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HOUSE BILL 846

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Edward C. Sandoval

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

**RELATING TO MEDICAID; CREATING THE MEDICAL ASSISTANCE
DEPARTMENT; TRANSFERRING RESPONSIBILITY FOR THE MEDICAID
PROGRAM FROM THE HUMAN SERVICES DEPARTMENT TO THE MEDICAL
ASSISTANCE DEPARTMENT; ENACTING THE MEDICAL ASSISTANCE
DEPARTMENT ACT AND THE MEDICAL ASSISTANCE APPEALS ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 7 of this act may be cited as the "Medical Assistance
Department Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Medical Assistance Department Act:**

**A. "department" means the medical assistance
department;**

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1 B. "medical assistance" means the services and
2 supplies furnished to medicaid-eligible recipients pursuant to
3 Title 19 and Title 21 of the Social Security Act; and

4 C. "secretary" means the secretary of medical
5 assistance.

6 Section 3. [NEW MATERIAL] DEPARTMENT ESTABLISHED. --

7 There is created in the executive branch the "medical
8 assistance department". The department shall be a cabinet
9 department and shall be responsible for the administration of
10 the medicaid program pursuant to Title 19 and Title 21 of the
11 Social Security Act. The department shall coordinate with
12 other state departments and agencies for the administration of
13 medical assistance; provided that nothing in this section
14 authorizes a department or agency other than the medical
15 assistance department to establish, maintain and revise
16 eligibility criteria pursuant to Title 19 or Title 21 of the
17 Social Security Act.

18 Section 4. [NEW MATERIAL] SECRETARY OF MEDICAL
19 ASSISTANCE-- APPOINTMENT. --

20 A. The administrative head of the medical
21 assistance department is the "secretary of medical
22 assistance", who shall be appointed by the governor with the
23 consent of the senate and who shall serve in the executive
24 cabinet.

25 B. The appointed secretary shall serve and have

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1 all the duties, responsibilities and authority of that office
2 during the period of time prior to final action by the senate
3 confirming or rejecting his appointment.

4 Section 5. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL
5 POWERS.--

6 A. The secretary is responsible to the governor
7 for the operation of the department. It is his duty to manage
8 all operations of the department and to administer and enforce
9 the laws with which he or the department is charged.

10 B. To perform his duties, the secretary has every
11 power expressly enumerated in the laws, whether granted to the
12 secretary or the department or any division of the department,
13 except where authority conferred upon any division is
14 explicitly exempted from the secretary's authority by statute.
15 In accordance with these provisions, the secretary shall:

16 (1) except as otherwise provided in the
17 Medical Assistance Department Act, exercise general
18 supervisory and appointing authority over all department
19 employees, subject to any applicable personnel laws and rules;

20 (2) delegate authority to subordinates as he
21 deems necessary and appropriate, clearly delineating such
22 delegated authority and the limitations thereto;

23 (3) organize the department into divisions or
24 other organizational units he deems will enable it to function
25 most effectively and efficiently, subject to any provisions of

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1 law requiring or establishing specific organizational units;

2 (4) within the limitations of available
3 appropriations and applicable laws, employ and fix the
4 compensation of those persons necessary to discharge his
5 duties;

6 (5) take administrative action by issuing
7 orders and instructions, not inconsistent with the law, to
8 ensure implementation of and compliance with the provisions of
9 law for which administration or execution he is responsible
10 and to enforce those orders and instructions by appropriate
11 administrative action in the courts;

12 (6) conduct research and studies that will
13 improve the operations of the department and the provision of
14 services to the citizens of the state;

15 (7) provide courses of instruction and
16 practical training for employees of the department and other
17 persons involved in the administration of programs with the
18 objective of improving the operations and efficiency of
19 administration;

20 (8) prepare an annual budget of the
21 department;

22 (9) provide cooperation, at the request of
23 heads of administratively attached agencies, in order to:

24 (a) minimize or eliminate duplication
25 of services and jurisdictional conflicts;

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1 (b) coordinate activities and resolve
2 problems of mutual concern; and

3 (c) resolve by agreement the manner and
4 extent to which the department shall provide budgeting,
5 record-keeping and related clerical assistance to
6 administratively attached agencies;

7 (10) appoint, with the governor's consent, a
8 "director" for each division. These appointed positions are
9 exempt from the provisions of the Personnel Act. Persons
10 appointed to these positions shall serve at the pleasure of
11 the secretary;

12 (11) give bond in the penal sum of
13 twenty-five thousand dollars (\$25,000) and require directors
14 to each give bond in the penal sum of ten thousand dollars
15 (\$10,000) conditioned upon the faithful performance of duties
16 as provided in the Surety Bond Act. The department shall pay
17 the costs of these bonds; and

18 (12) require performance bonds of such
19 department employees and officers as he deems necessary as
20 provided in the Surety Bond Act. The department shall pay the
21 costs of these bonds.

22 C. The secretary may apply for and receive, with
23 the governor's approval, in the name of the department any
24 public or private funds, including United States government
25 funds, available to the department to carry out its programs,

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1 duties or services.

2 D. Where functions of departments overlap or a
3 function assigned to one department could better be performed
4 by another department, the secretary may recommend appropriate
5 legislation to the next session of the legislature for its
6 approval.

7 E. The secretary may make and adopt such
8 reasonable and procedural rules as may be necessary to carry
9 out the duties of the department and its divisions. No rule
10 promulgated by the director of any division in carrying out
11 the functions and duties of the division shall be effective
12 until approved by the secretary unless otherwise provided by
13 statute. Unless otherwise provided by statute, no rule
14 affecting any person or agency outside the department shall be
15 adopted, amended or repealed without a public hearing on the
16 proposed action before the secretary or a hearing officer
17 designated by him. The public hearing shall be held in Santa
18 Fe unless otherwise permitted by statute. Notice of the
19 subject matter of the rule, the action proposed to be taken,
20 the time and place of the hearing, the manner in which
21 interested persons may present their views and the method by
22 which copies of the proposed rule, proposed amendment or
23 repeal of an existing rule may be obtained shall be published
24 once at least thirty days prior to the hearing date in a
25 newspaper of general circulation and mailed at least thirty

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1 days prior to the hearing date to all persons who have made a
2 written request for advance notice of the hearing.

3 F. In the event the secretary anticipates that
4 adoption, amendment or repeal of a rule will be required by a
5 cancellation, reduction or suspension of federal funds or
6 order by a court of competent jurisdiction:

7 (1) if the secretary is notified by
8 appropriate federal authorities at least sixty days prior to
9 the effective date of such cancellation, reduction or
10 termination of federal funds, the department is required to
11 promulgate rules through the public hearing process to be
12 effective on the date mandated by the appropriate federal
13 authority; or

14 (2) if the secretary is notified by
15 appropriate federal authorities or court less than sixty days
16 prior to the effective date of such cancellation, reduction or
17 suspension of federal funds or court order, the department is
18 authorized without a public hearing to promulgate interim
19 rules effective for a period not to exceed ninety days. Such
20 interim rules shall not be promulgated without first providing
21 a written notice twenty days in advance to providers of
22 medical services and beneficiaries of department programs. At
23 the time of the promulgation of the interim rules, the
24 department shall give notice of the public hearing on the
25 final rules in accordance with Subsection E of this section.

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1 G. If the secretary certifies to the secretary of
2 finance and administration and gives contemporaneous notice of
3 such certification that the department has insufficient state
4 funds to operate any of the programs it administers and that
5 reductions in services or benefit levels are necessary, the
6 secretary may engage in interim rulemaking. Notwithstanding
7 any provision to the contrary in the State Rules Act, interim
8 rulemaking shall be conducted pursuant to Subsection E of this
9 section, except:

10 (1) the period of notice of public hearing
11 shall be fifteen days;

12 (2) the department shall also send individual
13 notices of the interim rulemaking and of the public hearing to
14 affected providers and beneficiaries;

15 (3) rules promulgated under this subsection
16 shall be in effect not less than five days after the public
17 hearing;

18 (4) rules promulgated under this subsection
19 shall not be in effect for more than ninety days; and

20 (5) if final rules are necessary to replace
21 the interim rules, the department shall give notice of intent
22 to promulgate final rules at the time of notice herein. The
23 final rules shall be promulgated not more than forty-five days
24 after the public hearing filed in accordance with the State
25 Rules Act.

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1 At the time of the promulgation of the interim rules, the
2 department shall give notice of the public hearing on the
3 final rules in accordance with Subsection E of this section.

4 H. All rules shall be filed in accordance with the
5 State Rules Act.

6 Section 6. [NEW MATERIAL] ORGANIZATIONAL UNITS OF
7 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW- ACCESS TO
8 INFORMATION. -- Those organizational units of the department and
9 the officers of those units specified by law shall have all of
10 the powers and duties enumerated in the specific laws
11 involved. However, the carrying out of those powers and
12 duties shall be subject to the direction and supervision of
13 the secretary, and he shall retain the final decision-making
14 authority and responsibility for the administration of any
15 such laws as provided in Section 5 of the Medical Assistance
16 Department Act. The department shall have access to all
17 records, data and information of other state departments,
18 agencies and institutions, including its own organizational
19 units not specifically held confidential by law.

20 Section 7. [NEW MATERIAL] COOPERATION WITH THE FEDERAL
21 GOVERNMENT-- AUTHORITY OF SECRETARY-- SINGLE STATE AGENCY
22 STATUS. --

23 A. The department is authorized to cooperate with
24 the federal government in the administration of the medicaid
25 and medical assistance programs in which financial or other

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1 participation by the federal government is authorized or
2 mandated under federal laws, regulations, rules or orders.
3 The secretary may enter into agreements with agencies of the
4 federal government to implement these medicaid and medical
5 assistance programs subject to availability of appropriated
6 state funds and any provisions of state laws applicable to
7 such agreements or participation by the state.

8 B. The governor or the secretary may by
9 appropriate order designate the department or any
10 organizational unit of the department as the single state
11 agency for the administration of a medicaid or medical
12 assistance program when such designation is a condition of
13 federal financial or other participation in the program under
14 applicable federal law, regulation, rule or order. Whether or
15 not a federal condition exists, the governor may designate the
16 department or any organizational unit of the department as the
17 single state agency for the administration of a medicaid or
18 medical assistance program. No designation of a single state
19 agency under the authority granted in this section shall be
20 made in contravention of state law.

