CHAPTER 24
HEALTH AND SAFETY

ARTICLE 1
PUBLIC HEALTH

24-1-1. Short title.

Sections 1 through 22 of this act may be cited as the "Public Health Act".

History: 1953 Comp., § 12-34-1, enacted by Laws 1973, ch. 359, § 1.

Meaning of "this act". - The phrase "this act", referred to in this section, apparently means Laws 1973, ch. 359, sections 1 to 22 of which currently are codified as 24-1-1 to 24-1-5 and 24-1-6 to 24-1-21. Laws 1990, ch. 105, § 2 and Laws 1990, ch. 97, § 1, enact 24-1-5.2 and 24-1-5.3 NMSA 1978 respectively as part of the Public Health Act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 1 et seq.

39A C.J.S. Health and Environment § 1 et seq.

24-1-2. Definitions.

As used in the Public Health Act:

A. "department" or "division" means the health services division of the health and environment department [department of health];

B. "director" means the director of the division;

C. "person", when used without further qualification, means any individual or any other form of entity recognized by law; and

D. "health facility" means any public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, sanitarium, maternity home or shelter, adult day care facility, asylum, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary or a health service organization operating as a free standing hospice or a home health agency. The designation of these services as a health facility is only for the purposes of definition in the Public Health Act and does not imply that a free standing hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities which, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or

temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners.

History: 1953 Comp., § 12-34-2, enacted by Laws 1973, ch. 359, § 2; 1977, ch. 253, § 39; 1979, ch. 25, § 1; 1981, ch. 171, § 10; 1983, ch. 112, § 1; 1987, ch. 27, § 1.

Bracketed material. - The bracketed reference relating to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department and enacts a new 9-7-4 NMSA 1978 creating the department of health. Section 9-7-5 NMSA 1978, as amended by Laws 1991, ch. 25, § 17 makes the secretary of health the administrative head of the department. The bracketed material was not enacted by the legislature and is not part of the law.

Cross-references. - As to creation of the department of health, see 9-7-4 NMSA 1978.

Public Health Act. - See 24-1-1 NMSA 1978 and notes thereto.

24-1-3. Powers and authority of department.

The department has authority to:

A. receive such grants, subsidies, donations, allotments or bequests as may be offered to the state, by the federal government or any department thereof, or by any public or private foundation or individuals;

B. supervise the health and hygiene of the people of the state;

C. investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;

D. establish, maintain and enforce isolation and quarantine;

E. close any public place and forbid gatherings of people when necessary for the protection of the public health;

F. establish programs and adopt regulations to prevent infant mortality, birth defects and morbidity;

G. prescribe the duties of public health nurses and school nurses;

H. provide educational programs and disseminate information on public health;

I. maintain and enforce regulations for the licensure of health facilities;

J. bring action in court for the enforcement of health laws and regulations and orders issued by the department;

K. enter into agreements with other states to carry out the powers and duties of the department;

L. cooperate and enter into contracts or agreements with the federal government or any other person to carry out the powers and duties of the department;

M. maintain and enforce regulations for the control of communicable diseases deemed to be dangerous to public health;

N. maintain and enforce regulations for immunization against diseases deemed to be dangerous to the public health;

O. maintain and enforce such rules and regulations as may be necessary to carry out the provisions of the Public Health Act and to publish same;

P. supervise state public health activities, operate a dental public health program, and operate state laboratories for the investigation of public health matters;

Q. sue and, with the consent of the legislature, be sued;

R. regulate the practice of midwifery;

S. administer legislation enacted pursuant to Title VI of the Public Health Service Act as amended and supplemented;

T. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety; and

U. do all other things necessary to carry out its duties.

History: 1953 Comp., § 12-34-3, enacted by Laws 1973, ch. 359, § 3; 1975, ch. 183, § 2.

Cross-references. - As to department of health generally, see 9-7-1 to 9-7-15 NMSA 1978.

Compiler's note. - Title VI of the Public Health Service Act, referred to in Subsection S, is compiled as 42 U.S.C. § 291 et seq.

Public Health Act. - See 24-1-1 NMSA 1978 and notes thereto.

Statutes delegating power to enact and enforce health regulations are to be liberally construed in order to effectuate the purpose of their enactment. 1957-58 Op. Att'y Gen. No. 58-230.

The health and social services department's (now department of health's) licensing power as delegated by the legislature in this article should be liberally construed to allow the department to prescribe, maintain and enforce necessary or desirable regulations to promote the psychological and physical well-being of children attending licensed child care centers. Included within the scope of the department's authority is the prescription, maintenance and enforcement of minimum standards for the care given children in licensed child care centers, provided such standards bear a reasonable relation to the public health and are reasonably adapted to prevent some existing or anticipated menace. 1976 Op. Att'y Gen. No. 76-37.

Isolation of person afflicted with contagious disease. - Under a general delegation of the power to take measures necessary to prevent the spread of contagious disease, health officers have the power to provide for the isolation of persons afflicted with such a disease. 1959-60 Op. Att'y Gen. No. 60-174.

Licensed nurse need not also have midwife license. - A family nurse practitioner authorized by the board of nursing to perform services constituting midwifery need not, as well, have a midwife license from the health services division (now department of health). 1981 Op. Att'y Gen. No. 81-7.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health §§ 19 to 44.

Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

General delegation of power to guard against spread of contagious disease, 8 A.L.R. 836.

School session, interruption of, by order of board of health as affecting contract other than with teacher, 15 A.L.R. 725.

Quarantine of typhoid carrier, 22 A.L.R. 845.

Power of state to require changes in buildings previously erected in order to comply with new requirements and standards for protection of health and safety, 109 A.L.R. 1117.

Building, delegation to board of health of power to require vacation, destruction or repair of, when deemed by such board to be unsafe or unsanitary, 114 A.L.R. 446.

Power to require closing of place of amusement or other place of public assembly because of fire hazard or unsanitary conditions, 140 A.L.R. 1048.

Validity, construction and application of statute or ordinance which precludes recovery of rent in case of occupancy of building which does not conform to building and health regulations, or where certificate of conformity has not been issued, 144 A.L.R. 259.

Validity of provision of statute or ordinance that requires vacation of premises which do not comply with building or sanitary regulations, upon notice to that effect, without judicial proceedings, 153 A.L.R. 849.

Physical examination or test, health regulation requiring submission to, as to violation of constitutional rights, 164 A.L.R. 967, 25 A.L.R.2d 1407.

Constitutional rights of owner as against destruction of building by public authorities, 14 A.L.R.2d 73.

Validity of regulations as to plumbers and plumbing, 22 A.L.R.2d 816.

Propriety of state or local government health officer's warrantless search - post-Camara cases, 53 A.L.R.4th 1168.

39A C.J.S. Health and Environment §§ 3 to 54.

24-1-4. Creation of health districts; appointment of health officers; powers and duties of health officers.

A. The director shall establish health districts and may modify and create new ones as he deems necessary.

B. The director shall appoint one district health officer for each health district. The director may appoint assistants to the district health officer when he deems necessary.

C. The director shall establish the powers and duties of the district health officers.

D. All school health personnel, except physical education personnel, are under the direct supervision and control of the district health officer in their district. They shall make such reports relating to public health as the district health officer in their district requires.

History: 1953 Comp., § 12-34-4, enacted by Laws 1973, ch. 359, § 4.

Cross-references. - As to district health officers generally, see 24-4-1 to 24-4-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health §§ 9 to 18.

Personal liability of health officer, 24 A.L.R. 798.

39A C.J.S. Health and Environment §§ 3 to 17.

24-1-5. Licensure of health facilities.

A. No health facility shall be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to protect human health or safety the director may issue a cease-and-desist order. The health facility may request a hearing which shall be held in the manner provided in this section.

B. The department is authorized to make such inspections and investigations and prescribe such regulations as it deems necessary or desirable to promote the health, safety and welfare of persons utilizing health facilities.

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all regulations of the department. Applications for hospital licenses shall include evidence that the bylaws or regulations of the hospital apply equally to osteopathic and medical physicians.

D. Upon inspection of any health facility, if the department finds any violation of its regulations, it may deny the application for a license, whether initial or renewal, or it may issue a temporary license. A temporary license shall not be issued for a period exceeding one hundred twenty days, nor shall more than two consecutive temporary licenses be issued.

E. A one-year nontransferable license shall be issued to any health facility complying with all regulations of the department. The license shall be renewable for successive one-year periods, upon filing of a renewal application, if the department is satisfied that the health facility is in compliance with all regulations of the department or if not in compliance with any regulation, has been granted a waiver or variance of that regulation by the department pursuant to procedures, conditions and guidelines adopted by regulation of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a license be posted or kept on the licensed premises.

F. Any health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on such accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on such accreditation. License renewals shall be issued upon application submitted by the facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and responsibilities under other provisions of the

Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed three dollars ($3.00) per bed for an in-patient health facility or one hundred dollars ($100) for any other health facility for each license application, whether initial or renewal, of an annual license or renewal of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit to the general fund.

