

AN ACT

RELATING TO DISABILITIES; MAKING TECHNICAL CHANGES TO STATUTORY LANGUAGE TO REFLECT CURRENT USE OF TERMS ABOUT PERSONS WITH DISABILITIES; CHANGING FUNDING LANGUAGE FOR THE DISABILITY FUND; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1995.

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

Section 1. Section 3-1-5 NMSA 1978 (being Laws 1985, Chapter 208, Section 2, as amended) is amended to read:

"3-1-5. PETITIONS--EXAMINATIONS OF SIGNATURES--PURGING--JUDICIAL REVIEW.--

A. All petitions, filing of petitions, verification of petitions and all other acts to be performed by petitioners, public officers or employees, regarding only those petitions that trigger a municipal special or regular election as authorized in the Municipal Code or otherwise authorized by law, shall comply with the terms of this section, except as otherwise expressly provided by law.

B. Each page or group of pages of a petition shall be accepted for filing by a municipal clerk, a county clerk, a governing body or a board of county commissioners only if:

(1) the municipal clerk has approved the form of petitions to be filed with the municipality prior to circulation of the petition; or

(2) the county clerk has approved the form of petitions to be filed with the county prior to circulation of the petition; and

(3) each page of the petition to be filed contains the approval or facsimile approval of the municipal or county clerk and the petition heading and penalty statement are legible when submitted for filing.

C. The municipal or county clerk shall approve a petition as to form if the proposed petition form contains:

(1) a heading that complies with a particular form of heading required by law; or

(2) a heading that clearly conveys the purpose for signing the petition if no particular form of heading is required by law;

(3) a place for the person signing the petition to write the date and the person's name (printed), address and signature, unless other requirements are mandated by law and then the petition shall comply with those requirements; and

(4) a statement that any person knowingly providing or causing to be provided any false information on a petition, forging a signature or signing a petition when that person knows that person is not a qualified elector in the municipality is guilty of a fourth degree felony.

D. The requirements of Subsection B of this

section shall be deemed complied with if an original form of petition is submitted to a municipal or county clerk for approval prior to circulation and after approval by the clerk that original form is reproduced by photocopying or other similar means so that the form and clerk's approval are unchanged from the original and are legible on each page of the petition to be filed.

E. A petition filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners shall include all individual pages of a petition complying with the provisions of this section, regardless of whether the pages are filed singly or in a group. Pages complying with the provisions of this section may be filed at different times so long as filing is within the time period allowed by law for the filing of the particular petition to be filed. If no time period is established by law, petition signatures may not span a period of time greater than sixty days from the date of the earliest signature on the petition, and the petition shall be filed within sixty-five days from the date of the earliest signature on the petition.

F. Upon approval of a proposed petition as to form, the municipal clerk shall notify the county clerk of the approval, and the county clerk shall furnish a current voter registration list of qualified electors entitled to vote in municipal elections to the municipal clerk within fourteen

days of the notification.

G. When a petition is filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners, the governing body or board of county commissioners shall either certify the petition as valid or order an examination of the petition and the names, addresses and signatures on the petition.

H. When an examination of the petition and the names, addresses and signatures on the petition is ordered, the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) resolve issues of residency and major infractions in accordance with the rules set forth in the Municipal Election Code;

(2) determine the minimum number of valid names, addresses and signatures, as mandated by law, that must be contained in the particular petition filed in order for it to be declared a valid petition;

(3) examine the petition and the names, addresses and signatures on the petition, purge from the petition the signature of any person who is not shown as a qualified elector of the municipality on the list of registered voters provided by the county clerk, purge any signature that is a forgery or that is illegible, purge any signature that appears more than once or that cannot be

matched to the name, address and signature as shown on the voter registration lists and the original affidavit of registration, purge the signature of any person who has not signed within the time limits set by law and purge the signature of any person who does not meet the qualifications for signing the petition as prescribed by law; and

(4) certify, no later than ten days after the petition is filed or after the expiration of the period within which the petition can be filed as prescribed by law, whichever occurs last, whether the petition contains the minimum number of valid names, addresses and signatures as mandated by law.

I. Nothing in this section shall preclude a person with a disability or an illiterate person from causing another person to sign a petition on a person with a disability's or an illiterate person's behalf, so long as the person signing for the person with a disability or illiterate person executes an affidavit acknowledged before a notary public that the person is authorized to sign the petition for the person with a disability or illiterate person. In order for the signature on behalf of the person with a disability or illiterate person to be counted and not purged, the original affidavit shall be submitted along with the petition containing the signature on behalf of the illiterate person or person with a disability.

J. If the petition is certified as valid pursuant

to Subsection G of this section or is certified as containing in excess of the minimum number of valid names, addresses and signatures mandated by law, then such certification shall be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners.

K. If the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, then the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) cause the names, addresses and signatures that were purged from the petition to be posted in the municipal or county clerk's office no later than on the day the petition is certified;

(2) determine the total number of people signing the petition, the number purged, the number that were not purged and the minimum number of valid names, addresses and signatures required by law for such a petition and post this information along with and at the same time as the posting required in Paragraph (1) of this subsection;

(3) publish once, pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978, within one week of the certification, the information compiled pursuant to Paragraphs (1) and (2) of this subsection; and

(4) cause the information compiled pursuant to Paragraphs (1) and (2) of this subsection and the date and

place of publication pursuant to Paragraph (3) of this subsection to be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners after publication has occurred.

L. The following rules shall govern reinstatement of purged signatures:

(1) within ten days after the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, any person whose signature has been purged from a petition may present evidence to the clerk to show that the person's signature has been wrongfully purged;

(2) if the clerk fails to reinstate that person's signature within three days of demand, then that person may, within ten days of the clerk's refusal to reinstate, petition the district court for an order to reinstate the person's signature on the petition. Upon a prima facie showing by the petitioner of the right to have that person's signature included upon the petition, the district court shall issue an order to the municipal clerk, county clerk, governing body or board of county commissioners to require reinstatement of the signature of the petitioner;

(3) within ten days after receiving the order of the district court, the municipal clerk, county clerk, governing body or board of county commissioners shall

reinstate the signature of the petitioner on the petition or show cause why the signature of the petitioner has not been reinstated. Upon hearing, if the district court finds that the person whose signature has been purged meets the qualifications for signing the petition, the district court shall make final its order of reinstatement to the municipal clerk, county clerk, governing body or board of county commissioners; and

(4) if a sufficient number of signatures are reinstated by the clerk, the district court or both to make the petition valid, then the reinstatement by the clerk or the district court, whichever occurs last, shall be deemed the date of certification of the validity of the petition for the purposes of adopting election resolutions, calling elections or for other matters as provided in the Municipal Code or otherwise provided by law.

M. Any petition that contains an insufficient number of signatures after all signatures have been reinstated pursuant to Subsection L of this section is invalid.

N. When a petition governed by this section is filed with the municipal clerk or the governing body of a municipality, the governing body or municipal clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law. When a petition governed by this section is required to be filed with

the county clerk or board of county commissioners, the board of county commissioners or county clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law.

O. Any person or any municipal or county official knowingly violating the provisions of this section, knowingly providing or causing to be provided any false information on a petition or forging a signature or otherwise signing a petition when that person knows the person is not a qualified elector in the municipality is guilty of a fourth degree felony.

P. The provisions of this section shall not be binding upon a municipality to the extent such provisions are inconsistent with or superseded by the terms and provisions of:

(1) the charter of a municipality incorporated by a special act;

(2) the charter of a municipality adopted pursuant to Article 10, Section 6 of the constitution of New Mexico;

(3) the charter of a municipality adopted pursuant to the Municipal Charter Act; or

(4) the charter of a combined municipal organization.