21 Section 8. Section 9-8-9 NMSA 1978 (being Laws 1977,
22 Chapter 252, Section 10, as amended) is amended to read:

23 "9-8-9. DIRECTORS.--The secretary shall appoint with the
24 approval of the governor "directors" of divisions established
25 within the department. The positions so appointed are exempt

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1 from the Personnel Act with the exception of the director of
2 the child support enforcement division, [~~and the director of~~
3 ~~the medical assistance division~~] who [each] shall be covered
4 under the Personnel Act. "

5 Section 9. Section 27-1-3 NMSA 1978 (being Laws 1937,
6 Chapter 18, Section 4, as amended) is amended to read:

7 "27-1-3. ACTIVITIES OF HUMAN SERVICES DEPARTMENT. -- The
8 [~~human services~~] department shall be charged with the
9 administration of all the welfare activities of the state as
10 provided in Chapter 27 NMSA 1978, except as otherwise provided
11 for by law. The [~~human services~~] department shall, except as
12 otherwise provided by law:

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

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

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1 department;

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

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

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

19 F. assist other departments, agencies and
20 institutions of local, state and federal governments when so
21 requested, cooperate with such agencies when expedient in
22 performing services in conformity with the purposes of Chapter
23 27 NMSA 1978 and cooperate with medical, health, nursing and
24 welfare groups, any state agency charged with the
25 administration of laws providing for vocational rehabilitation

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1 of physically handicapped persons and organizations within the
2 state;

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

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

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

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

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

24 L. inspect and require reports from all private
25 institutions, boarding homes and agencies providing

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1 assistance, care or other direct services to children who are
2 crippled, neglected, delinquent or dependent, the aged, blind,
3 feeble-minded and other dependent persons.

4 Nothing contained in this section shall be construed to
5 authorize the department to establish or prescribe standards
6 or [~~regulations~~] rules for or otherwise regulate programs or
7 services to children in group homes as defined in Section
8 9-8-13 NMSA 1978. Nothing contained in this section shall be
9 construed to authorize the department to establish or
10 prescribe rules for or otherwise regulate programs or services
11 pursuant to Title 19 or Title 21 of the federal Social
12 Security Act or other program that is administered by the
13 medical assistance department."

14 Section 10. Section 27-1-3.1 NMSA 1978 (being Laws 1980,
15 Chapter 83, Section 1) is amended to read:

16 "27-1-3.1. ACUTE CARE BED USAGE--FUNDING
17 AUTHORIZATION.--The [~~human services~~] medical assistance
18 department is authorized to accept and use federal grants or
19 matching funds for the purpose of reimbursement to certain
20 rural hospitals for using empty acute care beds for
21 intermediate care and skilled nursing care, as defined in
22 federal statutes and regulations, subject to federal approval
23 and the availability of funds. The medical assistance
24 department is authorized to use funds from existing
25 appropriations for matching federal funds for the purposes of

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1 this ~~[act]~~ section. "

2 Section 11. Section 27-2-2 NMSA 1978 (being Laws 1973,
3 Chapter 376, Section 2, as amended) is amended to read:

4 "27-2-2. DEFINITIONS. --As used in the Public Assistance
5 Act:

6 A. "department" means the human services
7 department;

8 B. "board" means the human services department;

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

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

13 E. "public welfare" or "public assistance" means
14 any aid or relief granted to or on behalf of an eligible
15 person under the Public Assistance Act and ~~[regulations]~~ rules
16 issued pursuant to that act but does not mean medical
17 assistance that is administered by the medical assistance
18 department;

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

21 G. "recipient" means a person who is receiving
22 public assistance or ~~[services under the Public Assistance~~
23 ~~Act]~~ medical assistance;

24 H. "federal act" means the federal Social Security
25 Act, as may be amended from time to time, and regulations

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1 issued pursuant to that act; ~~and~~

2 I. "secretary" means the secretary of human
3 services; and

4 J. "medical assistance" means the services and
5 supplies furnished to individuals pursuant to Title 19 or
6 Title 21 of the Social Security Act. "

7 Section 12. Section 27-2-9 NMSA 1978 (being Laws 1973,
8 Chapter 376, Section 13) is amended to read:

9 "27-2-9. PAYMENT FOR HOSPITAL CARE. --

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

24 B. To receive reimbursement for providing
25 in-patient hospital services, a hospital shall file annually

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1 with the medical assistance department such information as the
2 medical assistance department may reasonably require to
3 determine reasonable costs or the hospital's customary cost of
4 in-patient hospital services.

5 C. Any hospital entitled to reimbursement for in-
6 patient hospital services shall be entitled to a hearing,
7 pursuant to [~~regulations~~] rules of the [~~board~~] medical
8 assistance department consistent with applicable state law, if
9 the hospital disagrees with the medical assistance
10 department's determination of the reimbursement the hospital
11 is to receive. "

12 Section 13. Section 27-2-12 NMSA 1978 (being Laws 1973,
13 Chapter 376, Section 16, as amended) is amended to read:

14 "27-2-12. **MEDICAL ASSISTANCE PROGRAMS.** -- Consistent with
15 the federal act and subject to the appropriation and
16 availability of federal and state funds, the medical
17 assistance [~~division of the human services~~] department may by
18 [~~regulation~~] rule provide medical assistance, including the
19 services of licensed doctors of oriental medicine and licensed
20 chiropractors, to persons eligible for [~~public~~] medical
21 assistance programs under the federal act. "

22 Section 14. Section 27-2-12.3 NMSA 1978 (being Laws
23 1987, Chapter 269, Section 1, as amended) is amended to read:

24 "27-2-12.3. **MEDICAID REIMBURSEMENT-- EQUAL PAY FOR EQUAL**
25 **PHYSICIANS', DENTISTS', OPTOMETRISTS', PODIATRISTS' AND**

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1 PSYCHOLOGISTS' SERVICES. -- The [~~human services~~] medical
2 assistance department shall establish a rate for the
3 reimbursement of physicians, dentists, optometrists,
4 podiatrists and psychologists for services rendered to
5 medicaid patients that provides equal reimbursement for the
6 same or similar services rendered without respect to the date
7 on which such physician, dentist, optometrist, podiatrist or
8 psychologist entered into practice in New Mexico, the date on
9 which the physician, dentist, optometrist, podiatrist or
10 psychologist entered into an agreement or contract to provide
11 such services or the location in which such services are to be
12 provided in the state; provided, however, that the
13 requirements of this section shall not apply when the [~~human~~
14 ~~services~~] medical assistance department contracts with
15 entities pursuant to Section 27-2-12.6 NMSA 1978 to negotiate
16 a rate for the reimbursement for services rendered to medicaid
17 patients in the medicaid managed care system. "

18 Section 15. Section 27-2-12.4 NMSA 1978 (being Laws
19 1987, Chapter 214, Section 1) is amended to read:

20 "27-2-12.4. LONG-TERM CARE FACILITIES--NONCOMPLIANCE
21 WITH STANDARDS AND CONDITIONS--SANCTIONS. --

22 A. In addition to any other actions required or
23 permitted by federal law or regulation, the [~~human services~~]
24 medical assistance department shall impose a hold on state
25 medicaid payments to a long-term care facility thirty days

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1 after the [~~health and environment~~] department of health
2 notifies the [~~human services~~] medical assistance department in
3 writing pursuant to an on-site visit that the long-term care
4 facility is not in substantial compliance with the standards
5 or conditions of participation promulgated by the federal
6 department of health and human services pursuant to which the
7 facility is a party to a medicaid provider agreement, unless
8 the substantial noncompliance has been corrected within that
9 thirty-day period or the facility's medicaid provider
10 agreement is terminated or not renewed based in whole or in
11 part on the noncompliance. The written notice shall cite the
12 specific deficiencies that constitute noncompliance.

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

22 C. The [~~human services~~] medical assistance
23 department shall not reimburse any long-term care facility
24 during the payment hold period imposed pursuant to Subsection
25 A of this section for any medicaid [~~recipient-patients~~]

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1 recipients who are new admissions and who are admitted on or
2 after the day the hold is imposed and prior to the day the
3 hold is removed.

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

17 E. A long-term care facility shall not charge
18 medicaid [~~recipient-patients~~] recipients, their families or
19 their responsible parties to recoup any payments not received
20 because of a hold on medicaid payments imposed pursuant to
21 this section.

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

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G. As used in this section:

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

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

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

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

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

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

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

(b) do not interfere with adequate

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1 patient care;

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

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

6 (e) are ones ~~[which]~~ that the long-term
7 care facility is making reasonable plans to correct. "

8 Section 16. Section 27-2-12.5 NMSA 1978 (being Laws
9 1989, Chapter 83, Section 1, as amended) is amended to read:

10 "27-2-12.5. MEDICAID-CERTIFIED NURSING FACILITIES--
11 RETROACTIVE ELIGIBILITY--REFUNDS--PENALTY.--

12 A. Medicaid payment for a medicaid-eligible
13 patient shall be accepted by a medicaid-certified nursing
14 facility from the first month of medicaid eligibility,
15 regardless of whether the eligibility is retroactive. The
16 nursing facility shall refund to the ~~[patient]~~ medicaid
17 recipient or responsible party all out-of-pocket money except
18 for required medical-care credits paid to the nursing facility
19 for that ~~[patient's]~~ medicaid recipient's care on and after
20 the date of medicaid eligibility for services covered by the
21 medicaid program. Within thirty days after notification by
22 the ~~[human services]~~ medical assistance department of the
23 patient's medicaid eligibility, the nursing facility shall
24 make any necessary refund to the ~~[patient]~~ medicaid recipient
25 or responsible party required under this section.

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

9 Section 17. Section 27-2-12.6 NMSA 1978 (being Laws
10 1994, Chapter 62, Section 22) is amended to read:

11 "27-2-12.6. MEDICAID PAYMENTS--MANAGED CARE. --

12 A. The medical assistance department shall provide
13 for a statewide, managed care system to provide
14 cost-efficient, preventive, primary and acute care for
15 medicaid recipients by ~~[July 1, 1995]~~.

16 B. The managed care system shall ensure:

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

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

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

25 (4) to the maximum extent possible, that

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1 ~~[medicaid-eligible individuals]~~ medicaid recipients are not
2 identified as such except as necessary for billing purposes.