H. The department may revoke or suspend the license of any health facility or may impose on any health facility after January 1, 1991, any intermediate sanction or civil monetary penalty provided in Section 24-1-5.2 NMSA 1978, after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter, upon a determination that the health facility is not in compliance with any regulation of the department. If immediate action is required to protect human health and safety, the director may suspend a license or impose any intermediate sanction pending a hearing, provided such hearing is held within five working days of the suspension or imposition of the sanction, unless waived by the licensee.

I. The department shall schedule a hearing pursuant to Subsection H of this section if the department receives a request for a hearing from a licensee:

(1) within ten working days after receipt by the licensee of notice of suspension, revocation, imposition of an intermediate sanction or civil monetary penalty or denial of an initial or renewal application;

(2) within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction imposition and notice of hearing, if the licensee wishes to waive the early hearing scheduled and request a hearing at a later date; or

(3) within five working days after receipt of a cease-and-desist order.

The department shall also provide timely notice to the licensee of the date, time and place for the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. Any hearing under this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by regulation of the department. The licensee has the right to be represented by counsel, to present all relevant evidence by means of witnesses and books, papers, documents, records, files and other evidence and to examine all opposing witnesses who appear on any matter relevant to the issues. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum prior to or after the commencement of the hearing to compel discovery and the attendance of witnesses and the production of

relevant books, papers, documents, records, files and other evidence. Documents or records pertaining to abuse, neglect or exploitation of a resident, client or patient of a health facility or other documents, records or files in the custody of the human services department or the office of the state long-term care ombudsman at the state agency on aging that are relevant to the alleged violations are discoverable and admissible as evidence in any hearing.

K. Any party may appeal to the court of appeals on the record within thirty days after the final decision of the department. The court shall set aside the final decision only if it is found to be arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; outside the authority of the department; or otherwise not in accordance with law.

L. Every complaint about a health facility received by the department pursuant to this section shall be promptly investigated to substantiate the allegation and to take appropriate action if substantiated. The department shall coordinate with the human services department, the office of the state long-term care ombudsman at the state agency on aging and any other appropriate agency to develop a joint protocol establishing responsibilities and procedures to assure prompt investigation of complaints, including prompt and appropriate referrals and necessary action regarding allegations of abuse, neglect or exploitation of residents, clients or patients in a health facility.

M. Complaints received by the department pursuant to this section shall not be disclosed publicly in such manner as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, where there are reasonable grounds to believe that any child is in imminent danger of abuse or neglect while in the care of a child care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32-1-15 NMSA 1978, the department shall consult with the owner or operator of the child care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the health facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator. Within seven working days from the day of notice, the director shall make his decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the health facility, the director may suspend operation of the health facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the health facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary of health and environment [secretary of health] or the department to make any inspection or investigation or to prescribe any regulations concerning group homes as

defined in Section 9-8-13 NMSA 1978 except such as are reasonably necessary or desirable to promote the health and safety of persons utilizing such group homes.

History: 1953 Comp., § 12-34-5, enacted by Laws 1973, ch. 359, § 5; 1975, ch. 183, § 3; 1979, ch. 33, § 1; 1983, ch. 185, § 1; 1987, ch. 31, § 2; 1989, ch. 138, § 1; 1990, ch. 105, § 1.

Cross-references. - As to inspections generally, see 24-1-16 to 24-1-19 NMSA 1978.

As to confidentiality of files and records generally, see 24-1-20 NMSA 1978.

As to abandonment or abuse of a child, see 30-6-1 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "in this section" for "in Subsection H of this section" at the end of the third sentence in Subsection A; added the language beginning "or if not in compliance" at the end of the second sentence in Subsection E; in Subsection H, inserted "or may impose on any health facility after January 1, 1991, any intermediate sanction or civil monetary penalty provided in Section 24-1-5.2 NMSA 1978" in the first sentence, inserted "or impose any intermediate sanction" and "or imposition of the sanction" in the second sentence, transferred the former third sentence and made it the beginning of the third sentence of present Subsection J and transferred the former fourth sentence to make it the first sentence of present Subsection K; added present Subsection I; added the first and second sentences, the language beginning "prior to or after the commencement" at the end of the third sentence and the fourth sentence of present Subsection J; added the second sentence of present Subsection K; added Subsection L; designated former Subsections I to K as present Subsections M to O; and substituted "any individuals" for "other individuals" in present Subsection M.

Applicability. - Laws 1990, ch. 105, § 5 makes the provisions of the act authorizing imposition of intermediate sanctions and civil monetary penalties apply to health facility licensing regulation violations occurring on or after January 1, 1991.

Public Health Act. - See 24-1-1 NMSA 1978 and notes thereto.

Child care center operated by church. - The statutory requirement of obtaining a license to operate a child care center did not violate the right of a church, which operated a child care center in which corporal punishment was allowed, to freely exercise religion. Health Servs. Div. v. Temple Baptist Church, 112 N.M. 262, 814 P.2d 130 (Ct. App. 1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Hospitals and Asylums § 4.

Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 A.L.R.4th 1096.

Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

Propriety of state or local government health officer's warrantless search - post-Camara cases, 53 A.L.R.4th 1168.

Tort liability of private nursery school or day-care center, or employee thereof, for injury to child while attending facility, 58 A.L.R.4th 240.

Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm, 60 A.L.R.4th 1153.

Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured, 68 A.L.R.4th 266.

41 C.J.S. Hospitals § 3 et seq.

24-1-5.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 105, § 4 repeals 24-1-5.1 NMSA 1978, as enacted by Laws 1981, ch. 171, § 11, relating to health and safety certification of foster homes, effective July 1, 1990. For provisions of former section, see 1986 Replacement Pamphlet.

24-1-5.2. Health facilities; intermediate sanctions; civil penalty.

A. Upon a determination that after January 1, 1991, a health facility is not in compliance with any licensing requirement of the department, the department, subject to the provisions of this section and Section 24-1-5 NMSA 1978, may impose on the facility:

(1) any intermediate sanction established by regulation, including but not limited to:

(a) a directed plan of correction;

(b) facility monitors;

(c) denial of payment for new medicaid admissions to the facility;

(d) temporary management; and

(e) restricted admissions; and

(2) a civil monetary penalty, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed a total of five thousand dollars ($5,000) per day. Penalties and interest amounts assessed under this paragraph and recovered on behalf of the state shall be remitted to the state treasurer for deposit in the general fund, except as otherwise provided by federal law for medicaid-certified nursing facilities. The civil monetary penalties contained in this paragraph are cumulative and may be imposed in addition to any other fines or penalties provided by law.

B. The secretary of health and environment [secretary of health] shall adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions. The criteria shall provide for more severe sanctions for a violation that results in any abuse, neglect or exploitation of residents, clients or patients as defined in the regulations or that places one or more residents, clients or patients of a health facility at substantial risk of serious physical or mental harm.

C. The provisions of this act for intermediate sanctions and civil monetary penalties shall not apply to certified nursing facilities except upon a determination by the federal health care financing administration that these provisions comply with the provisions for nursing facility remedies and civil monetary penalties pursuant to 42 U.S.C. 1395 and 1396, as amended, and upon a determination by the department that no other state or federal agency is authorized to impose the same remedies, sanctions or penalties.

D. A health facility is liable to the department for the reasonable costs of a directed plan of correction, facility monitors or temporary management imposed pursuant to this section and Section 24-1-5 NMSA 1978. The department may take all necessary and appropriate legal action to recover these costs from a health facility. All money recovered from a health facility pursuant to this subsection shall be paid into the general fund.

History: 1978 Comp., § 24-1-5.2, enacted by Laws 1990, ch. 105, § 2.

Cross-references. - For Statewide Health Care Act, see ch. 27, art. 10 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Effective dates. - Laws 1990, ch. 105, § 6 makes the act effective on July 1, 1990.

Applicability. - Laws 1990, ch. 105, § 5 makes the provisions of the act authorizing imposition of intermediate sanctions and civil monetary penalties apply to health facility licensing regulation violations occurring on or after January 1, 1991.

24-1-5.3. Intermediate care facilities for the mentally retarded; licensure moratorium. (Effective until February 23, 1994.)

A. For a period beginning thirty days after the effective date of this act, the department shall not issue a license to any new intermediate care facility for the mentally retarded that applies for a license after the effective date of this act, and no such facility shall apply for licensure, except as provided in Subsection B of this section.

B. The department may accept applications for and issue licenses to intermediate care facilities for the mentally retarded on and after the earliest of the following dates:

(1) February 23, 1994;

(2) the date the secretary of human services certifies to the secretary of health and environment [secretary of health] that the human services department has approved and begun implementation of a plan to control the growth of intermediate care facilities for the mentally retarded and to establish the future role of intermediate care facilities for the mentally retarded in the developmental disabilities service system; or

(3) the date that the human services department receives notice that the federal department of health and human services has not approved the New Mexico developmentally disabled medicaid waiver program or has approved that waiver program without expanding the number of available slots.

C. As used in this section, "intermediate care facility for the mentally retarded" means any intermediate care facility eligible for certification as an intermediate care facility for the mentally retarded.

History: Laws 1990, ch. 97, § 1.

Delayed repeals. - Laws 1990, ch. 97, § 3 repeals 24-1-5.3 NMSA 1978, as enacted by Laws 1990, ch. 97, § 1, effective February 23, 1994.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Emergency clauses. - Laws 1990, ch. 97, § 4 makes the act effective immediately. Approved March 5, 1990.

