

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENSURING MEDICAID ELIGIBILITY FOR ALL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES RECIPIENTS; ELIMINATING HOUSEHOLD GROUPS; ELIMINATING THE STATE HOUSING SUBSIDY; MODIFYING THE DISREGARDS PERMITTED; AMENDING THE NEW MEXICO WORKS ACT.

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

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

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

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

B. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant pursuant to the federal act and by state funds;

C. "department" means the human services department;

D. "dependent child" means a natural, adopted or step-child or ward who is seventeen years of age or younger

or who is eighteen years of age and is enrolled in high school;

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

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

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

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

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

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

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

L. "person" means an individual;

M. "secretary" means the secretary of the

department;

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

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

Section 2. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and also Laws 1998, Chapter 9, Section 4 as amended by Laws 1999, Chapter 71, Section 1 and by Laws 1999, Chapter 273, Section 2 and also by Laws 1999, Chapter 280, Section 1) is amended to read:

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

A. Application for cash assistance or services shall be made to the department's county office in the

county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant having custody of or residing with a dependent child who is a benefit group member and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other benefit group members have at the time of the filing of the application and other information required by the department.

B. Application for expedited food stamps shall be made to the department's county office in the county or district in which an applicant resides. The department shall process the application for expedited food stamps within twenty-four hours after the application is made.

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

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

and act on the application.

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

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

G. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

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

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

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

the participant become and remain employed;

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

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

(5) may require the participant to undergo appropriate substance abuse treatment.

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

J. If a participant does not develop an individual responsibility plan, refuses to sign an individual responsibility plan or refuses to attend semiannual reviews of an individual responsibility plan, he shall be required to enter into a conciliation pursuant to

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

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

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

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

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

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

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

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

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

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

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

- (1) physical acts that result in physical injury;
- (2) sexual abuse;
- (3) being forced to engage in nonconsensual sexual acts or activities;
- (4) threats or attempts at physical or

sexual abuse;

(5) mental abuse; or

(6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

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

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

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

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

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

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

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

(2) lived in Indian country, as defined in

the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of the adults living in Indian country or in the village were not employed. "

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

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

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

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

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to the federal act.

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

- (1) medicaid;

- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) fifty dollars (\$50.00) of collected child support passed through to the participant by the department's child support enforcement program; and
- (11) other income sources as determined by the department.

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

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

- (1) gross countable income that belongs to

the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

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

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

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

(3) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or

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

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

(5) costs of self-employment income; and

(6) business expenses.

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

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

"27-2B-8. RESOURCES. --

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

(1) two thousand dollars (\$2,000) in nonliquid resources;

(2) one thousand five hundred dollars (\$1,500) in liquid resources;

(3) the value of the principal residence of the participant;

(4) the value of burial plots and funeral contracts for family members;

(5) individual development accounts;

(6) the value of work-related equipment up to one thousand dollars (\$1,000);

(7) in areas without public transportation, the value of one motor vehicle for each participant engaged in a work activity; and

(8) in areas with public transportation, the value of one motor vehicle. "

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

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

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

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

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

(a) received or receives a reasonable return;

(b) attempted to or attempts to

receive a reasonable return; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously except that such person shall be

ineligible only for ten years;

(9) for five years following the date of release from any federal or state prison or county jail or following the date of completion of the terms of probation, a person convicted of a drug-related felony on or after August 22, 1996; however, the cash assistance of the other members of his assistance group shall be reduced only by the amount to which he otherwise would be entitled;

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

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

(12) unless he demonstrates good cause, a parent who does not assist the department in establishing paternity or obtaining child support or who does not assign support rights to New Mexico as required pursuant to the federal act.

B. At the time of application, a participant shall state in writing whether he or another member of the benefit group has been convicted on or after August 22, 1996 of a drug-related felony.

C. A person convicted of a drug-related felony may be eligible to receive services if the department in consultation with the corrections department determines that

services would enhance his rehabilitation and employment success.

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

Section 7. Section 27-2B-14 NMSA 1978 (being Laws 1998, Chapter 8, Section 14 and Laws 1998, Chapter 9, Section 14) is amended to read:

"27-2B-14. SANCTIONS. --

A. The department shall sanction a member of a benefit group for noncompliance with work requirements or child support requirements.

B. The sanction shall be applied at the following levels:

(1) twenty-five percent reduction of cash assistance for the first occurrence of noncompliance;

(2) fifty percent reduction of cash assistance for the second occurrence of noncompliance; and

(3) termination of cash assistance and ineligibility to reapply for six months for the third occurrence of noncompliance.

C. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction. The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed. Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action thirty days from the date the original conciliation notice was mailed.

D. Reestablishing compliance shall allow full payment to resume.

E. Noncompliance with reporting requirements may subject a participant to other sanctions.

F. Effective October 1, 2001, the department shall not terminate the medicaid benefits of any member of a benefit group due to imposition of a sanction pursuant to the provisions of this section. "

Section 8. Section 27-2B-15 NMSA 1978 (being Laws 1998, Chapter 8, Section 15 and Laws 1998, Chapter 9, Section 15) is amended to read:

"27-2B-15. MEDICAID ELIGIBILITY. --

A. The following are eligible for medicaid:

(1) a participant who is in transition to self-sufficiency due to employment or child support;

(2) a pregnant woman who meets the income and resource requirements for New Mexico's aid to families with dependent children as they existed on July 16, 1996;

(3) a member of a benefit group who is eighteen years of age or younger if the benefit group's income is below one hundred eighty-five percent of the federal poverty guidelines;

(4) a pregnant woman whose income is below one hundred eighty-five percent of the federal poverty guidelines;

(5) participants receiving federal supplemental security income;

(6) an aged, blind or disabled person in an institution who meets all the supplemental security income standards except for income;

(7) a person who meets all standards for institutional care but is cared for at home and meets eligibility standards for medicaid;

(8) a qualified medicare beneficiary,

qualified disabled working person or specified low-income medicare beneficiary; and

(9) a foster child in the custody of the state or of an Indian pueblo, tribe or nation who meets eligibility standards for medicare.

B. Effective October 1, 2001, for the medicaid category designated "JUL medicaid" by the department, the income eligibility criteria shall be the same as the income eligibility criteria set forth in the New Mexico Works Act." =