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

9 Section 18. Section 27-2-12.7 NMSA 1978 (being Laws
10 1980, Chapter 86, Section 1) is amended to read:

11 "27-2-12.7. MEDICAID- - ~~[HUMAN SERVICES]~~ MEDICAL
12 ASSISTANCE DEPARTMENT EMPLOYEES--STANDARDS OF CONDUCT--
13 ENFORCEMENT. - -

14 A. As used in this section:

15 (1) "business" means a corporation,
16 partnership, sole proprietorship, firm, organization or
17 ~~[individual]~~ person carrying on a business;

18 (2) "department" means the ~~[human services]~~
19 medical assistance department;

20 (3) "employee" means ~~[any]~~ a person who has
21 been appointed to or hired for ~~[any]~~ a department office,
22 including the human services department, connected with the
23 administration of medicaid funds and who receives compensation
24 in the form of salary;

25 (4) "employee with responsibility" means an

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1 employee who is directly involved in or has a significant part
2 in the medicaid decision-making, regulatory, procurement or
3 contracting process; and

4 (5) "financial interest" means an interest
5 held by [~~an individual~~] a person, his spouse or minor child
6 [~~which~~] that is:

7 (a) an ownership interest in business;
8 or

9 (b) [~~any~~] an employment or prospective
10 employment for which negotiations have already begun.

11 B. No employee with responsibility shall, for
12 twenty-four months following the date on which he ceases to be
13 an employee, act as agent or attorney for [~~any other~~] another
14 person or business in connection with a judicial or
15 administrative proceeding, application, ruling, contract,
16 claim or other matter relating to the medicaid program with
17 respect to which the employee made an investigation, rendered
18 [~~any~~] a ruling or was otherwise substantially and directly
19 involved during the last year he was an employee and which was
20 actually pending under his responsibility within that period.

21 C. No [~~department~~] secretary of medical
22 assistance, secretary of human services or [~~income support~~]
23 division director [~~or medical assistance bureau chief or their~~
24 deputies] of the medical assistance department or the human
25 services department shall, for twelve months following the

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1 date on which he ceases to be an employee, participate [~~in any~~
2 ~~manner~~] with respect to a judicial or administrative
3 proceeding, application, ruling, contract, claim or other
4 matter relating to the medicaid program and pending before the
5 department.

6 D. No employee with responsibility shall
7 participate [~~in any manner~~] with respect to a judicial or
8 administrative proceeding, application, ruling, contract,
9 claim or other matter relating to the medicaid program and
10 involving his spouse, minor child or [~~any~~] a business in which
11 he has a financial interest unless prior to [~~such~~] the
12 participation:

13 (1) full disclosure of his relationship or
14 financial interest is made in writing to the secretary of [~~the~~
15 ~~department~~] medical assistance; and

16 (2) a written determination is made by the
17 secretary of medical assistance that the disclosed
18 relationship or financial interest is too remote or
19 inconsequential to affect the integrity of the services of the
20 employee.

21 E. Violation of any of the provisions of this
22 section by an employee is grounds for dismissal, demotion or
23 suspension. A former employee who violates [~~any of the~~
24 ~~provisions~~] a provision of this section [~~shall be~~] is subject
25 to assessment by the department of a civil money penalty of

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1 two hundred fifty dollars (\$250) for each violation. The
2 department shall promulgate [~~regulations~~] rules to provide for
3 an administrative appeal of any assessment imposed. "

4 Section 19. Section 27-2-16 NMSA 1978 (being Laws 1974,
5 Chapter 31, Section 1, as amended) is amended to read:

6 "27-2-16. COMPLIANCE WITH FEDERAL LAW. --

7 A. Subject to the availability of state funds, the
8 [~~human services~~] medical assistance department may provide
9 assistance to aged, blind or disabled [~~individuals~~] persons in
10 the amounts consistent with federal law to enable the state to
11 be eligible for medicaid funding. [~~Individuals~~] A person
12 shall be determined to be aged, blind or disabled according to
13 [~~regulations~~] rules of the [~~human services~~] medical assistance
14 department.

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

21 Section 20. Section 27-2-23 NMSA 1978 (being Laws 1969,
22 Chapter 232, Section 1) is amended to read:

23 "27-2-23. [~~THIRD-PARTY~~] THIRD-PARTY LIABILITY. --

24 A. The [~~health and social services~~] medical
25 assistance department shall make reasonable efforts to

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1 ascertain any legal liability of third parties who are or may
2 be liable to pay all or part of the medical cost of injury,
3 disease or disability of an applicant for or recipient of
4 medical assistance pursuant to the provisions of Chapter 27
5 NMSA 1978.

6 B. When the medical assistance department makes
7 medical assistance payments [~~in~~] on behalf of a recipient, the
8 medical assistance department is subrogated to any right of
9 the recipient against a third party for recovery of medical
10 expenses to the extent that the medical assistance department
11 has made payment. "

12 Section 21. Section 27-2-25 NMSA 1978 (being Laws 1937,
13 Chapter 18, Section 11j, as amended) is amended to read:

14 "27-2-25. FUNERAL EXPENSES. --

15 A. On the death of:

16 (1) a recipient of financial assistance under
17 Section [~~13-17-9 or Section 13-17-10 NMSA 1953~~] 27-2-6 or
18 27-2-7 NMSA 1978 or under the federal supplemental security
19 income program; or

20 (2) an individual living in a nursing home or
21 an intermediate care facility, the payment for whose care is
22 made in whole or in part pursuant to Title 19 of the federal
23 act;
24 funeral expenses up to two hundred dollars (\$200) shall be
25 paid by the [~~health and social services~~] medical assistance

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1 department if the deceased's available resources, as defined
2 by ~~[regulation]~~ rules of the ~~[board]~~ medical assistance
3 department, are insufficient to pay the funeral expenses, the
4 persons legally responsible for the support of the deceased
5 are unable to pay the funeral expenses and no other person
6 will undertake to pay ~~[said]~~ those expenses.

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

14 Section 22. Section 27-2-26 NMSA 1978 (being Laws 1975,
15 Chapter 220, Section 2) is amended to read:

16 "27-2-26. MONEY RECEIVED FROM OTHER SOURCES-- DUTY AND
17 LIABILITY OF FUNERAL DIRECTOR.--Should any funeral director
18 accept payment from sources other than the medical assistance
19 department for burial of a deceased person for whom a claim
20 for burial expenses has been made to the medical assistance
21 department, he shall immediately notify the medical assistance
22 department of ~~[said]~~ the payment. The medical assistance
23 department ~~[will]~~ shall consider ~~[said]~~ the payment in deter-
24 mining the amount of any funeral expense payment it makes. If
25 the medical assistance department has already made payment,

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1 the funeral director shall refund to the medical assistance
2 department any excess over the amount [~~which~~] that the medical
3 assistance department would have paid had it known of the
4 payment from other sources. If any funeral director [~~shall~~
5 ~~fail~~] fails to notify the medical assistance department of any
6 such payment from other sources, he shall be liable to the
7 medical assistance department in an amount double the amount
8 paid or to be paid by the medical assistance department. "

9 Section 23. Section 27-2-43 NMSA 1978 (being Laws 1990,
10 Chapter 93, Section 3) is amended to read:

11 "27-2-43. DEFINITIONS. --As used in the Indigent
12 Catastrophic Illness Hospital Funding Act:

13 A. "department" means the [~~human services~~] medical
14 assistance department;

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

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

22 D. "medically indigent patient" means an
23 individual who is a New Mexico resident who incurs hospital
24 charges, who is not eligible for medicaid or medicare and
25 whose family or household income does not exceed two hundred

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1 fifty percent of the federal poverty level. "

2 Section 24. Section 27-2A-3 NMSA 1978 (being Laws 1994,
3 Chapter 87, Section 3) is amended to read:

4 "27-2A-3. DEFINITIONS. --As used in the Medicaid Estate
5 Recovery Act:

6 A. "department" means the [~~human services~~] medical
7 assistance department;

8 B. "estate" means real and personal property and
9 other assets of the [~~individual~~] person subject to probate or
10 administration pursuant to the provisions of the Uniform
11 Probate Code; and

12 C. "medical assistance" means amounts paid by the
13 department as medical assistance pursuant to Title [~~XIX~~] 19 or
14 Title 21 of the Social Security Act. "

15 Section 25. Section 27-3-2 NMSA 1978 (being Laws 1973,
16 Chapter 256, Section 2, as amended) is amended to read:

17 "27-3-2. DEFINITIONS. --As used in the Public Assistance
18 Appeals Act:

19 A. "department" means the income support division
20 [~~the medical assistance division or the social services~~
21 ~~division~~] of the human services department;

22 B. "board" means the income support division [~~the~~
23 ~~medical assistance division or the social services division~~]
24 of the human services department; and

25 C. "director" means the director of the income

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1 support division [~~the medical assistance division or the~~
2 ~~social services division~~] of the human services department. "

3 Section 26. [NEW MATERIAL] SHORT TITLE. -- Sections 26
4 through 30 of this act may be cited as the "Medical Assistance
5 Appeals Act".

6 Section 27. [NEW MATERIAL] DEFINITIONS. -- As used in the
7 Medical Assistance Appeals Act:

8 A. "department" means the medical assistance
9 department; and

10 B. "secretary" means the secretary of medical
11 assistance.

12 Section 28. [NEW MATERIAL] FAIR HEARING. --

13 A. An applicant for or a recipient of medical
14 assistance under any provisions of the Social Security Act or
15 rules of the department adopted pursuant to that act may
16 request a hearing in accordance with rules of the department
17 if:

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

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

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

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

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1 B. The department shall by rule establish
2 procedures for the filing of a request for a hearing and the
3 time limits within which a request may be filed; provided,
4 however, that the department may grant reasonable extensions
5 of the time limits. If the request is not filed within the
6 specified time for appeal or within whatever extension the
7 department may grant, the department's actions shall be final.
8 Upon receipt of a timely request, the department shall give
9 the applicant or recipient reasonable notice of an opportunity
10 for a fair hearing in accordance with the rules of the
11 department.

12 C. The hearing shall be conducted by a hearing
13 officer designated by the secretary. The powers of the
14 hearing officer shall include administering oaths or
15 affirmations to witnesses called to testify, taking testimony,
16 examining witnesses, admitting or excluding evidence and
17 reopening any hearing to receive additional evidence. The
18 technical rules of evidence and the rules of civil procedure
19 shall not apply. The hearing shall be conducted so that the
20 contentions or defenses of each party to the hearing are amply
21 and fairly presented. Either party may be represented by
22 counsel or other representative of his designation, and he or
23 his representative may conduct cross-examination. Any oral or
24 documentary evidence may be received, but the hearing officer
25 may exclude irrelevant, immaterial or unduly repetitious

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1 evidence.

2 D. The secretary shall review the record of the
3 proceedings and shall make a decision thereon. The applicant
4 or recipient or his representative shall be notified in
5 writing of the secretary's decision and the reasons for the
6 decision. The written notice shall inform the applicant or
7 recipient of his right to judicial review. The department
8 shall be responsible for ensuring that the decision is
9 enforced.