Q. Once a petition has been filed with a municipal

clerk, a county clerk, a governing body or a board of county commissioners, no name on the petition may be withdrawn except those names purged pursuant to Subsection H of this section."

Section 2. Section 3-8-22 NMSA 1978 (being Laws 1985, Chapter 208, Section 30, as amended) is amended to read:

"3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST VOTER--TYPE OF ASSISTANCE.--

A. A voter may request assistance in voting only if the voter is:

- (1) visually impaired;
- (2) a person with a physical disability;
- (3) unable to read or write; or
- (4) a member of a language minority who is

unable to read well enough to exercise the elective franchise.

B. When a voter who is eligible for assistance requires assistance in marking a paper ballot or recording a vote on a voting machine, the voter shall announce this fact in an audible tone before receiving the paper ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance

in the signature roster, the voter shall be allowed to receive assistance in marking a paper ballot or recording a vote on a voting machine.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking and folding a paper ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. "Language minority" means a person who is Native American or of Spanish heritage,

and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing Native American election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service."

Section 3. Section 3-21-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter 170, Section 4 and also by Laws 1995, Chapter 211, Section 3) is amended to read:

"3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

- (1) height, number of stories and size of buildings and other structures;
- (2) percentage of a lot that may be occupied;
- (3) size of yards, courts and other open space;
- (4) density of population; and
- (5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

- (1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and
- (2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district

may differ from regulation in another district.

C. All state-licensed or state-operated community residences for persons with a mental or developmental disability and serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest amount of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the registered qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of registered qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be

subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies."

Section 4. Section 3-51-46 NMSA 1978 (being Laws 1973, Chapter 22, Section 3, as amended) is amended to read:

"3-51-46. PASSENGER MOTOR VEHICLE OF A PERSON WITH A DISABILITY--PARKING PRIVILEGE.--Passenger motor vehicles owned by and carrying a person with a disability and displaying special registration plates, or passenger motor vehicles carrying persons with severe mobility impairment and displaying parking placards, issued pursuant to Section 66-3-16 NMSA 1978, shall be permitted to park for unlimited periods of time in parking zones restricted as to length of time parking is normally permitted and are exempt from payment of any parking fee of the state or its political subdivisions. The provisions of this section shall prevail over any other law, rule or local ordinance but do not apply to zones where stopping, standing or parking is prohibited, zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of the day in order to facilitate traffic during those hours when parking is prohibited and zones subject to similar regulation because parking presents a traffic hazard."

Section 5. Section 3-60-26 NMSA 1978 (being Laws 1975, Chapter 341, Section 26) is amended to read:

"3-60-26. POWERS OF MUNICIPALITY.--Every municipality

shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Community Development Law, including but not necessarily limited to the following powers:

A. to undertake and carry out community development projects within its area of operation, including clearance and redevelopment, rehabilitation, conservation and development activities and programs; to make, enter into and execute contracts and other agreements and instruments necessary or convenient to the exercise of its powers under the Community Development Law; and to disseminate slum clearance, prevention of blight and community development information;

B. to provide, arrange or contract for the furnishing or repair by any public or private person or agency for services, privileges, works, streets, roads, public utilities, public buildings or other facilities for or in connection with a community development project; to, within its area of operation, install, acquire, construct, reconstruct, maintain and operate streets, utilities, parks, playgrounds, public buildings, including but not limited to parking facilities, transportation centers, public safety buildings and other public improvements or facilities as may be required by the municipality, the state or a political subdivision of the state; and to agree to any conditions that

it may deem reasonable and appropriate that are attached to federal financial assistance and imposed pursuant to federal law, including conditions relating to the determination of prevailing salaries or wages or compliance with federal and state labor standards, compliance with federal property acquisition policy and the provision of relocation assistance in accordance with federal law, in the undertaking or carrying out of a community development project; and to include in any contract let in connection with the project provisions to fulfill any of these conditions as it may deem reasonable and appropriate; provided, however, that all purchases of personal property shall be in accordance with the Procurement Code;

C. within its area of operation, to inspect any building or property in any community development area in order to make surveys, appraisals, soundings or test borings and to obtain an order for this purpose from a court of competent jurisdiction in the event inspection is denied by the property owner or occupant; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise any real property or personal property for its administrative or project purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real

or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of the Community Development Law. However, no statutory provisions with respect to the acquisition, clearance or disposition of real property by public bodies shall restrict a municipality or other public body exercising powers under the Community Development Law in the exercise of its functions with respect to a community development project unless the legislature shall specifically so state;

D. to invest any community development project funds held in reserve or sinking funds or other project funds that are not required for immediate disbursement in property or securities in which municipalities may legally invest funds subject to their control; to redeem bonds as have been issued pursuant to Section 3-60-30 NMSA 1978 at the redemption price established in the bonds or to purchase the bonds at less than redemption price. All bonds so redeemed or purchased shall be canceled;

E. to borrow money subject to those procedures and limitations as may be provided in the constitution of New Mexico or the Municipal Code and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state,

the county or other public body or from any sources, public or private, for the purposes of the Community Development Law; and to give security as may be required and subject to the provisions and limitations of general law except as may otherwise be provided by the Community Development Law and to enter into and carry out contracts in connection therewith. A municipality may include in any contract for financial assistance with the federal government for a community development project conditions imposed pursuant to federal law and that the municipality may deem reasonable or appropriate and that are not inconsistent with the purposes of the Community Development Law;

F. within its area of operation, to make all plans necessary for the carrying out of the purposes of the Community Development Law and to contract with any person, public or private, in making and carrying out the plans and to adopt or approve, modify and amend the plans. The plans may include, without limitation:

(1) a general plan for development of the community as a whole;

(2) community development plans for specific areas;

(3) plans for programs of voluntary or assisted repair and rehabilitation of buildings and improvements;

(4) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements; and

(5) appraisals, title searches, surveys, studies and other preliminary plans and work necessary to prepare for the undertaking of community development projects.

The municipality is authorized to develop, test and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of slums and urban blight and to pay for, accept and utilize grants of funds from the federal government for such purposes;

G. to prepare plans and provide reasonable assistance for the relocation of families displaced from a community development area to the extent essential for acquiring possession of and clearing the area or its parts to permit the carrying out of the community development project;

H. to appropriate, under existing authority, the funds and make expenditures necessary to carry out the purposes of the Community Development Law and, under existing authority, to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; in accordance with applicable law or ordinances, to plan or replan, zone or rezone any part of the

municipality or make exceptions from building regulations; and to enter into agreements with a community development agency vested with community development project powers under Section 3-60-34 NMSA 1978, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by the municipality pursuant to any of the powers granted by the Community Development Law;

I. within its area of operation, to organize, coordinate and direct the administration of the provisions of the Community Development Law as they apply to the municipality in order that the objective of remedying slum and blighted areas and preventing the causes within the municipality may be most effectively promoted and achieved; and to establish any new office or offices of the municipality or to reorganize existing offices as necessary;

J. to acquire real property, in addition to power elsewhere conferred in the Community Development Law, that is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources and scenic areas; the provision of recreational opportunities; or is to be used for public purposes; and

K. to engage in any or all of the following activities as part of a community development project:

(1) acquisition, construction, reconstruction or installation of public works, facilities and site or other improvements, including but not limited to neighborhood facilities, senior citizen centers, historic properties, utilities, streets, street lights, water and sewer facilities, including connections for residential users, foundations and platforms for air-rights sites, pedestrian malls and walkways, parks, playgrounds and other recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities and fire protection or health facilities that serve designated community development areas;

(2) special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly persons and persons with disabilities;

(3) provision of public services in the community development area that are not otherwise available in the area, including but not limited to the provisions of public services directed to the employment, economic development, crime prevention, child care, health, drug abuse, special education, welfare or recreation needs of the people who reside in the community development area;

(4) payment of the nonfederal share of any federal grant-in-aid program to the municipality that will be a part of a community development project;

(5) payment of relocation costs and assistance to individuals, families, businesses, organizations and farm operations displaced as a direct result of a community development project in accordance with applicable law governing such payment; and

(6) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development plans and projects.