"Effective date of this act". - The phrase "effective date of this act", referred to in subsection A, means March 5, 1990, the effective date of Laws 1990, ch. 97.

24-1-6. Tests required for newborn infants.

A. The department shall adopt tests for the detection of phenylketonuria and other congenital diseases which shall be given to every newborn infant, except that after being informed of the reasons for the tests, the parents or guardians of the newborn child may waive the requirements for the tests in writing. In determining which congenital diseases to adopt tests for, the secretary of health and environment

[secretary of health] shall consider the recommendations of the New Mexico Pediatrics Society of the American Academy of Pediatrics.

B. The department shall institute and carry on such laboratory services, or may contract with another agency or state to provide such services as are necessary to detect the presence of phenylketonuria and other congenital diseases.

C. The department shall, as necessary, carry on an educational program among physicians, hospitals, public health nurses and the public concerning phenylketonuria and other congenital diseases.

D. The department shall require that all hospitals or institutions having facilities for childbirth perform or have performed tests for phenylketonuria and other congenital diseases on all newborn infants except if the parents or guardians of a child object to the tests in writing.

History: 1953 Comp., § 12-34-6, enacted by Laws 1973, ch. 359, § 6; 1975, ch. 254, § 1; 1978, ch. 83, § 1; 1981, ch. 95, § 1.

Cross-references. - As to education and testing with respect to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-1-7. Venereal diseases; reports of cases.

A. Every physician who makes a diagnosis of, or treats or prescribes for a case of venereal disease, every superintendent or manager of a clinic, dispensary or charitable or penal institution in which there is a case of venereal disease and every laboratory performing a positive laboratory test for venereal disease shall report such case immediately, in writing, on a form supplied by the department to the district health officer in the district in which they are [he is] located.

B. All district health officers shall make weekly reports to the department on forms supplied by the department of all cases of venereal disease reported to them during the preceding week.

History: 1953 Comp., § 12-34-7, enacted by Laws 1973, ch. 359, § 7.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 31.

Compulsory examination for venereal disease, 2 A.L.R. 1332, 22 A.L.R. 1189.

Constitutionality, construction and application of statutes, ordinances, and regulations concerning prevention and cure of venereal disease, 127 A.L.R. 421.

Police power as authorizing legislation requiring arrested person to submit to physical examination for control of venereal diseases, 25 A.L.R.2d 1415.

Tort liability for infliction of venereal disease, 40 A.L.R.4th 1089.

24-1-8. Prevention of communication of venereal disease.

If any attending physician knows or has good reason to suspect that a person having a venereal disease may conduct himself so as to expose other persons to infection, he shall notify the district health officer of the name and address of the diseased person and the facts of the case.

History: 1953 Comp., § 12-34-8, enacted by Laws 1973, ch. 359, § 8.

24-1-9. Capacity to consent to examination and treatment for venereal disease.

Any person, regardless of age, has the capacity to consent to an examination and treatment by a licensed physician for any venereal disease.

History: 1953 Comp., § 12-34-9, enacted by Laws 1973, ch. 359, § 9.

Law reviews. - For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M. L. Rev. 279 (1980).

24-1-10. Pregnancy; serological test for syphilis.

A. Every physician examining a pregnant woman for conditions relating to her pregnancy during the period of gestation or at delivery or both shall take or cause to be taken a sample of blood of such woman at the time of first examination.

B. All such blood samples shall be submitted to the state public health laboratory for a standard serological test for syphilis.

C. The standard serological test shall be a test for syphilis approved by the director of the department. Such serological tests shall be made on request without charge by the department.

History: 1953 Comp., § 12-34-10, enacted by Laws 1973, ch. 359, § 10.

Cross-references. - As to capacity to consent to examination and diagnosis for pregnancy, see 24-1-13 NMSA 1978.

24-1-11. Reporting of blood tests.

In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the certificate whether a blood test for syphilis has been made upon a specimen of blood taken from the mother of the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken.

History: 1953 Comp., § 12-34-11, enacted by Laws 1973, ch. 359, § 11.

24-1-12. Health certificates; filing.

A. Any person who operates or is employed in a health facility shall, upon becoming employed or engaged in such occupation, present to the employer or, if self-employed, file at the place of business a health certificate from a licensed physician stating the person is free from communicable diseases in a transmissible state dangerous to the public health as defined by regulation of the health services division of the health and environment department [department of health]. The certificate shall be obtained not more than ninety days prior to the date of employment.

B. All certificates shall be kept on file and be subject to inspection by the licensing authority.

History: 1953 Comp., § 12-34-12, enacted by Laws 1973, ch. 359, § 12; 1981, ch. 46, § 1.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 25.

39A C.J.S. Health and Environment §§ 38, 39.

24-1-13. Pregnancy; capacity to consent to examination and diagnosis.

Any person, regardless of age, has the capacity to consent to an examination and diagnosis by a licensed physician for pregnancy.

History: 1953 Comp., § 12-34-13, enacted by Laws 1973, ch. 359, § 13.

Cross-references. - As to performance of standard serological test for syphilis for pregnant women, see 24-1-10 NMSA 1978.

24-1-14. [Sterilization;] special qualifications prohibited.

No hospital which permits any operation that results in sterilization to be performed therein or medical staff of such hospital shall require any person upon whom a

sterilization operation is to be performed to meet any special qualifications which are not imposed on individuals seeking other types of operations in the hospital.

History: 1953 Comp., § 12-34-14, enacted by Laws 1973, ch. 359, § 14.

Law reviews. - For comment, "Voluntary Sterilization in New Mexico: Who Must Consent?" see 7 N.M. L. Rev. 121 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 32.

Legal aspects of voluntary sterilization of man or woman, 93 A.L.R. 573.

Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

When statute of limitations begins to run against malpractice action in connection with sterilization or birth control procedures, 93 A.L.R.3d 218.

24-1-15. Reporting of contagious diseases.

A. Whenever any physician or other person knows that any person is sick with any disease dangerous to the public health, he shall promptly notify the district health officer or his authorized agent.

B. Any health authority receiving notice that any person is infected with disease dangerous to the public health shall secure his voluntary isolation or, if such person refuses to submit to isolation, he shall file a complaint with any magistrate or district court judge having jurisdiction over the infected person. The complaint shall state the facts as related, under oath, by the health authority or the facts according to his information and belief. Any magistrate or district court judge having jurisdiction may, upon proper complaint, issue a warrant directed to an officer authorized to serve arrest warrants requiring such officer, under the direction of the complaining health authority, to isolate the person.

History: 1953 Comp., § 12-34-15, enacted by Laws 1973, ch. 359, § 15.

Power to compel hospitalization of persons infected with dangerous disease. - See 1959-60 Op. Att'y Gen. No. 60-8.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 23.

Liability of physician for permitting exposure to infectious or contagious disease, 5 A.L.R. 926, 13 A.L.R. 1465.

General delegation of power to guard against spread of contagious disease as authorizing regulation as to disinfection, 8 A.L.R. 838.

Liability for committing, or aiding commitment to contagious disease hospital of one not suffering from contagious disease, 54 A.L.R. 659, 99 A.L.R. 541.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

39A C.J.S. Health and Environment § 19.

24-1-16. Inspection definitions.

As used in Sections 16 through 19 [24-1-16 to 24-1-19 NMSA 1978] of the Public Health Act:

A. "inspectorial search" means an entry into and examination of premises or vehicles, for the purpose of ascertaining the existence or nonexistence of conditions dangerous to health or safety or otherwise relevant to the public interest, in accordance with inspection requirements prescribed by fire, housing, sanitation, welfare, zoning or other laws or ordinances duly enacted for the promotion of public well-being;

B. "inspection officer" means an official authorized by law to conduct inspectorial searches; and

C. "inspection order" means an order issued by a magistrate or other competent official authorizing an inspectorial search.

History: 1953 Comp., § 12-34-16, enacted by Laws 1973, ch. 359, § 16.

Cross-references. - For constitutional provision relating to searches and seizures, see N.M. Const., art. II, § 10.

24-1-17. Inspectorial search by consent.

A. Within the scope of his authority with respect to the places to be inspected and the purpose for which inspection is to be carried out, an inspection officer may conduct an inspectorial search, with the voluntary consent of an occupant or custodian of the premises or vehicles to be inspected, who reasonably appears to the inspection officer to be in control of the places to be inspected or otherwise authorized to give such consent.

B. Before requesting consent for an inspectorial search, the inspection officer shall inform the person to whom the request is directed of the authority under and purposes for which the inspection is to be made and shall, upon demand, exhibit a badge or document evidencing his authority to make such inspections.

C. Inspections undertaken pursuant to this section shall be carried out with due regard for the convenience and privacy of the occupants, and during the daytime unless,

because of the nature of the premises, the convenience of the occupants or other circumstances, there is a reasonable basis for carrying out the inspection at night.

D. Except in accordance with the provisions of the subsequent subsection adequate notice of the time and purpose of an inspection shall be sent to the occupants or custodians of premises or vehicles to be inspected not less than seven days before the inspection is undertaken.