10 Section 29. [NEW MATERIAL] APPEAL. -- Within thirty days
11 after receiving written notice of the decision of the
12 secretary pursuant to the Medical Assistance Appeals Act, an
13 applicant or recipient may file a notice of appeal with the
14 district court pursuant to the provisions of Chapter 39,
15 Article 3 NMSA 1978.

16 Section 30. [NEW MATERIAL] EXPENDITURES. -- Nothing in the
17 Medical Assistance Appeals Act shall be construed as
18 authorizing or allowing expenditures for the affected programs
19 in excess of the amounts previously appropriated by the
20 legislature for medical assistance.

21 Section 31. Section 27-5-3 NMSA 1978 (being Laws 1965,
22 Chapter 234, Section 3, as amended) is amended to read:

23 "27-5-3. PUBLIC ASSISTANCE PROVISIONS. --

24 A. A hospital shall not be paid from the [county
25 indigent hospital claims] fund under the Indigent Hospital and

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1 County Health Care Act for any costs of an indigent patient
2 for services that have been determined by the [~~human services~~]
3 medical assistance department to be eligible for medicaid
4 reimbursement [~~from that department~~]. However, nothing in the
5 Indigent Hospital and County Health Care Act shall be
6 construed to prevent the board from transferring money from
7 the [~~county indigent hospital claims~~] fund to the sole
8 community provider fund or the county-supported medicaid fund
9 for support of the state medicaid program.

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

17 Section 32. Section 27-5-6.1 NMSA 1978 (being Laws 1993,
18 Chapter 321, Section 18) is amended to read:

19 "27-5-6.1. SOLE COMMUNITY PROVIDER FUND CREATED. --

20 A. The "sole community provider fund" is created
21 in the state treasury. The sole community provider fund,
22 which shall be administered by the [~~human services~~] medical
23 assistance department, shall consist of funds provided by
24 counties to match federal funds for medicaid sole community
25 provider hospital payments. Money in the fund shall be

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1 invested by the state treasurer as other state funds are
2 invested. Any unexpended or unencumbered balance remaining in
3 the fund at the end of any fiscal year shall not revert.

4 B. Money in the sole community provider fund is
5 appropriated to the [~~human services~~] medical assistance
6 department to make sole community provider hospital payments
7 pursuant to the state medicaid program. No sole community
8 provider hospital payments or money in the sole community
9 provider fund shall be used to supplant any general fund
10 support for the state medicaid program.

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

15 Section 33. Section 27-5-7.1 NMSA 1978 (being Laws 1993,
16 Chapter 321, Section 16) is amended to read:

17 "27-5-7.1. COUNTY INDIGENT HOSPITAL CLAIMS FUND--
18 AUTHORIZED USES OF THE FUND. --

19 A. The fund shall be used:

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

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

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

3 C. Until June 30, 1996, the cash reserves from the
4 fund may be used to meet the county's obligation under Section
5 27-10-4 NMSA 1978. "

6 Section 34. Section 27-5-11 NMSA 1978 (being Laws 1965,
7 Chapter 234, Section 12, as amended) is amended to read:

8 "27-5-11. HOSPITALS AND AMBULANCE SERVICES--HEALTH CARE
9 PROVIDERS--REQUIRED TO FILE DATA--SOLE COMMUNITY PROVIDER
10 HOSPITAL DUTIES. --

11 A. Any ambulance service, hospital or health care
12 provider in New Mexico or licensed out-of-state hospital,
13 prior to the filing of a claim with the board, shall have
14 placed on file with the board:

15 (1) current data, statistics, schedules and
16 information deemed necessary by the board to determine the
17 cost for all patients in that hospital or cared for by that
18 health care provider or tariff rates or charges of an
19 ambulance service;

20 (2) proof that the hospital, ambulance
21 service or health care provider is licensed, where required,
22 under the laws of this state or the state in which the
23 hospital operates; and

24 (3) any other information or data deemed
25 necessary by the board.

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1 B. Every sole community provider hospital
2 requesting or receiving medicaid sole community provider
3 hospital payments shall:

4 (1) accept indigent patients and request
5 reimbursement for those patients through the appropriate
6 county indigent fund. The responsible county shall approve
7 requests meeting its eligibility standards and notify the
8 hospital of such approval;

9 (2) confirm the amount of payment authorized
10 by each county for indigent patients, to that county for the
11 previous fiscal year, by September 30 of each calendar year;

12 (3) negotiate with each county the amount of
13 indigent hospital payments anticipated for the following
14 fiscal year by December 31 of each year; and

15 (4) provide to the medical assistance
16 department prior to January 15 of each year the amount of the
17 authorized indigent hospital payments anticipated for the
18 following fiscal year after an agreement has been reached on
19 the amount with each responsible county and such other related
20 information as the medical assistance department may request. "

21 Section 35. Section 27-5-12.2 NMSA 1978 (being Laws
22 1993, Chapter 321, Section 15) is amended to read:

23 "27-5-12.2. DUTIES OF THE COUNTY--SOLE COMMUNITY
24 PROVIDER HOSPITAL PAYMENTS.--Every county in New Mexico that
25 authorizes payment for services to a sole community provider

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1 hospital shall:

2 A. determine eligibility for benefits and
3 determine an amount payable on each claim for services to
4 indigent patients from sole community provider hospitals;

5 B. notify the sole community provider hospital of
6 its decision on each request for payment while not actually
7 reimbursing the hospital for the services that are reimbursed
8 with federal funds under the state medicaid program;

9 C. confirm the amount of the sole community
10 provider hospital payments authorized for each hospital for
11 the past fiscal year by September 30 of the current fiscal
12 year;

13 D. negotiate agreements with each sole community
14 provider hospital providing services for county residents on
15 the anticipated amount of the payments for the following
16 fiscal year; and

17 E. provide the [~~human services~~] medical assistance
18 department by January 15 of each year with the budgeted amount
19 of sole community provider hospital payments, by hospital, for
20 the following fiscal year. "

21 Section 36. Section 27-5-16 NMSA 1978 (being Laws 1965,
22 Chapter 234, Section 16, as amended) is amended to read:

23 "27-5-16. DEPARTMENT-- PAYMENTS-- COOPERATION. --

24 A. The medical assistance department shall not
25 decrease the amount of any medical assistance payments made to

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1 the hospitals or health care providers of this state pursuant
2 to law because of any financial reimbursement made to
3 ambulance services, hospitals or health care providers for
4 indigent or [~~medicaid-eligible~~] medicaid-eligible patients as
5 provided in the Indigent Hospital and County Health Care Act.

6 B. The medical assistance department shall
7 cooperate with each board in furnishing information or
8 assisting in the investigation of any person to determine
9 whether he meets the qualifications of an indigent patient as
10 defined in the Indigent Hospital and County Health Care Act.

11 C. The medical assistance department shall ensure
12 that the sole community provider payment and the reimbursement
13 to hospitals made under the state medicaid program do not
14 exceed what would have been paid for under medicare payment
15 principles. In the event the sole community provider payment
16 and medicaid reimbursement to hospitals would exceed medicare
17 payment principles, the medical assistance department shall
18 reduce the sole community provider payment prior to making any
19 reduction in reimbursement to hospitals made under the state
20 medicaid program "

21 Section 37. Section 27-10-3 NMSA 1978 (being Laws 1991,
22 Chapter 212, Section 3, as amended) is amended to read:

23 "27-10-3. COUNTY-SUPPORTED MEDICAID FUND CREATED--USE--
24 APPROPRIATION BY THE LEGISLATURE. --

25 A. There is created in the state treasury the

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1 "county-supported medicaid fund". The fund shall be invested
2 by the state treasurer as other state funds are invested.
3 Income earned from investment of the fund shall be credited to
4 the county-supported medicaid fund. The fund shall not revert
5 in any fiscal year.

6 B. Money in the county-supported medicaid fund is
7 subject to appropriation by the legislature to support the
8 state medicaid program and to institute or support primary
9 care health care services pursuant to Subsections D and E of
10 Section 24-1A-3.1 NMSA 1978. Of the amount appropriated each
11 year, nine percent shall be appropriated to the department of
12 health to institute or support primary care health care
13 services pursuant to Subsections D and E of Section 24-1A-3.1
14 NMSA 1978.

15 C. Up to three percent of the county-supported
16 medicaid fund each year may be expended for administrative
17 costs related to medicaid or developing new primary care
18 health care centers or facilities.

19 D. In the event federal funds for medicaid are not
20 received by New Mexico for any eighteen-month period, the
21 unencumbered balance remaining in the county-supported
22 medicaid fund and the sole community provider fund at the end
23 of the fiscal year following the end of any eighteen-month
24 period shall be paid within a reasonable time to each county
25 for deposit in the county indigent hospital claims fund in

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1 proportion to the payments made by each county through tax
2 revenues or transfers in the previous fiscal year as certified
3 by the local government division of the department of finance
4 and administration. The medical assistance department [~~will~~]
5 shall provide for budgeting and accounting of payments to the
6 fund. "

7 Section 38. Section 27-11-2 NMSA 1978 (being Laws 1998,
8 Chapter 30, Section 2) is amended to read:

9 "27-11-2. DEFINITIONS. --As used in the Medicaid Provider
10 Act:

11 A. "department" means the [~~human services~~] medical
12 assistance department;

13 B. "managed care organization" means a person
14 eligible to enter into risk-based prepaid capitation
15 agreements with the department to provide health care and
16 related services;

17 C. "medicaid" means the medical assistance program
18 established pursuant to Title 19 of the federal Social
19 Security Act and regulations issued pursuant to that act;

20 D. "medicaid provider" means a person, including a
21 managed care organization, operating under contract with the
22 department to provide medicaid-related services to recipients;

23 E. "person" means an individual or other legal
24 entity;

25 F. "recipient" means a person whom the department

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1 has determined to be eligible to receive medicaid-related
2 services;

3 G. "secretary" means the secretary of [~~human~~
4 ~~services~~] medical assistance; and

5 H. "subcontractor" means a person who contracts
6 with a medicaid provider to provide medicaid-related services
7 to recipients. "

8 Section 39. Section 27-11-3 NMSA 1978 (being Laws 1998,
9 Chapter 30, Section 3, as amended) is amended to read:

10 "27-11-3. REVIEW OF MEDICAID PROVIDERS-- CONTRACT
11 REMEDIES-- PENALTIES. --

12 A. Consistent with the terms of any contract
13 between the department and a medicaid provider, the secretary
14 shall have the right to be afforded access to such of the
15 medicaid provider's records and personnel, as well as its
16 subcontracts and that subcontractor's records and personnel,
17 as may be necessary to ensure that the medicaid provider is
18 complying with the terms of its contract with the department.

