

25 B. The department shall assist an applicant in

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1 completing the application for cash assistance or services and
2 shall evaluate an applicant to determine eligibility for all
3 department programs for which the applicant is eligible. The
4 department shall process all expedited food stamp applications
5 within two business days of submission, and the department
6 shall deliver expedited food stamps to an eligible applicant
7 within seven days of the application.

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

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

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

22 F. Whenever the department receives an application
23 for assistance, a verification and record of the applicant's
24 circumstances shall promptly be made to ascertain the facts
25 supporting the application and to obtain other information

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1 required by the department. The verification may include a
2 visit to the home of the applicant, as long as the department
3 gives adequate prior notice of the visit to the applicant.

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

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

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

13 (2) sets forth obligations of the participant
14 that may include a requirement that the participant attend
15 school, maintain certain grades and attendance, keep the
16 participant's school-age children in school, immunize the
17 participant's children or engage in other activities that will
18 help the participant become and remain employed;

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

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

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1 and

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

5 I. The participant and the department shall sign
6 the participant's individual responsibility plan. The
7 department shall not allow a participant to decline to
8 participate in developing an individual responsibility plan.
9 The department shall not waive the requirement that a
10 participant develop an individual responsibility plan. The
11 department shall emphasize the importance of the individual
12 responsibility plan to the participant.

13 J. ~~[If a participant does not develop an individual~~
14 ~~responsibility plan, refuses to sign an individual~~
15 ~~responsibility plan or, refuses to attend semiannual reviews of~~
16 ~~an individual responsibility plan.]~~ The participant shall be
17 required to enter into a conciliation process pursuant to
18 Subsection C of Section 27-2B-14 NMSA 1978 if the participant:

19 (1) does not develop an individual
20 responsibility plan;

21 (2) refuses to sign an individual
22 responsibility plan;

23 (3) refuses to attend semiannual reviews of an
24 individual responsibility plan;

25 (4) refuses to undergo a drug test that the

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1 department requires pursuant to its individualized suspicion
2 that the participant engages in illegal drug use; or

3 (5) refuses treatment for illegal drug use
4 pursuant to Subsection C of Section 1 of this 2011 act after
5 testing positive in a drug test for illegal drug use.

6 K. Except in matters that relate to Paragraphs (4)
7 and (5) of Subsection J of this section, if the participant
8 persists in noncompliance with the individual responsibility
9 plan process after the conciliation process, the participant
10 shall be subject to sanctions pursuant to Section 27-2B-14 NMSA
11 1978.

12 [~~K.~~] L. The participant shall also sign a
13 participation agreement that designates the number of hours
14 that the participant must participate in work activities to
15 meet participation standards.

16 [~~L.~~] M. The department shall review the current
17 financial eligibility of a benefit group when the department
18 reviews food stamp eligibility.

19 [~~M.~~] N. The department shall meet semiannually with
20 a participant to review and revise the participant's individual
21 responsibility plan.

22 [~~N.~~] O. The department shall develop a complaint
23 procedure to address issues pertinent to the delivery of
24 services and other issues relating to a participant's
25 individual responsibility plan."

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1 SECTION 8. Section 27-2B-6 NMSA 1978 (being Laws 1998,
2 Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6, as
3 amended by Laws 2007, Chapter 46, Section 19 and by Laws 2007,
4 Chapter 350, Section 4) is amended to read:

5 "27-2B-6. DURATIONAL LIMITS.--

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

10 B. During a participant's semiannual review, the
11 department shall examine the participant's progress to
12 determine if the participant has successfully completed an
13 educational or training program or increased the number of
14 hours the participant is working as required by the federal
15 act. If the department has an individualized suspicion that a
16 participant is engaged in illegal drug use, it may require the
17 participant to undergo a drug test. If the participant tests
18 positive for illegal drug use, as a condition of continued
19 eligibility, the participant shall undergo treatment pursuant
20 to the provisions of Subsections C and D of Section 1 of this
21 2011 act. The department may refer the participant to
22 alternative work activities or provide additional services to
23 address barriers to employment facing the participant.

24 C. Up to twenty percent of the population of
25 participants may be exempted from the sixty-month durational

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1 limit set out in Subsection A of this section because of
2 hardship or because those participants are battered or subject
3 to extreme cruelty.

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

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

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

- 25 (1) who is barred from engaging in a work

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1 activity because the person has a temporary or permanent
2 disability;

3 (2) who is the sole provider of home care to a
4 family member who is ill or has a disability;

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

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

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

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

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

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

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

24 (2) lived in Indian country, as defined in the
25 federal act, if the most reliable data available with respect

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1 to the month indicate that at least fifty percent of the adults
2 living in Indian country or in the village were not employed."

3 SECTION 9. Section 27-2B-11 NMSA 1978 (being Laws 1998,
4 Chapter 8, Section 11 and Laws 1998, Chapter 9, Section 11, as
5 amended) is amended to read:

6 "27-2B-11. INELIGIBILITY.--

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

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

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

14 (a) received or receives a reasonable
15 return;

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

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

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

24 (a) participates in educational
25 activities directed toward the attainment of a high school

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1 diploma or its equivalent; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (11) a person who refuses to undergo a drug
23 test that the department requires based on the department's
24 individualized suspicion that the person engages in illegal
25 drug use;

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1 (12) a person who refuses to undergo treatment
2 for illegal drug use after a positive drug test for illegal
3 drug use; and

4 (13) a person who has been convicted for
5 distribution of controlled substances.