Payments made by the municipality or community development agency under the terms of a contract for reconstruction or rehabilitation of private property shall be made from a special fund created for that purpose and shall not be paid directly to the property owner but shall instead be paid to the contractor by the municipality or agency from such fund upon proper authorization of the property owner and notification that the terms of the contract have been fulfilled. However, all such rehabilitation contracts shall be between the property owner and contractor after a sealed bidding procedure and award of contract approved by the municipality have taken place."

Section 6. Section 9-7-4.1 NMSA 1978 (being Laws 2004, Chapter 51, Section 1) is amended to read:

"9-7-4.1. COMPREHENSIVE STRATEGIC PLAN FOR HEALTH.--

A. The department, in conjunction with the New Mexico health policy commission and other state agencies,

pursuant to Section 9-7-11.1 NMSA 1978, shall develop a comprehensive strategic plan for health that emphasizes prevention, personal responsibility, access and quality.

B. The department shall publish the comprehensive strategic plan for health by July 1, 2004 and July 1 of subsequent even-numbered years. By July 1 of odd-numbered years, the department shall review and update or amend the plan in response to changes and developments.

C. The department shall include the legislature, health care providers, consumer and patient advocates, health care financing organizations, managed care organizations, major insurers in the state, the human services department, the children, youth and families department, the aging and long-term services department, pharmaceutical manufacturers and other stakeholders in its development of the comprehensive strategic plan for health so as to give geographic representation to all areas of the state. The department shall ensure that public participation and public input are integrated into the planning process. The department shall convene regional meetings on the proposed plan to allow public review and comment, including oral and written testimony, pursuant to the Open Meetings Act.

D. The department shall consult with the governments of Indian nations, tribes and pueblos located wholly or partially within New Mexico to include Indian

nations, tribes and pueblos in the development of the comprehensive strategic plan for health.

E. The department shall report its findings, recommendations and goals in its biennial comprehensive strategic plan for health. The plan shall address the following areas and others that the governor and the legislature may from time to time request:

(1) a summary of the state's health care system that includes the financial, administrative and delivery structure in both the public and private sector;

(2) the diseases, injuries and risk factors for physical, behavioral and oral health that are the greatest cause of illness, injury or death in the state, with special attention to and recognition of the disparities that currently exist for different population groups;

(3) key indicators of and barriers to health care coverage and access, with specific emphasis on reducing the number of uninsured New Mexicans;

(4) the role of the department, other state agencies and the private sector in identifying strategies and interventions to provide health care coverage, access and quality;

(5) a continuum of care model that emphasizes prevention, early intervention and health promotion and that includes public health services, emergency medical

services, primary care, acute care, specialized care, tertiary care and long-term care;

(6) health education, wellness, nutrition and exercise initiatives that emphasize personal health responsibility;

(7) workforce initiatives to identify, recruit and retain health care professionals;

(8) health care facility infrastructure, capacity, capitalization and financial viability in both the public and private sector;

(9) licensing, credentialing, oversight and tracking initiatives designed to improve health care quality and outcome measurements;

(10) programs, services and activities designed to address the needs of persons who have a disability, are elderly or have special needs;

(11) anticipated demands and challenges on the health care system as the need for long-term care services increases;

(12) data and information addressing key health status and system indicators, statistics, benchmarks, targets and goals for the state and comparing it nationally, regionally and to other states of similar size and demographics; provided that individually identifiable health information and other proprietary information is protected as

required by state or federal law; and

(13) planning and response to public health emergencies, including bioterrorism, pandemic flu, disease outbreaks and other situations that will require a coordinated response by the health care system."

Section 7. Section 9-8-13 NMSA 1978 (being Laws 1977, Chapter 252, Section 15, as amended) is amended to read:

"9-8-13. AUTHORITY TO CONDUCT SOCIAL SERVICES.--

A. The social services division of the department has authority to:

(1) establish, administer and supervise child welfare activities and social services to children, including but not limited to:

(a) children placed for adoption;

(b) homeless, dependent and neglected children;

(c) children in foster family homes or institutions because of dependency or neglect; and

(d) children with a physical or mental disability who may need such services;

(2) establish, administer and supervise social services for adults;

(3) license foster homes; and

(4) prescribe such regulations as it deems necessary to enforce and comply with this section and the

Child Placement Agency Licensing Act and inspect and require reports from all private institutions, boarding homes, shelter care homes, group homes, foster homes and other facilities providing assistance, care or other direct services to children or aged, blind, disabled or other dependent persons.

B. Nothing contained in this section or in the Human Services Department Act shall authorize the secretary:

(1) to establish or prescribe standards or regulations for, or otherwise regulate programs for or services to, children in group homes excepting only:

(a) the right to inspect and require reports from group homes as may be reasonably necessary to carry out any functions that may otherwise be specifically granted the department by law; and

(b) the right to require annual reports from group homes stating the name, address and telephone number of: 1) their principal offices; 2) their residential facilities for the care of children; 3) the membership of their boards of directors or other governing bodies if any; and 4) the persons in charge of the group homes and of their residential facilities; or

(2) to accept any delegation from or to exercise, perform or participate in any functions or duties, including any investigations or inspections, of the department of health or of its secretary that relate to group homes.

As used in this subsection, "group home" includes any home the principal function of which is to care for a group of children on a twenty-four-hour-a-day residential basis and that receives no funds as such directly from or through the department and that is a member of any state or national association that requires it to observe standards comparable to pertinent recognized state or national group home standards for the care of children, such as the New Mexico Christian child care association, the national association of homes for children or the council on accreditation or that is certified by any such organization as complying with such standards."

Section 8. Section 21-2-6 NMSA 1978 (being Laws 1978, Chapter 54, Section 1, as amended) is amended to read:

"21-2-6. STATEWIDE PLANNING--PARTICIPATING AGENCIES AND PERSONS.--

A. The state commission in carrying out its planning activities for post-secondary education shall consult with and invite the active participation of:

(1) representatives of post-secondary educational institutions of the several types enumerated in Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;

(2) the public education commission;

(3) the public education department;

(4) representatives of public and private elementary and secondary schools;

- (5) the secretary of labor;
- (6) the tourism department;
- (7) the apprenticeship council;
- (8) the economic development department;
- (9) the state advisory council on vocational education;
- (10) the secretary of finance and administration or the secretary's designee;
- (11) persons familiar with the education needs of persons with a disability and persons disadvantaged by economic, racial or ethnic status;
- (12) representatives of business, industry, organized labor and agriculture;
- (13) the general public; and
- (14) private in-state post-secondary institutions.

B. Whenever the planning activities carried out under the provisions of Section 21-2-5 NMSA 1978 are concerned with the types of post-secondary education enumerated in Subparagraphs (a) through (e) of Paragraph (1) of Subsection A of Section 21-2-2 NMSA 1978, the state commission shall directly involve the public education commission and the public education department in all planning activities."

Section 9. Section 21-6-2 NMSA 1978 (being Laws 1899, Chapter 42, Section 3, as amended) is amended to read:

"21-6-2. PURPOSES--ADMISSION AGE--ADMISSION OF
NONRESIDENTS--TUITION--CHANGE OF NAME--EXPENDITURES FOR
GRADUATES IN COLLEGE--AUDIOLOGICAL CLINIC--SCHOLARSHIPS--
PRESIDENT'S POWERS.--

A. Except as otherwise provided in this section, the New Mexico school for the deaf shall be devoted exclusively to the care and instruction of persons of either sex who are residents within the state and between the ages of five years and the age of majority and who are deaf or hard-of-hearing; provided that the board of regents, in its discretion, may admit residents of this state who have attained the age of one year for daytime care and instruction, but not for residential purposes, and may also admit residents of this state who are over the age of majority.