19 B. Upon not less than two days' written notice to
20 a medicaid provider the secretary may, consistent with the
21 provisions of the Medicaid Provider Act and rules issued
22 pursuant to that act, carry out an administrative
23 investigation or conduct administrative proceedings to
24 determine whether a medicaid provider has:

25 (1) materially breached its obligation to

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1 furnish medicaid-related services to recipients, or any other
2 duty specified in its contract with the department;

3 (2) violated any provision of the Public
4 Assistance Act or the Medicaid Provider Act or any rules
5 issued pursuant to those acts;

6 (3) intentionally or with reckless disregard
7 made any false statement with respect to any report or
8 statement required by the Public Assistance Act or the
9 Medicaid Provider Act, rules issued pursuant to either of
10 those acts or a contract with the department;

11 (4) intentionally or with reckless disregard
12 advertised or marketed, or attempted to advertise or market,
13 its services to recipients in a manner as to misrepresent its
14 services or capacity for services, or engaged in any
15 deceptive, misleading or unfair practice with respect to
16 advertising or marketing;

17 (5) hindered or prevented the secretary from
18 performing any duty imposed by the Public Assistance Act, the
19 Human Services Department Act, the Department of Health Act,
20 the Medical Assistance Act or the Medicaid Provider Act or any
21 rules issued pursuant to those acts; or

22 (6) fraudulently procured or attempted to
23 procure any benefit from medicaid.

24 C. Subject to the provisions of Subsection D of
25 this section, after affording a medicaid provider written

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1 notice of hearing not less than ten days before the hearing
2 date and an opportunity to be heard, and upon making
3 appropriate administrative findings, the secretary may take
4 any or any combination of the following actions against the
5 provider:

6 (1) impose an administrative penalty of not
7 more than five thousand dollars (\$5,000) for engaging in any
8 practice described in Paragraphs (1) through (6) of Subsection
9 B of this section; provided that each separate occurrence of
10 such practice shall constitute a separate offense;

11 (2) issue an administrative order requiring
12 the provider to:

13 (a) cease or modify any specified
14 conduct or practices engaged in by it or its employees,
15 subcontractors or agents;

16 (b) fulfill its contractual obligations
17 in the manner specified in the order;

18 (c) provide any service that has been
19 denied;

20 (d) take steps to provide or arrange
21 for any service that it has agreed or is otherwise obligated
22 to make available; or

23 (e) enter into and abide by the terms
24 of a binding or nonbinding arbitration proceeding, if agreed
25 to by any opposing party, including the secretary; or

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1 (3) suspend or revoke the contract between
2 the provider and the department pursuant to the terms of that
3 contract.

4 D. If a contract between the department and a
5 medicaid provider explicitly specifies a dispute resolution
6 mechanism for use in resolving disputes over performance of
7 that contract, the dispute resolution mechanism specified in
8 the contract shall be used to resolve such disputes in lieu of
9 the mechanism set forth in Subsection C of this section.

10 E. If a medicaid provider's contract so specifies,
11 the medicaid provider shall have the right to seek de novo
12 review in district court of any decision by the secretary
13 regarding a contractual dispute. "

14 Section 40. Section 27-12-3 NMSA 1978 (being Laws 1998,
15 Chapter 52, Section 3) is amended to read:

16 "27-12-3. DEFINITIONS. --As used in the Child Health Act:

17 A. "child" means a natural person who has not
18 reached his nineteenth birthday;

19 B. "department" means the [~~human services~~] medical
20 assistance department;

21 C. "low-income children and their families" means
22 a family with a dependent child with income at or below the
23 level specified in Section [~~6 of the Child Health Act~~] 27-12-6
24 NMSA 1978; and

25 D. "secretary" means the secretary of [~~human~~

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1 ~~services]~~ medical assistance. "

2 Section 41. Section 27-12-4 NMSA 1978 (being Laws 1998,
3 Chapter 52, Section 4) is amended to read:

4 "27-12-4. PROGRAM CREATED. -- After consultation with the
5 secretary of health, the secretary of human services and the
6 secretary of children, youth and families, the secretary is
7 directed to design and implement a program to provide health
8 services to low-income children and their families in
9 accordance with the provisions of the Child Health Act. The
10 program shall meet the requirements for obtaining allotted
11 federal funds pursuant to the provisions of Title 21 of the
12 federal Social Security Act. In accordance with those
13 requirements and the requirements of the Child Health Act, the
14 secretary shall prepare and submit a child health plan to the
15 federal secretary of health and human services. The
16 department is the designated state agency to administer the
17 program and cooperate with the federal government in its
18 administration. "

19 Section 42. Section 30-40-1 NMSA 1978 (being Laws 1979,
20 Chapter 170, Section 1, as amended) is amended to read:

21 "30-40-1. FAILING TO DISCLOSE FACTS OR CHANGE OF
22 CIRCUMSTANCES TO OBTAIN PUBLIC ASSISTANCE OR MEDICAL
23 ASSISTANCE. --

24 A. Failing to disclose facts or change of
25 circumstances to obtain public assistance or medical

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1 assistance consists of any person knowingly failing to
2 disclose any material facts known to be necessary to determine
3 eligibility for public assistance or medical assistance or
4 knowingly failing to disclose a change in circumstances for
5 the purpose of obtaining or continuing to receive public
6 assistance or medical assistance to which he is not entitled
7 or in amounts greater than that to which he is entitled.

8 B. Whoever commits failing to disclose facts or
9 change of circumstances to obtain public assistance or medical
10 assistance when the value of the assistance wrongfully
11 received is one hundred dollars (\$100) or less in any twelve
12 consecutive months is guilty of a petty misdemeanor.

13 C. Whoever commits failing to disclose facts or
14 change of circumstances to obtain public assistance or medical
15 assistance when the value of the assistance wrongfully
16 received is more than one hundred dollars (\$100) but not more
17 than two hundred fifty dollars (\$250) in any twelve
18 consecutive months is guilty of a misdemeanor.

19 D. Whoever commits failing to disclose facts or
20 change of circumstances to obtain public assistance or medical
21 assistance when the value of the assistance wrongfully
22 received is more than two hundred fifty dollars (\$250) but not
23 more than two thousand five hundred dollars (\$2,500) in any
24 twelve consecutive months is guilty of a fourth degree felony.

25 E. Whoever commits failing to disclose facts or

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1 change of circumstances to obtain public assistance or medical
2 assistance when the value of the assistance wrongfully
3 received is more than two thousand five hundred dollars
4 (\$2,500) but not more than twenty thousand dollars (\$20,000)
5 is guilty of a third degree felony.

6 F. Whoever commits failing to disclose facts or
7 change of circumstances to obtain public assistance or medical
8 assistance when the value of the assistance wrongfully
9 received exceeds twenty thousand dollars (\$20,000) is guilty
10 of a second degree felony. "

11 Section 43. Section 30-40-2 NMSA 1978 (being Laws 1979,
12 Chapter 170, Section 2, as amended) is amended to read:

13 "30-40-2. UNLAWFUL USE OF FOOD STAMP IDENTIFICATION CARD
14 OR MEDICAL IDENTIFICATION CARD. --

15 A. Unlawful use of food stamp identification card
16 or medical identification card consists of the use of a food
17 stamp or medical identification card by any person to whom it
18 has not been issued, or who is not an authorized
19 representative of such a person, for a food stamp allotment.

20 B. Whoever commits unlawful use of food stamp
21 identification card or medical identification card when the
22 value of the food stamps or medical [~~services~~] assistance
23 wrongfully received is one hundred dollars (\$100) or less is
24 guilty of a petty misdemeanor.

25 C. Whoever commits unlawful use of food stamp

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1 identification card or medical identification card when the
2 value of the food stamps or medical [~~services~~] assistance
3 wrongfully received is more than one hundred dollars (\$100)
4 but not more than two hundred fifty dollars (\$250) is guilty
5 of a misdemeanor.

6 D. Whoever commits unlawful use of food stamp
7 identification card or medical identification card when the
8 value of the food stamps or medical [~~services~~] assistance
9 wrongfully received is more than two hundred fifty dollars
10 (\$250) but not more than two thousand five hundred dollars
11 (\$2,500) is guilty of a fourth degree felony.

12 E. Whoever commits unlawful use of food stamp
13 identification card or medical identification card when the
14 value of the food stamps or medical [~~services~~] assistance
15 wrongfully received is more than two thousand five hundred
16 dollars (\$2,500) but not more than twenty thousand dollars
17 (\$20,000) is guilty of a third degree felony.

18 F. Whoever commits unlawful use of food stamp
19 identification card or medical identification card when the
20 value of the food stamps or medical [~~services~~] assistance
21 wrongfully received exceeds twenty thousand dollars (\$20,000)
22 is guilty of a second degree felony.

23 G. For the purpose of this section, the value of
24 the medical assistance received is the amount paid by the
25 [~~human services~~] medical assistance department for medical

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1 [services] assistance received through use of the card."

2 Section 44. Section 30-40-3 NMSA 1978 (being Laws 1979,
3 Chapter 170, Section 3, as amended) is amended to read:

4 "30-40-3. MISAPPROPRIATING PUBLIC ASSISTANCE OR MEDICAL
5 ASSISTANCE. --

6 A. Misappropriating public assistance or medical
7 assistance consists of any public officer or public employee
8 fraudulently misappropriating, attempting to misappropriate or
9 aiding and abetting in the misappropriation of food stamp
10 coupons, WIC checks pertaining to the special supplemental
11 food program for women, infants and children administered by
12 the department of health [~~and environment department~~], food
13 stamp or medical identification cards, public assistance
14 benefits, medical assistance benefits or funds received in
15 exchange for food stamp coupons.

16 B. Whoever commits misappropriating public
17 assistance or medical assistance when the value of the thing
18 misappropriated is one hundred dollars (\$100) or less is
19 guilty of a petty misdemeanor.

20 C. Whoever commits misappropriating public
21 assistance or medical assistance when the value of the thing
22 misappropriated is more than one hundred dollars (\$100) but
23 not more than two hundred fifty dollars (\$250) is guilty of a
24 misdemeanor.

25 D. Whoever commits misappropriating public

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1 assistance or medical assistance when the value of the thing
2 misappropriated is more than two hundred fifty dollars (\$250)
3 but not more than two thousand five hundred dollars (\$2,500)
4 is guilty of a fourth degree felony.