E. The notice required by the preceding subsection may be dispensed with if, because of the nature of the inspection to be undertaken, the conduct of the occupants, or other circumstances, there is a reasonable basis for belief that such notice would obstruct, or seriously diminish the utility, of the inspection in question.

History: 1953 Comp., § 12-34-17, enacted by Laws 1973, ch. 359, § 17.

Cross-references. - For constitutional provision relating to searches and seizures, see N.M. Const., art. II, § 10.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Propriety of state or local government health officer's warrantless search - post-Camara cases, 53 A.L.R.4th 1168.

24-1-18. Inspection searches.

A. Upon sufficient showing that consent to an inspectorial search has been refused or is otherwise unobtainable within a reasonable period of time, an inspection officer may make application for an inspection order. Such application shall be made to a district court judge having jurisdiction over the premises or vehicle to be searched or an administrative official authorized by statute or ordinance to issue inspection orders.

B. The application shall be granted and the inspection order issued upon a sufficient showing that inspection in the area in which the premises or vehicles in question are located, or inspection of the particular premises or vehicles, is in accordance with reasonable legislative or administrative standards, and that the circumstances of the particular inspection for which application is made are otherwise reasonable. The issuing authority shall make and keep a record of the proceedings on the application, and enter thereon his finding in accordance with the requirements of this section.

C. The inspection officer executing the order shall, if the premises or vehicle in question are unoccupied at the time of execution, be authorized to use such force as is reasonably necessary to effect entry and make the inspection.

D. The officer conducting the search shall, if authorized by the issuing authority on proper showing, be accompanied by one or more law enforcement officers authorized to serve search warrants who shall assist the inspection officer in executing the order at his direction.

E. After execution of the order or after unsuccessful efforts to execute the order, as the case may be, the inspection officer shall return the order to the issuing authority with a sworn report of the circumstances of execution or failure thereof.

History: 1953 Comp., § 12-34-18, enacted by Laws 1973, ch. 359, § 18.

Cross-references. - For constitutional provision relating to searches and seizures, see N.M. Const., art. II, § 10.

24-1-19. Emergency inspectorial searches.

A. Whenever it reasonably appears to an inspection officer that there may be a condition, arising under the laws he is authorized to enforce and imminently dangerous to health and safety, the detection or correction of which requires immediate access, without prior notice, to premises for purposes of inspectorial search, and if consent to such search is refused or cannot be promptly obtained, the inspection officer may make an emergency inspectorial search of the premises without an inspection order.

B. Upon completion of the emergency inspectorial search, the inspection officer shall make prompt report of the circumstances to the judicial or administrative authority to whom application for an inspection order would otherwise have been made.

History: 1953 Comp., § 12-34-19, enacted by Laws 1973, ch. 359, § 19.

Cross-references. - For constitutional provision relating to searches and seizures, see N.M. Const., art. II, § 10.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Personal liability of health officer, 24 A.L.R. 798.

Searches and seizures by health officers without warrant, 13 A.L.R.2d 969.

Propriety of state or local government health officer's warrantless search - post-Camara cases, 53 A.L.R.4th 1168.

24-1-20. Records confidential.

A. The files and records of the department giving identifying information about individuals who have received or are receiving from the department treatment, diagnostic services or preventive care for diseases, disabilities or physical injuries, are confidential and are not open to inspection except where permitted by rule of the department, as provided in Subsection C of this section and to the secretary of health and environment [secretary of health] or to an employee of the health and environment department [department of health] authorized by the secretary to obtain such information, but the information shall only be revealed for use in connection with a governmental function of the secretary or the authorized employee. Both the secretary

and the employees are subject to the penalty contained in Subsection F of this section if they release or use the information in violation of this section.

B. All information voluntarily provided to the director or his agent in connection with studies designated by him as medical research and approved by the secretary of health and environment [secretary of health], either conducted by or under the authority of the director for the purpose of reducing the morbidity or mortality from any cause or condition of health, is confidential and shall be used only for the purposes of medical research. The information shall not be admissible as evidence in any action of any kind in any court or before any administrative proceeding or other action.

C. The human services department and the office of the state long-term care ombudsman shall have prompt access to all files and records in the possession of the licensing and certification bureau of the department that are related to any health facility investigation. Officers and employees of those agencies with such access are subject to the penalty in Subsection F of this section if they release or use the information in violation of this section.

D. The files and records of the department are subject to subpoena for use in any pending cause in any administrative proceeding or in any of the courts of the state, unless otherwise provided by law.

E. No person supplying information to the department for use in a research project or any cooperating person in a research project shall be subject to any action for damages or other relief as a result of that activity.

F. Any person who discloses confidential information in violation of this section is guilty of a petty misdemeanor.

History: 1953 Comp., § 12-34-20, enacted by Laws 1973, ch. 359, § 20; 1975, ch. 324, § 1; 1977, ch. 253, § 41; 1990, ch. 105, § 3.

Cross-references. - As to Health Information Systems Act, see 24-14A-1 NMSA 1978.

As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

The 1990 amendment, effective July 1, 1990, in Subsection A, in the first sentence, deleted "including information from other sources" following "records of the department" and inserted "as provided in Subsection C of this section," in the second sentence, substituted "Subsection F of this section" for "this section", added present Subsection C, redesignated former Subsections C to E as present Subsections D to F, substituted "in any administrative proceeding or in any of the courts" for "in any of the courts" in present Subsection D, and made stylistic changes in Subsections A, B and present D.

Applicability. - Laws 1990, ch. 105, § 5 makes the provisions of the act authorizing imposition of intermediate sanctions and civil monetary penalties apply to health facility licensing regulation violations occurring on or after January 1, 1991.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Public health record as subject of privilege, 136 A.L.R. 856.

24-1-21. Penalties.

Any person violating any of the provisions of the Public Health Act or any order, rule or regulation adopted pursuant to the provisions of the Public Health Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars ($100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation of Subsection A of Section 24-1-5 NMSA 1978 after conviction shall be considered a separate offense. The department also may enforce its rules and orders by any appropriate civil action. The attorney general shall represent the department.

History: 1953 Comp., § 12-34-22, enacted by Laws 1973, ch. 359, § 22; 1975, ch. 183, § 4; 1983, ch. 185, § 2.

Public Health Act. - See 24-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health §§ 36 to 38.

39A C.J.S. Health and Environment §§ 48-52.

24-1-22. Scientific laboratory division; testing methods; certification.

A. The scientific laboratory division of the health and environment department [department of health] is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle under the influence of drugs or alcohol and to issue certification for operators and their instructors which shall be subject to termination or revocation at the discretion of the scientific laboratory division. The scientific laboratory division is further authorized to establish or approve quality control measures for alcohol breath testing and to establish or approve standards of training necessary to assure the qualifications of individuals conducting these analyses or collections.

B. The scientific laboratory division will establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

C. All laboratories analyzing breath, blood or urine samples pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978] shall be certified by the

scientific laboratory division. The certification shall be granted in accordance with the rules and regulations of the scientific laboratory division and shall be subject to termination or revocation for cause.

History: Laws 1981, ch. 165, § 1.

Cross-references. - For provision creating the department of health, see 9-7-4 NMSA 1978.

For provisions authorizing the performance of a blood-alcohol test, see 66-8-103, 66-8-104 and 66-8-109 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Appropriations. - Laws 1991, ch. 256, § 4D, effective June 14, 1991, appropriates $100,000 from the general fund to the scientific laboratory division of the health and environment department for the eightieth fiscal year for the purpose of purchasing equipment and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the general fund.

Laws 1991, ch. 256, § 2, effective June 14, 1991, provides that all appropriations contained in Laws 1991, ch. 256, § 4 shall be reduced by eighty-two one-hundredths of one percent rounded to the nearest tenth of a thousand dollars and that the department of finance and administration shall adjust all totals, rates of distribution and language accordingly.

Legislature did not intend to create a statutory right when it enacted this section, or to make compliance with regulations promulgated under this section mandatory. State v. Watkins, 104 N.M. 561, 724 P.2d 769 (Ct. App.), writ dismissed, 104 N.M. 522, 724 P.2d 231 (1986).

24-1-23. Disclosure by medicare health care providers; limitation on charges to recipient of services.

A. As used in this section:

(1) "health care provider" means any person who provides health care services the charges for which either he or the recipient of the services is eligible for payment or reimbursement of under provisions of the federal medicare program; and

(2) "recipient" means a person who is eligible under the federal medicare program provisions for reimbursement to him or payment on his behalf for charges for health care services.

B. A health care provider shall disclose to a recipient before providing services the provider's policy regarding whether or not the provider accepts assignment of medicare benefits.

History: Laws 1987, ch. 157, § 1.

ARTICLE 1A
RURAL PRIMARY HEALTH CARE

24-1A-1. Short title.

This act [24-1A-1 to 24-1A-4 NMSA 1978] may be cited as the "Rural Primary Health Care Act".

History: Laws 1981, ch. 295, § 1.

24-1A-2. Purpose of act.

The purpose of the Rural Primary Health Care Act [24-1A-1 to 24-1A-3, 24-1A-4 NMSA 1978] is to recruit and retain health care personnel and assist in the provision of primary health care services through eligible programs in underserved areas of the state in order to better serve the health needs of the public.