B. The board of regents may make expenditures for undergraduate collegiate expenses of graduates of the New Mexico school for the deaf. The board of regents may permit the use of facilities of the school by public and private agencies in the state in carrying on a conservation-of-hearing program when the agencies participate in the cost of the operation, upon such terms and conditions as the board of regents may prescribe.

C. The board of regents may contract with the veterans' administration and the vocational rehabilitation division of the public education department to provide

instruction for adults with a disability in vocations or lip reading taught at the school, but such adults may not be housed at the school. The board of regents may lease for a nominal sum for periods not to exceed three months to the public schools, institutions and agencies of the state any hearing test equipment owned by the school.

D. The board of regents, for the purpose of creating a source of teachers of the deaf, may pay tuition and other necessary expenses of graduates of New Mexico colleges desiring to take training to teach the deaf in out-of-state training centers and intending to make the teaching of the deaf in New Mexico their profession.

E. All instruction shall be free. Deaf or hard-of-hearing children from other states or territories may be received and educated in the school under such rules and regulations as the board of regents may prescribe, but in no event shall such children be admitted except upon the payment or guaranty of at least one thousand dollars (\$1,000) for the school year, on the basis of nine months for a school year. The president of the board of regents is authorized to make and enter into on behalf of the school all necessary agreements and contracts with the United States government and the proper authorities of other states and territories for the reception and education of such children, and the president is further authorized to receive and receipt for all money paid

upon such account and to endorse and transfer all checks, vouchers or other evidences of payment made or received in behalf of the school."

Section 10. Section 21-21G-3 NMSA 1978 (being Laws 1988, Chapter 111, Section 3, as amended) is amended to read:

"21-21G-3. DEFINITIONS.--As used in the Graduate Scholarship Act:

A. "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;

B. "award recipient" means a student awarded a graduate scholarship;

C. "department" means the higher education department;

D. "eligible institution" means any graduate-degree-granting state university accredited by the north central association of colleges and secondary schools;

E. "graduate and professional field" means any program of study intended to result in a master's or doctoral degree, excluding the degree in medicine; and

F. "groups underrepresented in graduate education" means women, minorities, persons with a visual impairment or other physical disability and other groups who have traditionally been underrepresented in the specific area of graduate study or profession for which the scholarship is

awarded."

Section 11. Section 22-14-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 191) is amended to read:

"22-14-1. DEFINITIONS.--As used in Sections 22-14-2 through 22-14-16 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable an individual to engage in a remunerative occupation. Vocational education may provide but is not limited to guidance and counseling, vocational instruction, training for vocational education instructors, transportation and training material and equipment;

B. "person with a disability" means a person with a physical or mental disability that constitutes a substantial handicap to employment but that is of such a nature that vocational rehabilitation may be reasonably expected to enable the person to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a person with a disability to engage in a remunerative occupation. Vocational rehabilitation may provide but is not limited to medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance and training material and

equipment; and

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education or vocational rehabilitation."

Section 12. Section 22-14-16 NMSA 1978 (being Laws 1967, Chapter 16, Section 204) is amended to read:

"22-14-16. ADMISSION TO STATE EDUCATIONAL INSTITUTIONS--EXEMPTION FROM CERTAIN FEES.--Upon written request of the department, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, a person with a disability meeting the standards of the institution."

Section 13. Section 24-1G-4 NMSA 1978 (being Laws 2005, Chapter 55, Section 4) is amended to read:

"24-1G-4. TELEHEALTH COMMISSION CREATED--POWERS AND DUTIES--MEMBERSHIP.--

A. The "New Mexico telehealth commission" is created. The commission is administratively attached to the department of health, which shall work in conjunction with the New Mexico health policy commission, in accordance with the Executive Reorganization Act.

B. The commission shall consist of no more than twenty-five members with members, one-third of whom shall be from rural areas, chosen from the following categories, all of whom shall be appointed by and serve at the pleasure of the

governor:

- (1) health care facilities;
- (2) health care practitioners;
- (3) health care workforce educators;
- (4) telehealth technology experts;
- (5) the telecommunications industry;
- (6) the business community;
- (7) health care insurance providers or other

health care payers;

- (8) Indian nations, tribes and pueblos;
- (9) legislators;
- (10) state agencies responsible for:
 - (a) telecommunications;
 - (b) public health;
 - (c) medicaid and social services;
 - (d) workforce development;
 - (e) children's health and social

services;

- (f) services for the elderly and
- persons with a disability;
- (g) criminal justice;
 - (h) health policy and planning; and
 - (i) education; and

(11) other members as the governor may
appoint to ensure appropriate cultural and geographic

representation and the interests of the public.

C. The commission shall:

(1) identify how telehealth can be used to increase access to care and implement state comprehensive health plans;

(2) identify barriers to telehealth utilization and expansion, including payment, infrastructure, training and workforce availability;

(3) inventory the state's telehealth assets, map available telecommunications infrastructure and examine the financial impact of failing to develop the state's telehealth capacities;

(4) coordinate public and private sector initiatives to enhance networking, portal development and connectivity and to expand telehealth and telecommunications capacity;

(5) establish such subcommittees as the commission deems necessary to fulfill its purpose, powers and duties or to address specific telehealth issues;

(6) identify specific actions to increase collaborative efforts and public-private partnerships to increase the use of telehealth for health care access development, patient outcome improvement, patient and workforce education and health care practitioner recruitment and development;

(7) develop and disseminate specific telehealth standards and guidelines to ensure quality of care, positive health outcomes, appropriate use of technology and protection of privacy and confidentiality;

(8) review and comment on initiatives, projects or grant applications to ensure telehealth standards and guidelines are met and maximum collaboration and cooperation across the state is encouraged;

(9) meet at least once each quarter at the call of the chair or vice chair, who shall be designated by the governor from among the membership; and

(10) report annually to the governor and the legislature on the state of the telehealth system and the adequacy and allocation of telehealth services throughout the state, providing the governor and the legislature with specific recommendations for improving telehealth and related service systems.

D. A majority of the members of the commission constitutes a quorum for the transaction of business."

Section 14. Section 24-2-1 NMSA 1978 (being Laws 1977, Chapter 253, Section 40) is amended to read:

"24-2-1. AUTHORITY TO CONDUCT SERVICES FOR CHILDREN WITH A DISABILITY.--The public health division of the department of health has authority to establish, administer and supervise activities to children who have a physical

disability or whose condition may become a disability. The public health division also may supervise the administration of those services to children with a disability that are not administered directly by it."

Section 15. Section 24-9A-1 NMSA 1978 (being Laws 1979, Chapter 132, Section 1, as amended) is amended to read:

"24-9A-1. DEFINITIONS.--As used in the Maternal, Fetal and Infant Experimentation Act:

A. "viability" means that stage of fetal development when the unborn child is potentially able to live outside the mother's womb, albeit with artificial aid;

B. "conception" means the fertilization of the ovum of a human female by the sperm of a human male;

C. "health" means physical or mental health;

D. "clinical research" means any biomedical or behavioral research involving human subjects, including the unborn, conducted according to a formal procedure. The term is to be construed liberally to embrace research concerning all physiological processes in human beings and includes research involving human in vitro fertilization, but shall not include diagnostic testing, treatment, therapy or related procedures conducted by formal protocols deemed necessary for the care of the particular patient upon whom such activity is performed and shall not include human in vitro fertilization performed to treat infertility; provided that this procedure

shall include provisions to ensure that each living fertilized ovum, zygote or embryo is implanted in a human female recipient, and no physician may stipulate that a woman must abort in the event the pregnancy should produce a child with a disability. Provided that emergency medical procedures necessary to preserve the life or health of the mother or the fetus shall not be considered to be clinical research;