5 E. Whoever commits misappropriating public
6 assistance or medical assistance when the value of the thing
7 misappropriated is more than two thousand five hundred dollars
8 (\$2,500) but not more than twenty thousand dollars (\$20,000)
9 is guilty of a third degree felony.

10 F. Whoever commits misappropriating public
11 assistance or medical assistance when the value of the thing
12 misappropriated exceeds twenty thousand dollars (\$20,000) is
13 guilty of a second degree felony.

14 G. Whoever commits misappropriating public
15 assistance or medical assistance when the item misappropriated
16 is a food stamp or medical identification card is guilty of a
17 fourth degree felony."

18 Section 45. Section 30-40-4 NMSA 1978 (being Laws 1979,
19 Chapter 170, Section 4) is amended to read:

20 "30-40-4. MAKING OR PERMITTING A FALSE CLAIM FOR
21 REIMBURSEMENT FOR PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE
22 SERVICES. --

23 A. Making or permitting a false claim for
24 reimbursement of public assistance or medical assistance
25 services consists of knowingly making, causing to be made or

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1 permitting to be made a claim for reimbursement for services
2 provided to a recipient of public assistance or medical
3 assistance for services not rendered or making a false
4 material statement or forged signature upon any claim for
5 services, with intent that the claim shall be relied upon for
6 the expenditure of public money.

7 B. Whoever commits making or permitting a false
8 claim for reimbursement for public assistance or medical
9 assistance services is guilty of a fourth degree felony. "

10 Section 46. Section 30-40-5 NMSA 1978 (being Laws 1979,
11 Chapter 170, Section 5) is amended to read:

12 "30-40-5. UNLAWFUL SEEKING OF PAYMENT FROM PUBLIC
13 ASSISTANCE OR MEDICAL ASSISTANCE RECIPIENTS. --

14 A. Unlawful seeking of payment from public
15 assistance or medical assistance recipients consists of
16 knowingly seeking payment from recipients or their families
17 for any unpaid portion of a bill for which reimbursement has
18 been or will be received from the human services department or
19 the medical assistance department or for claims or services
20 denied by the human services department or the medical
21 assistance department because of [~~provider~~] the provider's
22 administrative error.

23 B. Whoever commits unlawful seeking of payment
24 from a public assistance or medical assistance recipient is
25 guilty of a misdemeanor. "

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1 Section 47. Section 30-40-6 NMSA 1978 (being Laws 1979,
2 Chapter 170, Section 6, as amended) is amended to read:

3 "30-40-6. FAILURE TO REIMBURSE THE DEPARTMENT UPON
4 RECEIPT OF THIRD-PARTY PAYMENT. --

5 A. Failure to reimburse the [~~human services~~]
6 medical assistance department upon receipt of third-party
7 payment consists of [~~knowingly~~] knowing failure by a medicaid
8 provider to reimburse the [~~human services~~] medical assistance
9 department or the medical assistance department's fiscal agent
10 the amount of payment received from the medical assistance
11 department for services when the provider receives payment for
12 the same services from any third party.

13 B. A medicaid provider who commits failure to
14 reimburse the medical assistance department upon receipt of
15 third-party payment when the value of the payment made by the
16 medical assistance department is one hundred dollars (\$100) or
17 less is guilty of a petty misdemeanor.

18 C. A medicaid provider who commits failure to
19 reimburse the medical assistance department upon receipt of
20 third-party payment when the value of the payment made by the
21 medical assistance department is more than one hundred dollars
22 (\$100) but not more than two hundred fifty dollars (\$250) is
23 guilty of a misdemeanor.

24 D. A medicaid provider who commits failure to
25 reimburse the medical assistance department upon receipt of

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1 third-party payment when the value of the payment made by the
2 medical assistance department is more than two hundred fifty
3 dollars (\$250) but not more than two thousand five hundred
4 dollars (\$2,500) is guilty of a fourth degree felony.

5 E. A medicaid provider who commits failure to
6 reimburse the medical assistance department upon receipt of
7 third-party payment when the value of the payment made by the
8 medical assistance department is more than two thousand five
9 hundred dollars (\$2,500) but not more than twenty thousand
10 dollars (\$20,000) is guilty of a third degree felony.

11 F. A medicaid provider who commits failure to
12 reimburse the medical assistance department upon receipt of
13 third-party payment when the value of the payment made by the
14 medical assistance department exceeds twenty thousand dollars
15 (\$20,000) is guilty of a second degree felony. "

16 Section 48. Section 30-40-7 NMSA 1978 (being Laws 1979,
17 Chapter 170, Section 7) is amended to read:

18 "30-40-7. FAILURE TO NOTIFY THE HUMAN SERVICES
19 DEPARTMENT OR THE MEDICAL ASSISTANCE DEPARTMENT OF RECEIPT OF
20 ANYTHING OF VALUE FROM PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE
21 RECIPIENT. --Any employee of the human services department or
22 the medical assistance department who knowingly receives
23 anything of value, other than as provided by law, from either
24 a recipient of public assistance or medical assistance or from
25 the family of a public assistance or medical assistance

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1 recipient shall notify the human services department or the
2 medical assistance department within ten days after such
3 receipt on a form provided by the respective department.
4 Whoever fails to so notify the respective department within
5 ten days is guilty of a petty misdemeanor. "

6 Section 49. Section 30-44-2 NMSA 1978 (being Laws 1989,
7 Chapter 286, Section 2, as amended) is amended to read:

8 "30-44-2. DEFINITIONS. --As used in the Medicaid Fraud
9 Act:

10 A. "benefit" means money, treatment, services,
11 goods or anything of value authorized under the program;

12 B. "claim" means any communication, whether oral,
13 written, electronic or magnetic, that identifies a treatment,
14 good or service as reimbursable under the program;

15 C. "cost document" means [~~any~~] a cost report or
16 similar document that states income or expenses and is used to
17 determine a cost reimbursement-based rate of payment for a
18 provider under the program;

19 D. "covered person" means an individual who is
20 entitled to receive health care benefits from a managed health
21 care plan;

22 E. "department" means the [~~human services~~] medical
23 assistance department;

24 F. "entity" means a person other than an
25 individual and includes corporations, partnerships,

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1 associations, joint-stock companies, unions, trusts, pension
2 funds, unincorporated organizations, governments and their
3 political subdivisions [~~thereof~~] and nonprofit organizations;

4 G. "great physical harm" means physical harm of a
5 type that causes physical loss of a bodily member or organ or
6 functional loss of a bodily member or organ for a prolonged
7 period of time;

8 H. "great psychological harm" means psychological
9 harm that causes mental or emotional incapacitation for a
10 prolonged period of time or that causes extreme behavioral
11 change or severe physical symptoms or that requires
12 psychological or psychiatric care;

13 I. "health care official" means:

14 (1) an administrator, officer, trustee,
15 fiduciary, custodian, counsel, agent or employee of a managed
16 [~~care~~] health care plan;

17 (2) an officer, counsel, agent or employee of
18 an organization that provides, proposes to or contracts to
19 provide services to a managed health care plan; or

20 (3) an official, employee or agent of a state
21 or federal agency with regulatory or administrative authority
22 over a managed health care plan;

23 J. "managed health care plan" means a government-
24 sponsored health benefit plan that requires a covered person
25 to use, or creates incentives, including financial incentives,

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1 for a covered person to use, health care providers managed,
2 owned, under contract with or employed by a health care
3 insurer or provider service network. A "managed health care
4 plan" includes the health care services offered by a health
5 maintenance organization, preferred provider organization,
6 health care insurer, provider service network, entity or
7 person that contracts to provide or provides goods or services
8 that are reimbursed by or are a required benefit of a state or
9 federally funded health benefit program, or ~~[any]~~ a person or
10 entity who contracts to provide goods or services to the
11 program;

12 K. "person" includes individuals, corporations,
13 partnerships and other associations;

14 L. "physical harm" means an injury to the body
15 that causes pain or incapacitation;

16 M. "program" means the medical assistance program
17 authorized under Title ~~[XIX]~~ 19 or Title 21 of the federal
18 Social Security Act [~~42 U.S.C. 1396, et seq. and implemented~~
19 ~~under Section 27-2-12 NMSA 1978~~];

20 N. "provider" means ~~[any]~~ a person who has applied
21 to participate or who participates in the program as a
22 supplier of treatment, services or goods;

23 O. "psychological harm" means emotional or
24 psychological damage of such a nature as to cause fear,
25 humiliation or distress or to impair a person's ability to

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1 enjoy the normal process of his life;

2 P. "recipient" means ~~[any]~~ an individual who
3 receives or requests benefits under the program;

4 Q. "records" means ~~[any]~~ medical or business
5 documentation, however recorded, relating to the treatment or
6 care of ~~[any]~~ a recipient, to services or goods provided to
7 ~~[any]~~ a recipient or to reimbursement for treatment, services
8 or goods, including ~~[any]~~ documentation required to be
9 retained by regulations of the program; and

10 R. "unit" means the medicaid fraud control unit or
11 any other agency with power to investigate or prosecute fraud
12 and abuse of the program "

13 Section 50. Section 59A-18-31 NMSA 1978 (being Laws
14 1989, Chapter 183, Section 1, as amended) is amended to read:

15 "59A-18-31. ACCIDENT AND HEALTH POLICY OR CERTIFICATE
16 PROVISIONS RELATING TO INDIVIDUALS WHO ARE ELIGIBLE FOR
17 MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

18 A. Each individual or group policy or certificate
19 of accident or health insurance that is delivered, issued for
20 delivery or renewed in this state shall include provisions
21 that require benefits paid on behalf of a child or other
22 insured person under the policy or certificate to be paid to
23 the ~~[human services]~~ medical assistance department when:

24 (1) the ~~[human services]~~ medical assistance
25 department has paid or is paying benefits on behalf of the

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1 child or other insured person under the state's medicaid
2 program pursuant to Title [~~XIX~~] 19 or Title 21 of the federal
3 Social Security Act [~~42 U. S. C. 1396, et seq.~~];

4 (2) payment for the services in question has
5 been made by the [~~human services~~] medical assistance
6 department to the medicaid provider; and

7 (3) the insurer is notified that the insured
8 individual receives benefits under the medicaid program and
9 that benefits [~~must~~] shall be paid directly to the [~~human~~
10 ~~services~~] medical assistance department.

11 B. The notice required under Paragraph (3) of
12 Subsection A of this section may be accomplished through an
13 attachment to the claim by the [~~human services~~] medical
14 assistance department for insurance benefits when the claim is
15 first submitted by the [~~human services~~] medical assistance
16 department to the insurer.