6 B. For the purposes of this section, "second-chance
7 home" means an entity that provides a supportive and supervised
8 living arrangement to a minor unmarried parent where the minor
9 unmarried parent is required to learn parenting skills,
10 including child development, family budgeting, health and
11 nutrition and other skills to promote long-term economic
12 independence and the well-being of children.

13 C. Pursuant to the authorization provided to the
14 states in the Personal Responsibility and Work Opportunity
15 Reconciliation Act of 1996, 21 U.S.C. Section 862a(d)(1)(A),
16 New Mexico elects not to exempt all persons domiciled in the
17 state from application of 21 U.S.C. Section 862a(d)(1)(A)
18 concerning the restriction of eligibility for benefits on the
19 basis of a conviction for distribution of a controlled
20 substance."

21 **SECTION 10.** Section 27-2D-7 NMSA 1978 (being Laws 2003,
22 Chapter 317, Section 7) is amended to read:

23 "27-2D-7. INELIGIBILITY.--

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

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

3 (2) a person who, in the two years preceding
4 application, assigned or transferred real property unless [~~he~~]
5 the person:

6 (a) received or receives a reasonable
7 return;

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

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

12 (3) a minor unmarried parent who has not
13 successfully completed a high school education and who has a
14 child at least twelve weeks of age in [~~his~~] the minor unmarried
15 parent's care unless the minor unmarried parent:

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

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

22 (4) a minor unmarried parent who is not
23 residing in a place of residence maintained by [~~his~~] the minor
24 unmarried parent's parent, legal guardian or other adult
25 relative unless the department:

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

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

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

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

16 (e) finds that substantial evidence
17 exists of an act or a failure to act that presents an imminent
18 or serious harm to the minor unmarried parent and the child of
19 the minor unmarried parent if they live in the same residence
20 with the parent, legal guardian or other appropriate adult
21 relative; or

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

25 (5) a minor child who has been absent or is

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1 expected to be absent from the home for forty-five days;

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

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

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

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

12 (10) a person concurrently receiving
13 supplemental security income, tribal temporary assistance for
14 needy families or bureau of Indian affairs general assistance;
15 [~~and~~]

16 (11) unless [~~he~~] the parent demonstrates good
17 cause, a parent who does not assist the department in
18 establishing paternity or obtaining child support or who does
19 not assign support rights to New Mexico as required pursuant to
20 the federal act; and

21 (12) an otherwise eligible person who refuses
22 to consent to drug testing as a condition of eligibility for
23 cash assistance or services pursuant to Section 27-20-3 NMSA
24 1978, the department's finding of individualized suspicion that
25 the person engages in illegal drug use.

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B. For the purposes of this section:

(1) "drug test" means an analysis of an applicant's or participant's blood, hair or urine to screen for illegal drug use;

(2) "illegal drug use" means using or possessing a controlled substance without a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice or except as otherwise authorized by the Controlled Substances Act;

(3) "individualized suspicion" means a reasonable impression of likelihood or probability based upon specific observations concerning the appearance, behavior, speech or breath odor of an individual; and

(4) "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(a)."

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1 SECTION 11. Section 27-6-14 NMSA 1978 (being Laws 1979,
2 Chapter 290, Section 4, as amended) is amended to read:

3 "27-6-14. PERSONS ELIGIBLE FOR UTILITY ASSISTANCE.--

4 A. Utility assistance supplements shall be paid to
5 or on behalf of those individuals who are determined to be
6 eligible by [~~regulation~~] rule of the department.

7 B. The department shall determine the amount of
8 payment to be made; provided that no payment shall be made if a
9 payment for the same services or incurred bills has been made
10 to the household under a federal program for a similar purpose.

11 C. The department shall determine by rule the
12 procedures for drug testing of an eligible individual; provided
13 that no individual shall be eligible for direct assistance
14 supplements to the eligible individual under this section
15 without consenting to drug testing for direct assistance
16 supplements upon the department's individualized suspicion of
17 illegal drug use. If an individual tests positive for illegal
18 drug use, as a condition of eligibility for direct assistance,
19 the individual shall undergo treatment pursuant to the
20 provisions of Subsections C and D of Section 1 of this 2011
21 act.

22 D. For purposes of this section:

23 (1) "drug testing" means analysis of an
24 individual's blood, hair or urine to screen for a illegal drug
25 use;

1 (2) "illegal drug use" means using or
2 possessing a controlled substance without a valid prescription
3 or order of a practitioner while acting in the course of the
4 practitioner's professional practice or except as otherwise
5 authorized by the Controlled Substances Act; and

6 (3) "individualized suspicion" means a
7 reasonable impression of likelihood or probability based upon
8 specific observations concerning the appearance, behavior,
9 speech or breath odor of an individual."

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