E. "subject at risk", "subject" or "at risk" means any person who may be exposed to the likelihood of injury, including physical or psychological injury, as a consequence of participation as a subject in:

(1) any research, development or related activity that departs from the application of those established and accepted methods deemed necessary to meet the person's needs;

(2) controlled research studies necessary to establish accepted methods designed to meet the person's needs; or

(3) research activity that poses a significant risk to the subject;

F. "significant risk" means an activity that is likely to cause disfigurement or loss or impairment of the function of any member or organ;

G. "fetus" means the product of conception from the time of conception until the expulsion or extraction of

the fetus or the opening of the uterine cavity, but shall not include the placenta, extraembryonic membranes, umbilical cord, extraembryonic fluids and their resident cell types and cultured cells;

H. "live-born infant" means an offspring of a person that exhibits heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the infant ex utero; provided the Maternal, Fetal and Infant Experimentation Act does not apply to a fetus or infant absent the characteristics set forth in this subsection;

I. "infant" means an offspring of a human being from the time it is born until the end of its first chronological year;

J. "born" means the time the head or any other part of the body of the fetus emerges from the vagina or the time the uterine cavity is opened during a caesarean section or hysterotomy; and

K. "in vitro fertilization" means any fertilization of human ova that occurs outside the body of a female, either through admixture of donor human sperm and ova or by any other means."

Section 16. Section 27-1-2 NMSA 1978 (being Laws 1937, Chapter 18, Section 3) is amended to read:

"27-1-2. POWERS OF HUMAN SERVICES DEPARTMENT.--

A. The human services department is an agency of the state and shall at all times be under the exclusive control of this state. The management and control of the human services department is vested in the secretary of human services.

B. Subject to the constitution of New Mexico, the human services department has the power to:

- (1) sue and, with the consent of the legislature, be sued;
- (2) adopt and use a corporate seal;
- (3) have succession in its corporate name;
- (4) make contracts as authorized in Chapter 27 NMSA 1978 to carry out the purposes of that chapter;
- (5) adopt, amend and repeal bylaws, rules and regulations;
- (6) purchase, lease and hold real and personal property necessary or convenient for the carrying out of its powers and duties, to exercise the right of eminent domain to acquire such real property in the same manner as the state now exercises that right and to dispose of any property acquired in any manner;
- (7) have such powers as may be necessary or appropriate for the exercise of the powers specifically conferred upon it in Chapter 27 NMSA 1978;
- (8) 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 for public assistance, public welfare, social security or any other similar purpose;

(9) enter into reciprocal agreements with public welfare agencies of other states relative to the provision for relief or assistance to transients and nonresidents;

(10) establish and administer programs of old age assistance and aid to dependent children and persons with a visual impairment;

(11) establish and administer a program of services for children with a disability or who have a condition that may lead to a disability, and to supervise the administration of those services that are not administered directly by it;

(12) establish, extend and strengthen public welfare services for children; and

(13) establish and administer a program for general relief."

Section 17. Section 27-1-3 NMSA 1978 (being Laws 1937, Chapter 18, Section 4, as amended) is amended to read:

"27-1-3. ACTIVITIES OF HUMAN SERVICES DEPARTMENT.--The 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 department shall, except as otherwise provided by law:

A. administer old age assistance, aid to dependent children, assistance to persons with a visual impairment or other physical disability and general relief;

B. administer all aid or services to children with a disability, including the extension and improvement of services for children with such a disability, insofar as practicable under conditions in this state, provide for locating children who have a disability or a condition that may become a disability, provide corrective and any other services and care and facilities for diagnosis, hospitalization and after-care for such children and supervise the administration of those services that 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 a child who because of a physical or mental disability 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 that 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 persons with a physical disability 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 June 19, 1987;

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 persons who are elderly, who have a visual impairment, who have a physical or developmental disability or who are otherwise dependent.

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."

Section 18. 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, including work associated with the refurbishing of publicly assisted housing if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance, as long as the department complies with the federal act;

(7) community service programs;

(8) vocational education, except that vocational education shall not qualify as a work activity for longer than is provided by the federal act;

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

(10) education directly related to employment for a participant who has not received a high school diploma or a certificate of high school equivalency;

(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 once the department determines the person is ready to engage in a work activity or once the person has received cash assistance or services for twenty-four months or as otherwise required by the federal act, whether or not consecutive, whichever is earlier.

E. The following qualify as temporary alternative work activities that the department may establish for no longer than twelve weeks except as otherwise provided:

(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 post-secondary 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) and (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 person with a disability.

H. A participant engaged in post-secondary 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 has a temporary or permanent disability;

(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 person with a disability;

(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."

Section 19. 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 and services for up to sixty months.

B. During a participant's fourth, sixth and eighth semiannual reviews, 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 possible 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 has a temporary or permanent disability;

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

(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 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 20. Section 27-4-2 NMSA 1978 (being Laws 1973, Chapter 311, Section 2, as amended) is amended to read:

"27-4-2. DEFINITIONS.--As used in the Special Medical Needs Act:

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

Section 21. Section 27-4-3 NMSA 1978 (being Laws 1973, Chapter 311, Section 3) is amended to read:

"27-4-3. PERSONS WITH SPECIAL NEEDS.--

- A. The division shall by regulation establish a

program to provide essential medical care for persons who are elderly or blind or who have a disability and who are not eligible for public assistance under the Public Assistance Act and who have a serious medical condition that will as a reasonable medical probability lead to death in the near future.

B. Such medical condition shall 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 division."

Section 22. Section 27-9-1 NMSA 1978 (being Laws 1983, Chapter 323, Section 1) is amended to read:

"27-9-1. PROGRAM--DEMONSTRATIONS.--The human services department, in cooperation with the department of health, is authorized to administer demonstration programs that provide in-home and coordinated community care services to the frail elderly and to persons with a disability who would otherwise require institutionalization. The programs authorized by this section shall serve both those eligible and not eligible for federal medical assistance programs."

Section 23. Section 27-13-7 NMSA 1978 (being Laws 2003, Chapter 207, Section 1) is amended to read:

"27-13-7. FISCAL INTERMEDIARY--EXEMPTIONS--WORKERS' COMPENSATION.--

A. A fiscal intermediary shall not be subject to

vicarious liability as an employer or principal for a wrongful act committed by a personal care attendant if the attendant:

(1) is not a current or former employee of the fiscal intermediary;

(2) has not received training or instruction from the fiscal intermediary with respect to providing personal care services to a person with a disability, not including administrative paper work;

(3) has been hired by and received training or instruction from the consumer or the consumer's authorized representative to provide personal care to the consumer; and

(4) provides basic assistance with daily living activities that do not require the education, certification or training of a licensed health care practitioner.

B. A fiscal intermediary may identify a personal care attendant as a covered employee with the fiscal intermediary's workers' compensation carrier solely to provide workers' compensation coverage in the event of a work-related injury. Nothing in this subsection shall be construed to create an employer-employee relationship between the fiscal intermediary and the personal care attendant.

C. Nothing in this section shall be construed to provide the fiscal intermediary with immunity from a claim for a wrongful act committed by the fiscal intermediary or its

employees.

D. As used in this section:

(1) "consumer" means a person who is eligible for and receives state-funded or -operated services based on the person's disabilities;

(2) "fiscal intermediary" means a provider that furnishes administrative assistance for a consumer who selects a consumer-directed, rather than consumer-delegated, personal care program;

(3) "personal care attendant" means a person who provides assistance to a consumer with activities of daily living, including bathing, dressing, eating, transportation, shopping and similar activities; and

(4) "personal care program" means a state-funded or -operated support program, including medicaid, that provides the services of a personal care attendant for certain persons with a disability."