17 C. Notwithstanding any other provisions of law,
18 checks in payment for claims pursuant to any individual or
19 group policy or certificate of accident or health insurance
20 for health care services provided to insured individuals who
21 are also eligible for benefits under the medicaid program and
22 provided by medical providers qualified to participate under
23 the policy or certificate shall be made payable to the
24 provider. The insurer may be notified that the insured
25 individual is eligible for medicaid benefits through an

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1 attachment to the claim by the provider for insurance benefits
2 when the claim is first submitted by the provider to the
3 insurer.

4 D. No individual or group accident or health
5 policy or certificate delivered, issued for delivery or
6 renewed in this state on or after [~~the effective date of this~~
7 ~~section~~] June 16, 1989 shall contain any provision denying or
8 limiting insurance benefits because services are rendered to
9 an insured who is eligible for or who has received medical
10 assistance under the medicaid program of this state.

11 E. To the extent that payment for covered expenses
12 has been made pursuant to the state medicaid program for
13 health care items or services furnished to an individual, in
14 any case where an insurer has a legal liability to make
15 payments, the state is considered to have acquired the rights
16 of the individual to payment by the insurer for those health
17 care items or services. "

18 Section 51. Section 59A-22-38 NMSA 1978 (being Laws
19 1989, Chapter 183, Section 2, as amended) is amended to read:

20 "59A-22-38. INDIVIDUAL HEALTH INSURANCE--POLICY
21 PROVISIONS RELATING TO INDIVIDUALS WHO ARE ELIGIBLE FOR
22 MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

23 A. Each individual health insurance policy that is
24 delivered, issued for delivery or renewed in this state shall
25 include provisions that require benefits paid on behalf of a

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1 child or other insured person under the policy to be paid to
2 the [~~human services~~] medical assistance department when:

3 (1) the [~~human services~~] medical assistance
4 department has paid or is paying benefits on behalf of the
5 child or other insured person under the state's medicaid
6 program pursuant to Title [~~XIX~~] 19 or Title 21 of the federal
7 Social Security Act [~~42 U. S. C. 1396, et seq.~~];

8 (2) payment for the services in question has
9 been made by the [~~human services~~] medical assistance
10 department to the medicaid provider; and

11 (3) the insurer is notified that the insured
12 individual receives benefits under the medicaid program and
13 that benefits [~~must~~] shall be paid directly to the [~~human~~
14 ~~services~~] medical assistance department.

15 B. The notice required under Paragraph (3) of
16 Subsection A of this section may be accomplished through an
17 attachment to the claim by the [~~human services~~] medical
18 assistance department for insurance benefits when the claim is
19 first submitted by the [~~human services~~] medical assistance
20 department to the insurer.

21 C. Notwithstanding any other provisions of law,
22 checks in payment for claims pursuant to any individual health
23 insurance policy for health care services provided to persons
24 who are also eligible for benefits under the medicaid program
25 and provided by medical providers qualified to participate

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1 under the policy shall be made payable to the provider. The
2 insurer may be notified that the insured individual is
3 eligible for medicaid benefits through an attachment to the
4 claim by the provider for insurance benefits when the claim is
5 first submitted by the provider to the insurer.

6 D. No individual health insurance policy
7 delivered, issued for delivery or renewed in this state on or
8 after [~~the effective date of this section~~] June 16, 1989 shall
9 contain any provision denying or limiting insurance benefits
10 because services are rendered to an insured who is eligible
11 for or who has received medical assistance under the medicaid
12 program of this state.

13 E. To the extent that payment for covered expenses
14 has been made pursuant to the state medicaid program for
15 health care items or services furnished to an individual, in
16 any case where an insurer has a legal liability to make
17 payments, the state is considered to have acquired the rights
18 of the individual to payment by the insurer for those health
19 care items or services. "

20 Section 52. Section 59A-23-7 NMSA 1978 (being Laws 1989,
21 Chapter 183, Section 3, as amended) is amended to read:

22 "59A-23-7. BLANKET OR GROUP HEALTH POLICY OR
23 CERTIFICATE-- PROVISIONS RELATING TO INDIVIDUALS WHO ARE
24 ELIGIBLE FOR MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

25 A. Each blanket or group health policy or

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1 certificate of insurance that is delivered, issued for
2 delivery or renewed in this state shall include provisions
3 that require benefits paid on behalf of a child or other
4 insured person under the policy or certificate to be paid to
5 the [~~human services~~] medical assistance department when:

6 (1) the [~~human services~~] medical assistance
7 department has paid or is paying benefits on behalf of the
8 child or other insured person under the state's medicaid
9 program pursuant to Title [~~XIX~~] 19 or Title 21 of the federal
10 Social Security Act [~~42 U. S. C. 1396, et seq.~~];

11 (2) payment for the services in question has
12 been made by the [~~human services~~] medical assistance
13 department to the medicaid provider; and

14 (3) the insurer is notified that the insured
15 individual receives benefits under the medicaid program and
16 that benefits [~~must~~] shall be paid directly to the [~~human~~
17 ~~services~~] medical assistance department.

18 B. The notice required under Paragraph (3) of
19 Subsection A of this section may be accomplished through an
20 attachment to the claim by the [~~human services~~] medical
21 assistance department for insurance benefits when the claim is
22 first submitted by the [~~human services~~] medical assistance
23 department to the insurer.

24 C. Notwithstanding any other provisions of law,
25 checks in payment for claims pursuant to any blanket or group

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1 health insurance policy or certificate for health care
2 services provided to persons who are also eligible for
3 benefits under the medicaid program and provided by medical
4 providers qualified to participate under the policy or
5 certificate shall be made payable to the provider. The
6 insurer may be notified that the insured individual is
7 eligible for medicaid benefits through an attachment to the
8 claim by the provider for insurance benefits when the claim is
9 first submitted by the provider to the insurer.

10 D. No blanket or group health insurance policy or
11 certificate delivered, issued for delivery or renewed in this
12 state on or after [~~the effective date of this section~~] June
13 16, 1989 shall contain any provision denying or limiting
14 insurance benefits because services are rendered to an insured
15 who is eligible for or who has received medical assistance
16 under the medicaid program of this state.

17 E. To the extent that payment for covered expenses
18 has been made pursuant to the state medicaid program for
19 health care items or services furnished to an individual, in
20 any case where the insurer has a legal liability to make
21 payments, the state is considered to have acquired the rights
22 of the individual to payment by an insurer for those health
23 care items or services. "

24 Section 53. Section 59A-24A-15 NMSA 1978 (being Laws
25 1989, Chapter 183, Section 4, as amended) is amended to read:

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1 "59A- 24A- 15. MEDICARE SUPPLEMENT POLICY-- PROVISIONS
2 RELATING TO INDIVIDUALS WHO ARE ELIGIBLE FOR MEDICAL BENEFITS
3 UNDER THE MEDICAID PROGRAM --

4 A. Each medicare supplement policy that is
5 delivered, issued for delivery or renewed in this state shall
6 include provisions that require benefits paid on behalf of a
7 child or other insured person under the policy to be paid to
8 the [~~human services~~] medical assistance department when:

9 (1) the [~~human services~~] medical assistance
10 department has paid or is paying benefits on behalf of the
11 child or other insured person under the state's medicaid
12 program pursuant to Title [~~XIX~~] 19 or Title 21 of the federal
13 Social Security Act [~~42 U.S.C. 1396, et seq.~~];

14 (2) payment for the services in question has
15 been made by the [~~human services~~] medical assistance
16 department to the medicaid provider; and

17 (3) the issuer is notified that the insured
18 individual receives benefits under the medicaid program and
19 that benefits must be paid directly to the [~~human services~~]
20 medical assistance department.

21 B. The notice required under Paragraph (3) of
22 Subsection A of this section may be accomplished through an
23 attachment to the claim by the [~~human services~~] medical
24 assistance department for insurance benefits when the claim is
25 first submitted by the [~~human services~~] medical assistance

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1 department to the issuer.

2 C. Notwithstanding any other provisions of law,
3 checks in payment for claims pursuant to any medicare
4 supplement policy for health care services provided to persons
5 who are also eligible for benefits under the medicaid program
6 and provided by medical providers qualified to participate
7 under the policy shall be made payable to the provider. The
8 issuer may be notified that the insured individual is eligible
9 for medicaid benefits through an attachment to the claim by
10 the provider for insurance benefits when the claim is first
11 submitted by the provider to the issuer.

12 D. No medicare supplement policy delivered, issued
13 for delivery or renewed in this state on or after [~~the~~
14 ~~effective date of this section~~] June 16, 1989 shall contain
15 any provision denying or limiting insurance benefits because
16 services are rendered to an insured who is eligible for or who
17 has received medical assistance under the medicaid program of
18 this state, unless:

19 (1) the medicare supplement policy or
20 certificate has been suspended at the request of a policy or
21 certificate holder for a period not to exceed twenty-four
22 months; and

23 (2) during the period of suspension, the
24 policy or certificate holder is entitled to medical assistance
25 pursuant to Title [~~XIX~~] 19 or Title 21 of the federal Social

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1 Security Act [~~42 U.S.C. 1396, et seq.~~]. "

2 Section 54. Section 59A-44-46 NMSA 1978 (being Laws
3 1989, Chapter 183, Section 5) is amended to read:

4 "59A-44-46. FRATERNAL BENEFIT SOCIETIES-- CERTIFICATE
5 PROVISIONS RELATING TO INDIVIDUALS WHO ARE ELIGIBLE FOR
6 MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

7 A. Each individual or group policy or certificate
8 of accident or health insurance issued by a society that is
9 delivered, issued for delivery or renewed in this state shall
10 include provisions that require benefits paid on behalf of a
11 child or other insured person under the policy or certificate
12 to be paid to the [~~human services~~] medical assistance
13 department when:

14 (1) the [~~human services~~] medical assistance
15 department has paid or is paying benefits on behalf of the
16 child or other insured person under the state's medicaid
17 program pursuant to Title [~~XIX~~] 19 or Title 21 of the federal
18 Social Security Act [~~42 U.S.C. 1396, et seq.~~];

19 (2) payment for the services in question has
20 been made by the [~~human services~~] medical assistance
21 department to the medicaid provider; and

22 (3) the society is notified that the insured
23 individual receives benefits under the medicaid program and
24 that benefits must be paid directly to the [~~human services~~]
25 medical assistance department.

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1 B. The notice required under Paragraph (3) of
2 Subsection A of this section may be accomplished through an
3 attachment to the claim by the [~~human services~~] medical
4 assistance department for insurance benefits when the claim is
5 first submitted by the [~~human services~~] medical assistance
6 department to the society.

