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**SENATE BILL 135**

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

**INTRODUCED BY**

**Pete Campos**

**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.