Section 24. Section 28-7-2 NMSA 1978 (being Laws 1967, Chapter 232, Section 2) is amended to read:

"28-7-2. POLICY.--It is the policy of this state to encourage and enable persons who are blind, visually impaired or who have another physical disability to participate fully in the social and economic life of the state and to engage in remunerative employment."

Section 25. Section 28-7-3 NMSA 1978 (being Laws 1967,

Chapter 232, Section 3, as amended) is amended to read:

"28-7-3. EQUAL RIGHT TO USE PUBLIC FACILITIES.--

A. Persons who are blind, visually impaired or who have another physical disability have the same right as others to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

B. Persons who are blind, visually impaired or who have another physical disability are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort and any other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

C. Every totally or partially blind person shall have the right to be accompanied by a guide dog, specially trained for the purpose, in any of the places listed in this section without being required to pay an extra charge for the guide dog; provided that the person shall be liable for any damage done to the property or facilities by the dog.

D. The attorney general, district attorney or any person with a disability may file an action in the judicial

district when a building has been built or altered and the work has not been accomplished in accordance with the current uniform building code, other applicable publications and established handicapped standards. The building official shall notify those applying for a permit that they shall comply with established standards. Any interested person may appeal the granting or denial of a waiver to the district court where the building is located. If the court finds that the building owner was required to comply with handicap access standards of the uniform building code and has failed to comply with such standards within a reasonable period of time, then the party filing action shall recover the court costs, attorney fees and appropriate injunctive relief to remedy the violation."

Section 26. Section 28-7-5 NMSA 1978 (being Laws 1967, Chapter 232, Section 5) is amended to read:

"28-7-5. INTERFERENCE WITH RIGHTS OF BLIND--PENALTY.--
A person, firm or corporation or the agent of a person, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in Section 28-7-3 NMSA 1978 or otherwise interferes with the rights of a blind or visually impaired person or a person who has a physical disability enumerated in the White Cane Law is guilty of a misdemeanor."

Section 27. Section 28-7-6 NMSA 1978 (being Laws 1967,

HB 1055
Page 60

Chapter 232, Section 6) is amended to read:

"28-7-6. ANNUAL PROCLAMATION OF WHITE CANE SAFETY DAY BY GOVERNOR.--Each year, the governor shall take suitable public notice of October 15 as white cane safety day. The governor shall issue a proclamation in which the governor:

A. comments upon the significance of the white cane;

B. calls upon the citizens of the state to observe the provisions of the White Cane Law and to take precautions necessary to the safety of persons with a disability;

C. reminds the citizens of the state of the policies with respect to persons with a disability declared in the White Cane Law and urges the citizens to cooperate in giving effect to them; and

D. emphasizes the need of the citizens to be aware of the presence of persons with a disability in the community and to keep streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort and other places to which the public is invited safe and functional and to offer assistance to persons with a disability upon appropriate occasions."

Section 28. Section 28-7-7 NMSA 1978 (being Laws 1967, Chapter 232, Section 7) is amended to read:

"28-7-7. POLICY OF STATE ON EMPLOYMENT OF PERSONS WITH

A DISABILITY.--It is the policy of this state that a person who is blind, visually impaired or who has another physical disability shall be employed in the state service, the service of the political subdivisions of the state, the public schools and all other employment supported in whole or in part by public funds on the same terms and conditions as others, unless it is shown that the particular disability prevents the performance of the work involved."

Section 29. Section 28-10-3.1 NMSA 1978 (being Laws 1995, Chapter 95, Section 1, as amended) is amended to read:

"28-10-3.1. FULL-SERVICE GASOLINE STATIONS--DECAL DISPLAY--SERVICE TO PERSON WITH A DISABILITY.--

A. The governor's commission on disability shall design and produce a decal for display in full-service gasoline stations signifying that the gasoline station will provide gasoline pumping, window washing, fluid checks and other services provided at its full-service island to any properly permitted or certified driver with a disability at a self-service island.

B. Any full-service gasoline station providing the services described in Subsection A of this section may request and shall receive the decal upon application to the governor's commission on disability.

C. No gasoline station shall display the decal issued by the governor's commission on disability unless it

provides full service to any driver with a disability at a self-service island.

D. A gasoline station owner or operator who displays a decal signifying that the station will provide additional services to drivers with a disability at a self-service island and who fails to provide that service shall be subject to revocation of the decal for display according to this section."

Section 30. Section 28-10-5 NMSA 1978 (being Laws 1973, Chapter 349, Section 5, as amended) is amended to read:

"28-10-5. DISABILITY FUND CREATED.--

A. There is created in the state treasury a "disability fund". All funds, gifts, donations, bequests and other income of the governor's commission on disability shall be deposited by the director of the commission in the fund and shall be appropriated by the legislature to the commission to further the purpose of Sections 28-10-1 through 28-10-8.1 NMSA 1978 or for the purposes stated by the donor or grantor of the funds.

B. Distributions made to the disability fund from the housing modification for persons with a disability permanent fund shall constitute a separate account in the fund and are appropriated to the governor's commission on disability for the purpose of carrying out a residential accessibility modification program.

C. Money in the disability fund shall not revert but shall be used only as provided in Sections 28-10-1 through 28-10-8.1 NMSA 1978."

Section 31. Section 28-10-5.1 NMSA 1978 (being Laws 2001, Chapter 226, Section 1) is amended to read:

"28-10-5.1. HOUSING MODIFICATION FOR PERSONS WITH A DISABILITY PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

A. The "housing modification for persons with a disability permanent fund" is created in the state treasury. The fund shall consist of money appropriated to the fund and any gifts, donations or bequests made to the fund. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978, and earnings from investment of the fund shall be credited to the fund. Money in the fund shall not revert at the end of any fiscal year and shall not be expended for any purpose, except that an annual distribution shall be made to the fund for persons with a disability in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2002 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the housing modification for persons with a disability permanent fund to the disability fund in an amount equal to three hundred thousand dollars (\$300,000) until that amount is less than an amount equal to five percent of the

average of the year-end market values of the housing modification for persons with a disability permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be five percent of the average of the year-end market values of the housing modification for persons with a disability permanent fund for the immediately preceding five calendar years."

Section 32. Section 28-10-9 NMSA 1978 (being Laws 1969, Chapter 129, Section 1) is amended to read:

"28-10-9. SHORT TITLE.--Sections 28-10-9 through 28-10-12 NMSA 1978 may be cited as the "Disability Employment Act"."

Section 33. Section 28-10-10 NMSA 1978 (being Laws 1969, Chapter 129, Section 2) is amended to read:

"28-10-10. DEFINITION.--As used in the Disability Employment Act, "persons with a disability" includes persons with a mental or physical disability."

Section 34. Section 28-10-11 NMSA 1978 (being Laws 1969, Chapter 129, Section 3) is amended to read:

"28-10-11. STATE POLICY.--In order to further the efforts of New Mexico in alleviating the problems of persons with a disability, full consideration shall be given to the employment of such persons in state government in positions in which they meet the necessary performance requirements or in positions in which performance requirements can be modified to

take advantage of their abilities without detriment to the state service."

Section 35. Section 28-10-12 NMSA 1978 (being Laws 1969, Chapter 129, Section 4) is amended to read:

"28-10-12. PERSONNEL BOARD--RULES.--The personnel board shall establish rules and procedures consistent with the state policy of employment of persons with a disability. The rules and procedures shall be adopted after consultation with appropriate vocational rehabilitation agencies, state institutions, interested private associations and organizations and interested individuals. Any rules or procedures adopted by the personnel board shall provide that:

A. certification in an appropriate form shall be required from an appropriate agency to the effect that:

(1) the person with a disability has the ability to perform the duties of the position sought;

(2) the person with a disability is physically qualified to do the work without hazard to that person or to others; and

(3) the person with a disability is socially competent in a work environment and, either independently or with continuing help as has been provided, in after-working-hours living;

B. there are suitable periods of probation or trial employment for persons with a disability before the

employment becomes permanent under the provisions of the Personnel Act; and

C. the processes set forth in this section for establishing the eligibility of persons with a disability are construed to meet the requirements of competitive entrance examinations under the provisions of the Personnel Act."