7 C. Notwithstanding any other provisions of law,
8 checks in payment for claims pursuant to any individual or
9 group policy or certificate of accident or health insurance
10 for health care services provided to persons who are also
11 eligible for benefits under the medicaid program and provided
12 by medical providers qualified to participate under the policy
13 or certificate shall be made payable to the provider. The
14 society may be notified that the insured individual is
15 eligible for medicaid benefits through an attachment to the
16 claim by the provider for insurance benefits when the claim is
17 first submitted by the provider to the society.

18 D. No individual or group policy or certificate of
19 accident or health insurance issued by a society that is
20 delivered, issued for delivery or renewed in this state on or
21 after the effective date of this section shall contain any
22 provision denying or limiting insurance benefits because
23 services are rendered to an insured who is eligible for or who
24 has received medical assistance under the medicaid program of
25 this state. "

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1 Section 55. Section 59A-46-29 NMSA 1978 (being Laws
2 1989, Chapter 183, Section 6, as amended) is amended to read:

3 "59A-46-29. HEALTH MAINTENANCE ORGANIZATIONS-- CONTRACT
4 OR CERTIFICATE PROVISIONS RELATING TO INDIVIDUALS WHO ARE
5 ELIGIBLE FOR MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

6 A. Each individual or group contract or
7 certificate that is delivered, issued for delivery or renewed
8 in this state shall include provisions that require any
9 indemnity benefits payable by a health maintenance
10 organization on behalf of an enrollee under the contract or
11 certificate to be paid to the [~~human services~~] medical
12 assistance department when:

13 (1) the [~~human services~~] medical assistance
14 department has paid or is paying benefits on behalf of the
15 enrollee under the state's medicaid program pursuant to Title
16 [~~XIX~~] 19 or Title 21 of the federal Social Security Act [~~42~~
17 ~~U.S.C. 1396, et seq.~~];

18 (2) payment for the services in question has
19 been made by the [~~human services~~] medical assistance
20 department to the medicaid provider; and

21 (3) the health maintenance organization is
22 notified that the enrollee receives benefits under the
23 medicaid program and that any indemnity benefits payable by
24 the health maintenance organization must be paid directly to
25 the [~~human services~~] medical assistance department.

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1 B. The notice required under Paragraph (3) of
2 Subsection A of this section may be accomplished through an
3 attachment to the claim by the ~~[human services]~~ medical
4 assistance department for any indemnity benefits payable by
5 the health maintenance organization when the claim is first
6 submitted by the ~~[human services]~~ medical assistance
7 department to the health maintenance organization.

8 C. Notwithstanding any other provisions of law,
9 checks in payment for claims for any indemnity benefits
10 payable by a health maintenance organization pursuant to any
11 individual or group contract or certificate for health care
12 services provided to persons who are also eligible for
13 benefits under the medicaid program and provided by medical
14 providers not contracting with the health maintenance
15 organization shall be made payable to the provider. The
16 health maintenance organization may be notified that the
17 enrollee is eligible for medicaid benefits through an
18 attachment to the claim by the provider for health maintenance
19 organization benefits when the claim is first submitted by the
20 provider to the health maintenance organization.

21 D. No health maintenance organization group or
22 individual contract or certificate delivered, issued for
23 delivery or renewed in this state on or after ~~[the effective~~
24 ~~date of this section]~~ June 16, 1989 shall contain any
25 provision denying or limiting health maintenance organization

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1 benefits because services are rendered to an enrollee who is
2 eligible for or who has received medical assistance under the
3 medicaid program of this state.

4 E. To the extent that payment for covered expenses
5 has been made pursuant to the state medicaid program for
6 health care items or services furnished to an individual, in
7 any case where a health maintenance organization has a legal
8 liability to make payments, the state is considered to have
9 acquired the rights of the individual to payment by the health
10 maintenance organization for those health care items or
11 services. "

12 Section 56. Section 59A-47-36 NMSA 1978 (being Laws
13 1989, Chapter 183, Section 7, as amended) is amended to read:

14 "59A-47-36. NONPROFIT HEALTH CARE PLANS-- CONTRACT OR
15 CERTIFICATE PROVISIONS RELATING TO INDIVIDUALS WHO ARE
16 ELIGIBLE FOR MEDICAL BENEFITS UNDER THE MEDICAID PROGRAM --

17 A. Each individual or group contract for health
18 care expense payments or certificate therefor that is
19 delivered, issued for delivery or renewed in this state by a
20 health care plan shall include provisions that require
21 benefits paid on behalf of a subscriber under the contract or
22 certificate to be paid to the [~~human services~~] medical
23 assistance department when:

24 (1) the [~~human services~~] medical assistance
25 department has paid or is paying health care expenses on

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1 behalf of the subscriber under the state's medicaid program
2 pursuant to Title [~~XIX~~] 19 or Title 21 of the federal Social
3 Security Act [~~42 U.S.C. 1396, et seq.~~];

4 (2) payment for the expenses in question has
5 been made by the [~~human services~~] medical assistance
6 department to the medicaid provider; and

7 (3) the health care plan is notified that the
8 subscriber receives benefits under the medicaid program and
9 that benefits must be paid directly to the [~~human services~~]
10 medical assistance department.

11 B. The notice required under Paragraph (3) of
12 Subsection A of this section may be accomplished through an
13 attachment to the claim by the [~~human services~~] medical
14 assistance department for health care expense payments when
15 the claim is first submitted by the [~~human services~~] medical
16 assistance department to the health care plan.

17 C. Notwithstanding any other provisions of law,
18 checks in payment for claims pursuant to any individual or
19 group contract for health care expense payments or certificate
20 therefor for health care services provided to subscribers who
21 are also eligible for benefits under the medicaid program and
22 provided by medical providers qualified to participate under
23 the contract or certificate shall be made payable to the
24 provider. The health care plan may be notified that the
25 subscriber is eligible for medicaid benefits through an

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1 attachment to the claim by the provider for health care
2 expense payments when the claim is first submitted by the
3 provider to the health care plan.

4 D. No individual or group contract for health care
5 expense payments or certificate therefor delivered, issued for
6 delivery or renewed in this state on or after [~~the effective~~
7 ~~date of this section~~] June 16, 1989 shall contain any
8 provision denying or limiting contract benefits because
9 services are rendered to a subscriber who is eligible for or
10 who has received medical assistance under the medicaid program
11 of this state.

12 E. To the extent that payment for covered expenses
13 has been made pursuant to the state medicaid program for
14 health care items or services furnished to an individual, in
15 any case where a health care plan has a legal liability to
16 make payments, the state is considered to have acquired the
17 rights of the individual to payment by the health care plan
18 for those health care items or services. "

19 Section 57. Section 59A-57-7 NMSA 1978 (being Laws 1998,
20 Chapter 107, Section 7) is amended to read:

21 "59A-57-7. POINT-OF-SERVICE OPTION PLAN. --

22 A. Except as otherwise provided in this section,
23 the department may require a plan that offers a
24 point-of-service plan or open plan to include in any managed
25 health care plan it offers an option for a point-of-service

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1 plan or open plan to the extent that the department determines
2 that the open plan option is financially sound.

3 B. No health care insurer may be required to offer
4 a point-of-service plan or open plan as an option under a
5 medicaid-funded managed health care plan unless the [~~human~~
6 ~~services~~] medical assistance department has established such a
7 requirement as part of a procurement for managed health care
8 under the medicaid program."

9 Section 58. Section 59A-57-10 NMSA 1978 (being Laws
10 1998, Chapter 107, Section 10) is amended to read:

11 "59A-57-10. APPLICATION OF ACT TO MEDICAID PROGRAM --

12 A. Except as otherwise provided in this section,
13 the provisions of the Patient Protection Act apply to the
14 medicaid program operation in the state. A managed health
15 care plan offered through the medicaid program shall grant
16 enrollees and providers the same rights and protections as are
17 granted to enrollees and providers in any other managed health
18 care plan subject to the provisions of the Patient Protection
19 Act.

20 B. Nothing in the Patient Protection Act shall be
21 construed to limit the authority of the [~~human services~~]
22 medical assistance department to administer the medicaid
23 program, as required by law. Consistent with applicable state
24 and federal law, the [~~human services~~] medical assistance
25 department shall have sole authority to determine, establish

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1 and enforce medicaid eligibility criteria, the scope,
2 definitions and limitations of medicaid benefits and the
3 minimum qualifications or standards for medicaid service
4 providers.

5 C. Medicaid recipients and applicants retain their
6 right to appeal decisions adversely affecting their medicaid
7 benefits to the [~~human services~~] medical assistance
8 department, pursuant to the [~~Public~~] Medical Assistance
9 Appeals Act. Notwithstanding other provisions of the Patient
10 Protection Act, a medicaid recipient or applicant who files an
11 appeal to the [~~human services~~] medical assistance department
12 pursuant to the [~~Public~~] Medical Assistance Appeals Act may
13 not file an appeal on the same issue to the superintendent
14 pursuant to the Patient Protection Act, unless the [~~human~~
15 ~~services~~] medical assistance department refuses to hear the
16 appeal. The superintendent may refer to the [~~human services~~]
17 medical assistance department any appeal filed with the
18 superintendent pursuant to the Patient Protection Act if the
19 complainant is a medicaid beneficiary and the matter in
20 dispute is subject to the provisions of the [~~Public~~] Medical
21 Assistance Appeals Act.

22 D. Any managed health care plan participating in
23 the medicaid managed care program as of [~~the effective date of~~
24 ~~the Patient Protection Act~~] July 1, 1998 and that is in
25 compliance with contractual and regulatory requirements

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1 applicable to that program shall be deemed to comply with any
2 requirements established in accordance with [~~that~~] the Patient
3 Protection Act until July 1, 1999; provided that, from [~~the~~
4 ~~effective date of that act~~] July 1, 1998, any rights
5 established under that act beyond those under requirements of
6 the [~~human services~~] medical assistance department shall apply
7 to enrollees in medicaid managed health care plans. "

8 Section 59. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
9 PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1, 2001:

10 A. all personnel, appropriations, money, records,
11 equipment, supplies and other property of the medical
12 assistance division of the human services department shall be
13 transferred to the medical assistance department;

14 B. all contracts of the medical assistance
15 division shall be binding and effective on the medical
16 assistance department; and

17 C. all references in law to the medical assistance
18 division, medicaid or Title 19 or Title 21 of the Social
19 Security Act shall be deemed to be references to the medical
20 assistance department.

21 Section 60. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2001.