History: Laws 1981, ch. 295, § 2; 1983, ch. 236, § 1.

24-1A-3. Definitions.

As used in the Rural Primary Health Care Act [24-1A-1 to 24-1A-3, 24-1A-4 NMSA 1978]:

A. "health care underserved areas" means a geographic area in which it has been determined by the health and environment department [department of health], through the use of indices and other standards set by the department, that sufficient primary health care is not being provided to the citizens of that area.

B. "eligible programs" means nonprofit community-based entities established to provide primary health care services for residents of health care underserved areas and includes rural health clinics and those serving primarily low-income populations;

C. "department" means the health and environment department; and

D. "primary health care" means the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services.

History: Laws 1981, ch. 295, § 3; 1983, ch. 236, § 2.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-1A-3.1. Department; technical and financial assistance.

To the extent funds are made available for the purposes of the Rural Primary Health Care Act [24-1A-1 to 24-1A-3, 24-1A-4 NMSA 1978], the department is authorized to:

A. provide for a program to recruit and retain health care personnel in health care underserved areas;

B. develop plans for and coordinate the efforts of other public and private entities assisting in the provision of primary health care services through eligible programs;

C. provide for technical assistance to eligible programs in the areas of administrative and financial management, clinical services, outreach and planning;

D. provide for distribution of financial assistance to eligible programs which have applied for and demonstrated a need for assistance in order to sustain a minimum level of delivery of primary health care services;

E. institute a program for enabling the development of new primary care health care centers or facilities and that program:

(1) shall give preference to communities that have few or no community-based primary care services;

(2) may require in-kind support from local communities where primary care health care centers or facilities are established;

(3) may require primary care health care centers or facilities to assure provision of health care to the medically indigent; and

(4) shall permit the implementation of innovative and creative uses of local or statewide health care resources, or both, other than those listed in Paragraphs (2) and (3) of this subsection.

History: 1978 Comp., § 24-1A-3.1, enacted by Laws 1983, ch. 236, § 3; 1991, ch. 212, § 18.

The 1991 amendment, effective July 1, 1991, added Subsection E.

Appropriations. - Laws 1991, ch. 212, § 22B, effective July 1, 1991, appropriates $249,000 from the county-supported medicaid fund to the health and environment department for the eightieth fiscal year for the purpose of promoting primary health care services pursuant to Subsection E of Section 24-1A-3.1 NMSA 1978 and provides that

any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the county-supported medicaid fund.

24-1A-4. Rules and regulations.

Subject to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], the department shall adopt rules and regulations for recruiting health care personnel in health care underserved areas, and shall establish a formula for distribution of financial assistance to eligible programs which shall take into account the relative needs of applicants for assistance, provided that funds may not be expended for land or facility acquisition or debt amortization and further provided that a local match of ten percent shall be required from each local recipient for each request for assistance.

History: Laws 1981, ch. 295, § 4; 1983, ch. 236, § 4.

ARTICLE 1B
COUNTY MATERNAL AND CHILD HEALTH PLAN

24-1B-1. Short title.

This act [24-1B-1 to 24-1B-7 NMSA 1978] may be cited as the "County Maternal and Child Health Plan Act".

History: Laws 1991, ch. 113, § 1.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-2. Purpose of act.

The purpose of the County Maternal and Child Health Plan Act [24-1B-1 to 24-1B-7 NMSA 1978] is to encourage the development of comprehensive, community-based maternal and child health services to meet the needs of childbearing women and their families and thereby improve the long-term health of New Mexicans across the state.

History: Laws 1991, ch. 113, § 2.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-3. Definitions.

As used in the County Maternal and Child Health Plan Act [24-1B-1 to 24-1B-7 NMSA 1978]:

A. "board" means the board of county commissioners in a county;

B. "department" means the health and environment department [department of health]; and

C. "planning council" means the county maternal and child health planning council.

History: Laws 1991, ch. 113, § 3.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-4. Planning council created; membership.

A. The board may create a county maternal and child health planning council, and it may appoint members for terms designated by the board. The members of the planning council shall be selected to represent a broad spectrum of interests that may include county officials, community-based program providers, childbearing and parenting families, local school administrators, local political leaders, employees of the income support office, employees of the county field health office, maternal and child health care providers, obstetricians, family physicians, nurses, mid-level providers and hospital administrators.

B. Members of the planning council shall elect from among themselves a chairman for a term designated by the board. The planning council shall meet at the call of the chairman.

C. Planning council members shall not be paid, but they may receive per diem and mileage expenses paid by the county as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1991, ch. 113, § 4.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-5. County maternal and child health plans.

A. The board or its designee with the advice of the planning council may prepare a county maternal and child health plan. The plan shall have the approval of the planning council and the board before it may be submitted by the board to the department for approval.

B. Two or more boards may agree among themselves to establish a multicounty maternal and child health plan.

C. Each county maternal and child health plan shall include:

(1) a county needs assessment that identifies and quantifies:

(a) those populations that are unable to obtain adequate maternal and child health services;

(b) the major factors that affect accessibility to local maternal and child health services;

(c) the gaps in locally available maternal and child health services; and

(d) the extent to which county residents use maternal and child health services available in other counties;

(2) a county inventory that identifies existing public and private providers, services and maternal and child health plans, medicaid and other governmental and charitable resources, program duplications and the county's current monetary contributions to maternal and child health programs; and

(3) recommendations on how to improve and fund maternal and child health in the county based upon the county's needs assessment and inventory of existing services and resources. In its recommendations, the county shall include proposals to eliminate duplications of services, improve access and initiate new services as needed. The county shall also include conclusions about the need to rely on services available in other counties and on the level of charitable, federal, state and county funding and in-kind contributions that are required to implement its plan fully.

D. The recommendations contained in the county maternal and child health plan may be based on the development of comprehensive maternal and child health services. Development of the maternal and child health plan may include a consideration of:

(1) teen pregnancy;

(2) family planning;

(3) prenatal care;

(4) financing of perinatal care for persons not eligible for medicaid;

(5) proposals to expand provider capacity;

(6) outreach, information, referral, risk assessment and case management for both pregnant women and their children;

(7) perinatal health education projects;

(8) home visiting and social support groups;

(9) projects that reduce poor pregnancy and child outcomes;

(10) projects that enhance utilization of well-child care;

(11) projects that remove transportation barriers from perinatal services; and

(12) projects that coordinate local community services, including those services provided by the county's state public health office.

E. The plan shall be updated at the request of the board or the department if the plan as implemented is not achieving the stated goals or if the needs of the local population have changed.

History: Laws 1991, ch. 113, § 5.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-6. County maternal and child health funds.

A. The department shall contract for maternal and child health services in a county to implement the county's maternal and child health plan after the plan has been approved by the department.

B. As a condition of the department contracting for county maternal and child health services in a county, after an opportunity for county input the county may be required to contribute to the implementation of its department-approved county maternal and child health plan based on the relative wealth of the county as measured by the population of the county, the per-capita income of the county, the gross receipts tax base and the average property value in the county.

C. The department shall contract for maternal and child health services to implement a county's maternal and child health plan based upon:

(1) the amount of funds appropriated for the purpose of carrying out the provisions of the County Maternal and Child Health Plan Act [24-1B-1 to 24-1B-7 NMSA 1978];

(2) the county's need for services as measured by:

(a) maternal and child health indicators;

(b) the teen pregnancy rate; and

(c) maternal and child health provider availability and shortages; and

(3) the county's demonstration that the services in its county maternal and child health plan fit into the comprehensive outline of community-based maternal and child health services described in Subsection D of Section 5 [24-1B-5 NMSA 1978] of the County Maternal and Child Health Plan Act.

D. Nothing in this act [24-1B-1 to 24-1B-7 NMSA 1978] shall prohibit the department from contracting for those categories of maternal and child health services that it contracted for prior to the effective date of the County Maternal and Child Health Care Act or that it deems essential for public health.

History: Laws 1991, ch. 113, § 6.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-1B-7. Department; powers and duties.

A. The department shall review, evaluate, and approve or reject county maternal and child health plans and it may require that a county update its county maternal and child health plan.

B. The department is authorized to contract for maternal and child health services to implement county maternal and child health plans subject to the availability of appropriations for that purpose.

C. The department shall monitor and evaluate the contracts funded by the department and assess whether maternal and child health conditions are improving.

D. The department shall provide technical assistance and training to assist each county as needed in developing its maternal and child health plan.

E. The department may gather information necessary to evaluate the effectiveness of services it contracts for through the provisions of the County Maternal and Child Health Plan Act [24-1B-1 to 24-1B-7 NMSA 1978].

F. The department shall adopt all rules and regulations necessary to carry out the purposes of the County Maternal and Child Health Plan Act including:

(1) the procedures and format for applying for department approval of a county maternal and child health plan;

(2) the format for county maternal and child health plans;

(3) the criteria to review, evaluate and approve or reject county maternal and child health plans;

(4) the procedures and format for requesting that the department procure services under a department-approved county maternal and child health plan;

(5) the formula used to determine a county's required contribution to implement its maternal and child health plan;

(6) a procedure that determines a county's need for maternal and child health services;

(7) the procedure to determine the distribution of state funds appropriated to implement county maternal and child health plans;

(8) the procedures for gathering and reporting programmatic and financial information necessary to evaluate the effectiveness of maternal and child health services that the department contracts for through the provisions of the County Maternal and Child Health Plan Act; and

(9) definitions that set an acceptable minimum standard for the services provided.