Section 36. Section 30-16-12 NMSA 1978 (being Laws 1963, Chapter 303, Section 16-12) is amended to read:

"30-16-12. FALSELY REPRESENTING ONESELF AS INCAPACITATED.--Falsely representing oneself as disabled consists of a person falsely representing the person's own self to be blind, visually impaired, deaf or having a physical disability for the purpose of obtaining money or other thing of value.

Whoever commits falsely representing oneself as disabled is guilty of a petty misdemeanor."

Section 37. Section 31-18B-2 NMSA 1978 (being Laws 2003, Chapter 384, Section 2) is amended to read:

"31-18B-2. DEFINITIONS.--As used in the Hate Crimes Act:

- A. "age" means sixty years of age or older;
- B. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in

accord or opposed to the person's physical anatomy,
chromosomal sex or sex at birth;

C. "disability" means that the person has a physical or mental disability that substantially limits one or more of that person's functions, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

D. "motivated by hate" means the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim, whether or not the offender's belief or perception was correct; and

E. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

Section 38. Section 31-18B-3 NMSA 1978 (being Laws 2003, Chapter 384, Section 3) is amended to read:

"31-18B-3. HATE CRIMES--NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, AGE, DISABILITY, GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY--ALTERATION OF BASIC SENTENCE.--

A. When a separate finding of fact by the court or jury shows beyond a reasonable doubt that an offender committed a noncapital felony motivated by hate, the basic

sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by one year. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law.

B. If a finding was entered in a previous case that the offender was convicted for committing a crime that was motivated by hate, and if a separate finding of fact by the court or jury shows beyond a reasonable doubt that in the instant case the offender committed a noncapital felony that was motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by two years. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that requires community service, treatment, education or any combination thereof. The

court may suspend or defer any or all of the sentence, or grant a conditional discharge unless otherwise provided by law.

C. If the case is tried before a jury and if a prima facie case has been established showing that in the commission of the offense the offender was motivated by hate, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that in the commission of the offense the offender was motivated by hate, the court shall decide the issue and shall make a separate finding of fact regarding the issue. If the court or jury determines that the offender is guilty of the crime and finds beyond a reasonable doubt that the offender was motivated by hate, the court shall include that determination in the judgment and sentence.

D. When a petty misdemeanor or a misdemeanor is motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law."

Section 39. Section 32A-5-44 NMSA 1978 (being Laws 1993, Chapter 77, Section 171) is amended to read:

"32A-5-44. ELIGIBILITY FOR SUBSIDIZED ADOPTIONS.--

A. The social services division of the human services department may make payments to adoptive parents or to medical vendors on behalf of a child placed for adoption by the division or by an agency when the division determines that:

- (1) the child is difficult to place; and
- (2) the adoptive family is capable of providing the permanent family relationship needed by the child in all respects, except that the needs of the child are beyond the economic resources and ability of the family.

B. As used in Sections 32A-5-43 through 32A-5-45 NMSA 1978, a "difficult to place child" means a child who has a mental, physical or emotional disability or who is in special circumstances by virtue of age, sibling relationship or racial background."

Section 40. Section 32A-6-2 NMSA 1978 (being Laws 1995, Chapter 207, Section 2, as amended) is amended to read:

"32A-6-2. DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the child, is administered or done to the child for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to

prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "clinician" means a physician, licensed psychologist, licensed independent social worker or licensed professional clinical counselor;

C. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the child, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child;

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

(3) are conducted at the suitable available facility closest to the child's place of residence;

D. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including electroconvulsive treatment and insulin coma treatment;

E. "developmental disability" means a severe chronic disability that:

(1) is attributable to a mental or physical impairment or a combination of mental or physical impairments;

(2) is manifested before a person reaches twenty-two years of age;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activities:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; or

(g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or generic treatments or other supports and services that are of lifelong or extended duration and that are individually planned or coordinated;

F. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a

licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

G. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in the competent practice of medicine and psychology and supported by scientifically acceptable studies;

H. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

I. "habilitation" means the process by which professional persons and their staff assist a child with a developmental disability in acquiring and maintaining those skills and behaviors that enable the child to cope more effectively with the demands of the child's own person and of the child's environment and to raise the level of the child's physical, mental and social efficiency. "Habilitation" includes programs of formal, structured education and treatment;

J. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the child will attempt to commit suicide or will cause serious

bodily harm to the child's self by violent or other self-destructive means, including grave passive neglect;

K. "likelihood of serious harm to others" means that it is more likely than not that in the near future the child will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the child;

L. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

M. "mental health or developmental disabilities professional" means a physician or other professional who, by training or experience, is qualified to work with persons who have a mental disorder or a developmental disability;

N. "physician" or "licensed psychologist", when used for the purpose of hospital admittance or discharge, means a physician or licensed psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

O. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the

surgery is performed for the following purposes:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

"Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

P. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the individual resides on the premises and where one or more of the following measures is available for use:

(1) a mechanical device to restrain or restrict the child's movement;

(2) a secure seclusion area from which the child is unable to exit voluntarily;

(3) a facility or program designed for the

purpose of restricting the child's ability to exit voluntarily; or

(4) the involuntary emergency administration of psychotropic medication; and

Q. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the child."

Section 41. Section 32A-16-4 NMSA 1978 (being Laws 1989, Chapter 290, Section 4, as amended) is amended to read:

"32A-16-4. POWERS AND DUTIES OF THE BOARD.--The child development board shall:

A. recommend to the secretary of children, youth and families the hiring of a director of child development;

B. consider and adopt licensure requirements, policies and procedures for individuals working in licensed or registered health facilities with children from birth to age five; provided that such licensure requirements shall not apply to individuals working in group homes pursuant to Section 9-8-13 NMSA 1978;

C. consider and make recommendations to the public education department regarding additional licensure requirements for public school personnel working with public school children up to age eight;

D. work with other state agencies to promote a uniform and comprehensive method of licensing child care

personnel;

E. develop and adopt policies and procedures for the office of child development;

F. develop levels of licensure for nonpublic school personnel depending upon the age of children served, the training facility used and the program in which the individual is employed;

G. work with the department of health to develop levels of licensure for nonpublic school personnel serving children who are developmentally delayed or at risk for developmental delay, birth through two years;

H. develop and adopt program criteria for state-funded preschool programs serving children from birth to age five; provided that criteria shall not apply to programs serving children who have a developmental delay or are at risk for developing a delay, birth through two years, and programs serving children who have a developmental delay, three through five years; and

I. work with other state agencies to monitor the implementation of state-funded preschool program criteria."

Section 42. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

"43-1-3. DEFINITIONS.--As used in the Mental Health and Developmental Disabilities Code:

A. "aversive stimuli" means anything that, because

it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental disabilities facility by the person's parent or guardian or by any court order;

C. "code" means the Mental Health and Developmental Disabilities Code;

D. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the client, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the client;

(2) involve no restrictions on physical

movement and no requirement for residential care except as reasonably necessary for the administration of treatment or for the protection of the client or others from physical injury; and

(3) are conducted at the suitable available facility closest to the client's place of residence;

E. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including but not limited to electroconvulsive treatment and insulin coma treatment;

F. "court" means a district court of New Mexico;

G. "department" or "division" means the behavioral health services division of the department of health;

H. "developmental disability" means a disability of a person that is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction that requires treatment or habilitation similar to that provided to persons with mental retardation;

I. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available, including the New Mexico behavioral health institute at Las Vegas, the Los Lunas medical center or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a certified

psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

J. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;

K. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

L. "habilitation" means the process by which professional persons and their staff assist a client with a developmental disability in acquiring and maintaining those skills and behaviors that enable the person to cope more effectively with the demands of the person's self and environment and to raise the level of the person's physical, mental and social efficiency. "Habilitation" includes but is not limited to programs of formal, structured education and treatment;

M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future a person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-

destructive means, including but not limited to grave passive neglect;

N. "likelihood of serious harm to others" means that it is more likely than not that in the near future a person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

O. "mental disability" means substantial disorder of a person's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

P. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with persons with a mental disability or a developmental disability;

Q. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

R. "psychosurgery":

(1) means those operations currently referred to as lobotomy, psychiatric surgery and behavioral

surgery and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(a) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(b) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(c) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior; and

(2) "psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

S. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution or supervisory residence or nursing home when the client resides on the premises; and

T. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or

behavior of the client."