History: Laws 1991, ch. 113, § 7.

Effective dates. - Laws 1991, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

ARTICLE 2
CRIPPLED CHILDREN SERVICES

24-2-1. Authority to conduct crippled children services.

The health services division of the health and environment department [department of health] has authority to establish, administer and supervise activities to crippled children and children suffering from conditions which lead to crippling. The health services division also may supervise the administration of those services to crippled children which are not administered directly by it.

History: 1978 Comp., § 24-2-1, enacted by Laws 1977, ch. 253, § 40.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

ARTICLE 2A
HEMOPHILIA PROGRAM

24-2A-1. Short title.

This act [24-2A-1 to 24-2A-3 NMSA 1978] may be cited as the "Theodore R. Montoya Memorial Hemophilia Program Act".

History: Laws 1980, ch. 26, § 1.

24-2A-2. Definitions.

As used in the Theodore R. Montoya Memorial Hemophilia Program Act [24-2A-1 to 24-2A-3 NMSA 1978]:

A. "blood products" means certain components or factors obtained from whole blood which when periodically administered to persons suffering from hemophilia result in relief or control of the disease;

B. "eligible patient" means a person suffering from hemophilia whose case has been evaluated and accepted for provision of services by the hemophilia program established by the school;

C. "fund" means the hemophilia fund;

D. "hemophilia" means a genetic disease in which uncontrolled bleeding from otherwise minor causes may result in death or disability;

E. "hemophilia program" means the New Mexico comprehensive hemophilia diagnostic and treatment program established by the school to provide comprehensive clinical evaluation of patients suffering from hemophilia, out-patient blood product usage, counseling services to families of persons suffering from hemophilia and outreach to the public;

F. "provider" means any blood service or laboratory furnishing blood products to the school and its program administration for eligible patients;

G. "university" means the university of New Mexico; and

H. "secretary" means the secretary of health and environment [secretary of health].

History: Laws 1980, ch. 26, § 2.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-2A-3. Hemophilia fund created; use; calculation of costs.

A. There is created in the state treasury the "hemophilia fund".

B. The fund shall be administered by the university and shall be used solely to provide hemophilia program services to eligible patients. The university may expend and distribute funds to:

(1) the school for the costs of clinical evaluation, to include at least one visit per eligible patient per year;

(2) providers for the costs of blood products for each eligible patient, all as approved by the school, to the extent not covered by insurance, medicaid or medicare; and

(3) the school for hemophilia program support, including nursing coordination, social services to patients and families and outreach for public education.

History: Laws 1980, ch. 26, § 3.

ARTICLE 2B
HUMAN IMMUNODEFICIENCY VIRUS TESTS

24-2B-1. Short title.

This act [24-2B-1 to 24-2B-8 NMSA 1978] may be cited as the "Human Immunodeficiency Virus Test Act".

History: Laws 1989, ch. 227, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Child custody and visitation rights of person infected with AIDS, 86 A.L.R.4th 211.

24-2B-2. Informed consent.

No person shall perform a test designed to identify the human immunodeficiency virus or its antigen or antibody without first obtaining the informed consent of the person upon whom the test is performed, except as provided in Section 6 [24-2B-6 NMSA 1978] of the Human Immunodeficiency Virus Test Act. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations and the meaning of its results. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

History: Laws 1989, ch. 227, § 2.

24-2B-3. Substituted consent.

Informed consent shall be obtained from a legal guardian or other person authorized by law when the person is not competent. A minor shall have the capacity to give informed consent to have the human immunodeficiency virus test performed on himself.

History: Laws 1989, ch. 227, § 3.

24-2B-4. Mandatory counseling.

No positive test result shall be revealed to the person upon whom the test was performed without the person performing the test or the health facility at which the test was performed providing or referring that person for individual counseling about:

A. the meaning of the test results;

B. the possible need for additional testing;

C. the availability of appropriate health care services, including mental health care, social and support services; and

D. the benefits of locating and counseling any individual by whom the infected person may have been exposed to the human immunodeficiency virus and any individual whom the infected person may have exposed to the human immunodeficiency virus.

History: Laws 1989, ch. 227, § 4.

Effective dates. - Laws 1989, ch. 227 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

24-2B-5. Informed consent not required.

Informed consent for testing is not required and the provisions of Section 1 [Section 2] [24-2B-2 NMSA 1978] of the Human Immunodeficiency Virus Test Act do not apply for:

A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the Uniform Anatomical Gift Act [Chapter 24, Article 6 NMSA 1978], or for transplant recipients or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;

B. the performance of a test in bona fide medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that post-test counseling or referral for counseling shall nonetheless be required

when the individual is able to receive that post-test counseling. Necessary treatment shall not be withheld pending test results;

C. the performance of a test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

D. the performance of a test in order to provide appropriate care or treatment to a health care worker who may have been exposed to excessive amounts of blood or bodily fluids when the subject of the test is unable to grant or withhold consent and the test results are necessary for medical diagnostic purposes; or

E. the performance of a test done in a setting where the identity of the test subject is not known, such as in public health testing programs and sexually transmitted disease clinics.

History: Laws 1989, ch. 227, § 5.

Bracketed material. - The reference to § 1 of the Human Immunodeficiency Virus Test Act in the introductory language seems incorrect. Section 1 (24-2B-1 NMSA 1978) is the short title provision. Section 2 (24-2B-2 NMSA 1978) relates to informed consent. The bracketed material was not enacted by the legislature and is not part of the law.

24-2B-6. Confidentiality.

No person or the person's agents or employees who require or administer the test shall disclose the identity of any person upon whom a test is performed, or the result of such a test in a manner which permits identification of the subject of the test, except to the following persons:

A. the subject of the test or the subject's legally authorized representative, guardian or legal custodian;

B. any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

C. an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;

D. the health and environment department [department of health] and the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of acquired immune deficiency syndrome;

E. a health facility or health care provider which procures, processes, distributes or uses:

(1) a human body part from a deceased person, with respect to medical information regarding that person;

(2) semen provided prior to the effective date of the Human Immunodeficiency Virus Test Act for the purpose of artificial insemination;

(3) blood or blood products for transfusion or injection; or

(4) human body parts for transplant with respect to medical information regarding the donor or recipient;

F. health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews so long as any identity remains confidential;

G. authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and

H. for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.

History: Laws 1989, ch. 227, § 6.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Effective dates. - Laws 1989, ch. 227 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

24-2B-7. Disclosure statement.

No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by the Human Immunodeficiency Virus Test Act [24-2B-1 to 24-2B-8 NMSA 1978]. Whenever disclosure is made pursuant to that act, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law."

History: Laws 1989, ch. 227, § 7.

24-2B-8. Self-disclosure.

Nothing in the Human Immunodeficiency Virus Test Act [24-2B-1 to 24-2B-8 NMSA 1978] shall be construed to prevent a person who has been tested from disclosing in any way to any other person his own test results.

History: Laws 1989, ch. 227, § 8.

ARTICLE 3
SICKLE CELL TRAIT AND SICKLE CELL ANEMIA

24-3-1. Sickle cell trait and sickle cell anemia; education; diagnosis.

A. The health services division of the health and environment department [department of health] shall provide by regulation procedures to establish, maintain, promote and effectuate a program designed to educate the general public and public and private school students regarding the nature and inheritance of sickle cell trait and sickle cell anemia. The division shall consult and advise the state board of education concerning development and use of informational and educational materials relating to sickle cell trait and sickle cell anemia.

B. The health services division of the health and environment department [department of health] shall provide by regulation for diagnosis of sickle cell trait and sickle cell anemia. Regulations shall provide for, among other things:

(1) the making available to all physicians by the health services division [department of health] of current information concerning the nature, effects, diagnosis and treatment of sickle cell trait and sickle cell anemia;

(2) the testing of all school-age children who may be susceptible to sickle cell trait and sickle cell anemia, at least once, as a part of the school health program; and

(3) the making available without cost to any person unable to afford the services of a physician, tests to diagnose sickle cell trait and sickle cell anemia.

History: 1953 Comp., § 12-3-45, enacted by Laws 1973, ch. 300, § 1; 1977, ch. 253, § 25.

Cross-references. - As to state board of education, see Chapter 22, Article 2 NMSA 1978.

As to education and testing relating to phenylketonuria, see 24-1-6 NMSA 1978.

Bracketed material. - See note with same catchline following 24-1-2 NMSA 1978.

ARTICLE 3A
CERTIFICATES OF NEED FOR NEW HEALTH SERVICES

24-3A-1 to 24-3A-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 300, § 9 repeals 24-3A-1 to 24-3A-13 NMSA 1978, as enacted by Laws 1978, Chapter 104 and amended by Laws 1981, Chapter 300, the Certificate of Need Act, effective July 1, 1983.

ARTICLE 3B
DEPARTMENT OF HEALTH EDUCATION

24-3B-1. Short title.

Chapter 24, Article 3B NMSA 1978 may be cited as the "Department of Health Education Act".

History: 1978 Comp., § 24-3B-1, enacted by Laws 1978, ch. 211, § 1; 1991, ch. 25, § 27.

The 1991 amendment, effective March 29, 1991, rewrote this section, which read "The provisions of Sections 1 through 4 may be cited as the 'Health and Environment Department Education Act'".

24-3B-2. Definitions.

As used in the Department of Health Education Act [this article]:

A. "department" means the department of health;

B. "educational appraisal and review committee" means the educational appraisal and review committee as defined in the special education regulations of the state board of education;

C. "evaluated school-age resident" means a school-age resident who has been evaluated by the department according to the state board of education special education regulations;

D. "fund" means the department of health education fund;

E. "institution-bound resident" means an evaluated school-age resident who is not enrolled in a public school;

F. "referred school-age resident" means an evaluated school-age resident who has been referred to a school district for enrollment;

G. "school-age resident" means a school-age person as defined in Section 22-1-2 NMSA 1978 who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary; and

H. "secretary" means the secretary of health.

History: 1978 Comp., § 24-3B-2, enacted by Laws 1978, ch. 211, § 2; 1991, ch. 25, § 28.

Cross-references. - As to state board of education, see Chapter 22, Article 2 NMSA 1978.

The 1991 amendment, effective March 29, 1991, added the catchline and substituted "Department of Health Education Act" for "Health and Environment Department Education Act" in the introductory phrase, "department of health" for "health and environment department as created under the Health and Environment Department Act" in Subsection A, "department of health" for "health and environment department" in Subsection D, "22-1-2 NMSA 1978" for "77-1-2 NMSA 1953" and "43-1-3 NMSA 1978" for "34-2A-2 NMSA 1953" in Subsection G and "health" for "the department" in Subsection H.

24-3B-3. Education of school age residents.

A. All school age residents shall be evaluated by the department for purposes of educational placement according to the special education regulations of the state board of education.

B. Any evaluated school age resident not recommended for placement in a public school by the department or as a result of the appeal process shall be provided an educational program by the institution in which he is a school age resident. All such educational programs shall be in accordance with the special education regulations of the state board of education.

C. The department shall refer any evaluated school age resident who has been recommended for placement in a public school to a school district for enrollment.

D. The educational appraisal and review committee of a school district shall evaluate and recommend placement of all referred school age residents according to the placement process as provided in the special education regulations of the state board of education. A school district shall enroll all referred school age residents who have been

recommended for placement in a public school by the educational appraisal and review committee of the school district.

E. The department may appeal any recommendation to not place a referred school age resident in a public school only if such recommendation is made by the educational appraisal and review committee of the school district where the institution, in which the referred school age resident is a client, is located. The appeal process shall be as provided in the special education regulations of the state board of education. Any referred school age resident who has been recommended for placement in a public school as a result of the appeal process shall be enrolled in the school district where the institution, in which the referred school age resident is a client, is located, as provided in Paragraph (2), Subsection C of Section 22-12-4 NMSA 1978.

F. All school age residents who are enrolled in a public school shall be counted in the special education membership of the school district.

G. Transportation for all school age residents enrolled in a public school shall be provided to and from the institution in which they are clients and the public school in which they are enrolled. Such transportation shall be provided in accordance with Section 22-8-2 and Sections 22-16-1 through 22-16-10 NMSA 1978.

History: 1978 Comp., § 24-3B-2 enacted by Laws 1978, ch. 211, § 3.

Cross-references. - As to state board of education, see Chapter 22, Article 2 NMSA 1978.

24-3B-4. Fund created; use; calculation.

A. There is created the "health environment department education fund" in the state treasury.

B. The fund shall be used solely to provide educational services to institution-bound residents of the state institutions under the authority of the secretary.

C. The secretary shall distribute the fund to institutions under his authority within limits established by law.

D. The secretary shall determine the allocation to each institution from the fund according to the annual program cost of that institution as calculated on September 15 of the fiscal year.

E. The annual program cost for each institution shall be determined by the following calculation:

REFER TO THE BOOK FOR THE PROPER FORM

F. The dollar value per program unit shall be the same as the dollar value per program unit as established by the legislature for the state equalization guarantee.

G. Each director of each state institution under the authority of the secretary shall submit annually, on or before October 15, to the secretary an estimate for the succeeding fiscal year of the number of institution-bound residents and any other information necessary to calculate annual program cost.

H. The secretary shall submit annually, on or before November 15, to the department of finance and administration the recommendations of the department regarding the fund for the succeeding fiscal year, for inclusion in the executive budget document.

History: 1978 Comp., § 24-3B-4, enacted by Laws 1978, ch. 211, § 4.

Cross-references. - As to state equalization guarantee distributions, see 22-8-25 NMSA 1978.

ARTICLE 4
DISTRICT HEALTH OFFICERS

24-4-1. District health officer; compensation; private practice prohibited; exception.

Each district health officer shall receive the salary prescribed for such position by the state personnel board. The salary shall constitute full authority for the district health officers and they shall receive no other salary payment or fees from any other public source. No district health officer shall engage in the private practice of medicine, maintain an office for the practice of medicine, nor accept nor receive any fee, gratuity or emolument of any form for rendering medical or surgical service to any citizen of this state, except that permission for such practice may be given by the secretary of the health and environment department [secretary of health] in any district, the board of which has declared an emergency to exist.

History: Laws 1935, ch. 131, § 6; 1941 Comp., § 71-206; Laws 1947, ch. 172, § 4; 1953 Comp., § 12-2-6; Laws 1957, ch. 174, § 3; 1973, ch. 4, § 8; 1977, ch. 253, § 17; 1980, ch. 81, § 1.

Cross-references. - As to state personnel board, see 10-9-8 NMSA 1978.

As to appointment and establishment of powers and duties of district health officers and assistants, see 24-1-4 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Local health levies. - Laws 1973, ch. 359, § 24, requires that a special county health tax be levied annually unless money is specifically appropriated to replace the county health levy, not to exceed one mill.

Section prohibits district health officers from engaging in the practice of medicine except in conjunction with their duties as health officers. 1953-54 Op. Att'y Gen. No. 5753.

Acceptance of payment for services. - Where the board has not declared a state of emergency to exist in the district, the district health officer may not accept payment for his services since such would constitute the private practice of medicine and the receipt of a "fee, gratuity or emolument" for rendering medical or surgical services. 1957-58 Op. Att'y Gen. No. 57-117.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health §§ 4, 9 to 18.

39A C.J.S. Health and Environment §§ 9 to 15.

24-4-2. Offices of county health department and district health officer; expenses.

The board of county commissioners of each county in such health districts shall provide suitable quarters for the county health department and the district health officer, including office space for the district health officer and administrative staff, office space for physician personnel, clinic space for patients and waiting space for patients, their friends and families. The boards of county commissioners shall make proper provision for all office and other expense, including utilities and maintenance, incurred in enforcing the health laws and regulations within the counties wherein such expense is incurred. The board of county commissioners of each county in such health districts may, upon adoption of a resolution approved by the department of finance and administration, deposit such county funds as are hereby provided with the state treasurer to the credit of the health and environment department [department of health] for such purposes as are herein provided at such times as such funds are available; provided the depositing of such funds with the state treasurer be upon a voucher approved by the board of county commissioners subject to all statutes and regulations covering the disbursement of county funds excepting that such funds may be so deposited prior to said payments being due and payable, provided further that no such deposits shall be in excess of any line item of the approved county health budget.

History: Laws 1935, ch. 131, § 7; 1941 Comp., § 71-207; 1953 Comp., § 12-2-7; Laws 1957, ch. 174, § 4; 1977, ch. 24, § 134; 1977, ch. 253, § 18; 1980, ch. 81, § 2.

Cross-references. - As to state treasurer, see N.M. Const., art. V, § 1 and 8-6-1 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-4-3. Additional health officers; state personnel board rules govern appointment and dismissal.

Whenever, in the opinion of the director of the health services division of the health and environment department [secretary of health], conditions require the employment of persons in addition to the district health officer to properly execute the health laws and regulations in any county, the board of county commissioners of such county, with the approval of the director of the health services division [secretary of health], may employ such additional persons as the director shall designate, and their compensation and expenses shall be paid from the county general fund upon vouchers drawn by the district health officer. The board of county commissioners of such county may, upon adoption of a resolution approved by the secretary of finance and administration, deposit such county funds as are hereby provided with the state treasurer to the credit of the health and environment department [department of health] for such purposes as are herein provided at such time as such funds are available. The depositing of such funds with the state treasurer shall be upon a voucher approved by the board of county commissioners subject to all statutes and regulations covering the disbursement of county funds except that such funds may be so deposited prior to disbursement being due and payable. No such deposits shall be in excess of the approved budget for this purpose. The appointment and dismissal of all persons employed hereunder shall be governed by the rules promulgated under the Personnel Act by the personnel board.