Section 43. Section 43-1-4 NMSA 1978 (being Laws 1977, Chapter 279, Section 3, as amended) is amended to read:

"43-1-4. LEGAL REPRESENTATION OF CLIENTS.--

A. Clients shall be represented by counsel at all proceedings under the code and shall be entitled to obtain advice of counsel at any time regarding their status under the code.

B. The court shall appoint counsel to represent a client who has not retained counsel and is unable to do so. When appointing counsel, the court shall give preference to nonprofit organizations offering representation to persons with a mental illness or a developmental disability. A client shall be liable for the cost of legal representation unless the client is indigent."

Section 44. Section 43-1-19 NMSA 1978 (being Laws 1977, Chapter 279, Section 18, as amended) is amended to read:

"43-1-19. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client.

B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on the client's self or another;

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's

obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be

in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the client does not have a guardian or treatment guardian appointed by a court, the person seeking such authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the client, except that if the client is less than fourteen years of age, the client's parent or guardian is authorized to consent to disclosure on behalf of the client.

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the code shall limit the confidentiality rights afforded by federal statute or regulation."

Section 45. Section 50-4-21 NMSA 1978 (being Laws 1955, Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage

Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States; and

C. "employee" includes an individual employed by an employer, but shall not include:

(1) an individual employed in domestic service in or about a private home;

(2) an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

(3) an individual employed by the United States;

(4) an individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of

the work performed by the individual;

(5) salespersons or employees compensated upon piecework, flat rate schedules or commission basis;

(6) students regularly enrolled in primary or secondary schools working after school hours or on vacation;

(7) registered apprentices and learners otherwise provided by law;

(8) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

(9) persons eighteen years of age or under who are not graduates of a secondary school;

(10) persons employed by ambulance services;

(11) G.I. bill trainees while under training;

(12) seasonal employees of an employer obtaining and holding a valid certificate issued annually by the director of the labor and industrial division of the labor department. The certificate shall state the job designations and total number of employees to be exempted. In approving or disapproving an application for a certificate of exemption, the director shall consider the following:

(a) whether such employment shall be at an educational, charitable or religious youth camp or retreat;

(b) that such employment will be of a temporary nature;

(c) that the individual will be furnished room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;

(d) the purposes for which the camp or retreat is operated;

(e) the job classifications for the positions to be exempted; and

(f) any other factors that the director deems necessary to consider;

(13) any employee employed in agriculture:

(a) if the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;

(b) if the employee is the parent, spouse, child or other member of the employer's immediate family; for the purpose of this subsection, the employer shall include the principal stockholder of a family corporation;

(c) if the employee: 1) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally

recognized as having been, paid on a piece-rate basis in the region of employment; 2) commutes daily from the employee's permanent residence to the farm on which the employee is so employed; and 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(d) if the employee, other than an employee described in Subparagraph (c) of this paragraph:

1) is sixteen years of age or under and is employed as a hand-harvest laborer, is paid on a piece-rate basis in an operation that has been, and is generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as the employee's parent or person standing in the place of the parent; and 3) is paid at the same piece-rate as employees over age sixteen are paid on the same farm; or

(e) if the employee is principally engaged in the range production of livestock or in milk production;

(14) an employee engaged in the handling, drying, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

(15) employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit

organizations."

Section 46. Section 50-4-23 NMSA 1978 (being Laws 1967, Chapter 242, Section 1) is amended to read:

"50-4-23. PERSONS WITH A DISABILITY--MINIMUM WAGE--
DIRECTOR POWERS AND DUTIES.--

A. The director of the labor and industrial division of the labor department, to the extent necessary in order to prevent curtailment of opportunities for employment, shall, by regulation, provide for the employment under special certificates of individuals, including individuals employed in agriculture, whose earning or productive capacity is impaired by physical or mental disability or injury or any other disability, at wages that are lower than the minimum wage applicable under Section 50-4-22 NMSA 1978, but not less than fifty percent of such wage.

B. The director, pursuant to regulations and upon certification of any state agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates that allow the holder thereof to work at wages that are less than those required by Subsection A of this section and that are related to the workers' productivity, for the employment of:

(1) workers with a disability who are engaged in work that is incidental to training or evaluation programs; and

(2) persons with multiple disabilities and other persons whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

C. The director may, by regulation or order, provide for the employment of persons with a disability in work activities centers under special certificates at wages that are less than the minimums applicable under Section 50-4-22 NMSA 1978, or less than that prescribed in Subsection A of this section, and that constitute equitable compensation for such persons. As used in this subsection, "work activities centers" means centers planned and designed exclusively to provide therapeutic activities for persons with a disability whose physical or mental disability is so severe as to make their productive capacity inconsequential.

D. The state agency administering or supervising the administration of vocational rehabilitation may issue a temporary certificate for a period not to exceed ninety days pursuant to Subsections A, B and C of this section and may request an extension of the certification by the director when it is determined that the severity of disability of an individual or circumstances warrants an extension of the certification."

Section 47. Section 58-18-3.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 3, as amended) is amended to read:

"58-18-3.1. ADDITIONAL DEFINITIONS--MULTIPLE-FAMILY

DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--

As used in the Mortgage Finance Authority Act:

A. "multiple-family dwelling project" means residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least sixty percent of whom are persons and families of low or moderate income, including without limitation persons of low or moderate income who are elderly and who have a disability as determined by the authority, provided that the percentage of low-income persons and families shall be at least the minimum required by federal tax law;

B. "transitional housing facility" means residential housing that is designed for temporary or transitional occupancy by persons or families of low or moderate income or special needs;

C. "congregate housing facility" means residential housing designed for occupancy by more than four persons or families of low or moderate income living independently of each other. The facility may contain group dining, recreational, health care or other communal facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping and bathing facilities;

D. "project mortgage loan" means a mortgage loan made to a sponsor to finance project costs of a multiple-

family dwelling or transitional or congregate housing facility; and

E. "sponsor" means an individual, association, corporation, joint venture, partnership, limited partnership, trust or any combination thereof that has been approved by the authority as qualified to own and maintain a multiple-family dwelling or transitional or congregate housing facility in New Mexico, maintains its principal office or a branch office in New Mexico and has agreed to subject itself to the regulatory powers of the authority and the jurisdiction of the courts of the state."

Section 48. Section 60-13-44 NMSA 1978 (being Laws 1967, Chapter 199, Section 52, as amended) is amended to read:

"60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The

recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of

state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to persons who have a physical disability, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to persons with a physical disability that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's commission on disability. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by persons with a physical disability or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the applicable New Mexico

building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act in effect at the applicable time shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus."

Section 49. Section 66-7-352.2 NMSA 1978 (being Laws 1983, Chapter 45, Section 2) is amended to read:

"66-7-352.2. LEGISLATIVE INTENT.--The policy and intent of the legislature is declared to be as follows:

A. that the legislature finds there is a significant safety hazard for persons with a physical