History: Laws 1919, ch. 85, § 36, added by 1920 (S.S.), ch. 2, § 1 (36); 1921, ch. 143, § 1 (36); 1929, ch. 55, § 1 (36); C.S. 1929, § 110-331; Laws 1941, ch. 97, § 1; 1941 Comp., § 71-211; 1953 Comp., § 12-2-11; Laws 1957, ch. 174, § 5; 1973, ch. 4, § 9; 1977, ch. 247, § 135; 1977, ch. 253, § 19; 1983, ch. 301, § 71.

Cross-references. - As to state personnel board, see 10-9-8 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39A C.J.S. Health and Environment § 11.

ARTICLE 5
IMMUNIZATION

24-5-1. Immunization regulations.

The health services division of the health and environment department [department of health] shall, after consultation with the state board of education, promulgate rules and regulations governing the immunization against diseases deemed to be dangerous to the public health, to be required of children attending public, private, home or parochial schools in the state. The immunizations required and the manner and frequency of their

administration shall conform to recognized standard medical practice in the state. The health services division shall supervise and secure the enforcement of the required immunization program.

History: 1953 Comp., § 12-3-4.1, enacted by Laws 1959, ch. 329, § 1; 1977, ch. 253, § 20; 1985, ch. 21, § 5.

Cross-references. - As to department of health, see 9-7-4 NMSA 1978.

As to state board of education, see Chapter 22, Article 2 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Claim for defective design of vaccine. - The Public Health Service Act, 42 U.S.C. § 201 et seq., and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., and the regulations promulgated thereunder, do not impliedly preempt a state common-law products liability claim for defective design of a pertussis vaccine. MacGillvray v. Lederle Labs. Div., 667 F. Supp. 743 (D.N.M. 1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 27; 68 Am. Jur. 2d Schools §§ 277 to 280.

Power of municipal or school authorities to prescribe vaccination or other health measure as condition of school attendance, 93 A.L.R. 1413.

Products liability: Pertussis vaccine manufacturers, 57 A.L.R.4th 911.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

39A C.J.S. Health and Environment §§ 18, 22; 79 C.J.S. Schools and School Districts §§ 452, 453.

24-5-2. Unlawful to enroll in school unimmunized; unlawful to refuse to permit immunization.

It is unlawful for any student to enroll in school unless he has been immunized, as required under the rules and regulations of the health services division of the health and environment department [department of health], and can provide satisfactory evidence of such immunication. Provided that, if he produces satisfactory evidence of having begun the process of immunization, he may enroll and attend school as long as the immunization process is being accomplished in the prescribed manner. It is unlawful for any parent to refuse or neglect to have his child immunized, as required by this section, unless the child is properly exempted.

History: 1953 Comp., § 12-3-4.2, enacted by Laws 1959, ch. 329, § 2; 1975, ch. 25, § 1; 1977, ch. 253, § 21.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-5-3. Exemption from immunization.

A. Any minor child through his parent or guardian may file with the health authority charged with the duty of enforcing the immunization laws:

(1) a certificate of a duly licensed physician stating that the physical condition of the child is such that immunization would seriously endanger the life or health of the child; or

(2) affidavits or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(3) affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

B. Upon filing and approval of such certificate, affidavits or affirmation, the child is exempt from the legal requirement of immunization for a period not to exceed nine months on the basis of any one certificate, affidavits or affirmation.

History: 1953 Comp., § 12-3-4.3, enacted by Laws 1959, ch. 329, § 3; 1979, ch. 42, § 1.

Section is controlling as to children attending public, private or parochial schools. 1961-62 Op. Att'y Gen. No. 62-5.

Chiropractors do not qualify as physicians for the purposes intended by this section. 1959-60 Op. Att'y Gen. No. 59-96.

24-5-4. Superintendent; duty to report.

It is the duty of each school superintendent, whether of a public, private or parochial school, to cause to be prepared a record showing the required immunization status of every child enrolled in or attending a school under his jurisdiction. These records must be kept current and available to the public health authorities. The name of any parent or guardian who neglects or refuses to permit his child to be immunized against diseases as required by rules and regulations promulgated hereunder shall be reported by the school superintendent to the director of the health services division of the health and environment department [department of health].

History: 1953 Comp., § 12-3-4.4, enacted by Laws 1959, ch. 329, § 4; 1975, ch. 25, § 2; 1977, ch. 253, § 22.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-5-5. Who may immunize; who must pay.

The immunization required may be done by any licensed physician or by someone under his direction. If the parents are unable to pay, the immunization shall be provided by the health services division of the health and environment department [department of health]. No public health employee may receive any fee for immunization service if the service is compensated for by the health services division. Local school boards may contribute toward the cost of materials and supplies for immunizations.

History: 1953 Comp., § 12-3-4.5, enacted by Laws 1959, ch. 329, § 5; 1977, ch. 253, § 23.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-5-6. Penalty.

Violation of any provisions relating to the immunization of school children is a misdemeanor.

History: 1953 Comp., § 12-3-4.6, enacted by Laws 1959, ch. 329, § 6.

Cross-references. - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

ARTICLE 6
ANATOMICAL GIFTS

24-6-1. Definitions.

As used in the Uniform Anatomical Gift Act [this article]:

A. "bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof;

B. "decedent" means a deceased individual and includes a stillborn infant or fetus;

C. "donor" means an individual who makes a gift of all or part of his body;

D. "eye bank" means any nonprofit agency which is organized to procure eye tissue for the purpose of transplantation or research and which meets the medical standards set by the eye bank association of America;

E. "hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state or a subdivision thereof, although not required to be licensed under state laws;

F. "organ procurement agency" means any nonprofit agency designated by the health care financing administration to procure and place human organs and tissues for transplantation, therapy or research;

G. "part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and includes parts;

H. "person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity;

I. "physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state; and

J. "state" includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

History: 1953 Comp., § 12-11-6, enacted by Laws 1969, ch. 105, § 1; 1987, ch. 74, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies §§ 119 to 122.

Validity and effect of testamentary direction as to disposition of testator's body, 7 A.L.R.3d 747.

Power of parent, guardian or committee to consent to surgical invasion of ward's person for benefit of another, 35 A.L.R.3d 692.

Enforcement of preference expressed by decedent as to disposition of his body after death, 54 A.L.R.3d 1037.

Tests of death for organ transplant purposes, 76 A.L.R.3d 913.

Statutes authorizing removal of body parts for transplant: validity and construction, 54 A.L.R.4th 1214.

24-6-2. Persons who may execute an anatomical gift.

A. Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purposes specified in Section 24-6-3 NMSA 1978, the gift to take effect upon death.

B. Any of the following persons in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of actual notice of contrary indications by the decedent, may give all or any part of the decedent's body for any purposes specified in Section 24-6-3 NMSA 1978:

(1) the spouse;

(2) an adult son or daughter;

(3) either parent;

(4) an adult brother or sister;

(5) a guardian of the person of the decedent at the time of his death; or

(6) any other person authorized or under obligation to dispose of the body.

C. If the donee has actual notice of contrary indications by the decedent, the donee shall not accept the gift. The persons authorized by Subsection B of this section may make the gift after death or immediately before death.

D. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

E. The rights of the donee created by the gift are paramount to the rights of others except as provided by Subsection D of Section 24-6-7 NMSA 1978.

F. If a decedent is a donor who has executed an anatomical gift as provided in Section 24-6-4 NMSA 1978 and has not revoked that gift as provided in Section 24-6-6 NMSA 1978, his gift of all or a part of his body, as amended if applicable, shall be valid and effective and shall not be revoked by any other person listed in Paragraphs (1) through (6) of Subsection B of this section.

History: 1953 Comp., § 12-11-7, enacted by Laws 1969, ch. 105, § 2; 1985, ch. 54, § 1; 1987, ch. 69, § 1.

Cross-references. - As to amendment or revocation of gift, see 24-6-6 NMSA 1978.

24-6-3. Persons who may become donees, and purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

A. any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

B. any accredited medical or dental school, college or university, for education, research, advancement of medical or dental science, therapy or transplantation; or

C. any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

D. any specified individual for therapy or transplantation needed by him.

History: 1953 Comp., § 12-11-8, enacted by Laws 1969, ch. 105, § 3.

Cross-references. - As to rights and duties of donee at death, see 24-6-7 NMSA 1978.

24-6-4. Manner of executing anatomical gifts.

A. A gift of all or part of the body under Subsection A of Section 24-6-2 NMSA 1978 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

B. A gift of all or part of the body under Subsection A of Section 24-6-2 NMSA 1978 may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence, unless the document is a driver's license application or renewal form or a driver's license, in which case, the presence and signature of only one witness is necessary. If the donor cannot sign, the document may be signed for him at his direction and in his presence and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

C. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

D. Notwithstanding Subsection B of Section 24-6-7 NMSA 1978, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

E. Any gift by a person designated in Subsection B of Section 24-6-2 NMSA 1978 shall be made by a document signed by him or made by his telegraphic, recorded telephonic or other recorded message.

History: 1953 Comp., § 12-11-9, enacted by Laws 1969, ch. 105, § 4; 1987, ch. 69, § 2.

Cross-references. - As to amendment or revocation of gift, see 24-6-6 NMSA 1978.

As to rights and duties of donee upon death, see 24-6-7 NMSA 1978.

24-6-5. Delivery of document of gift.

If the gift is made by the donor to a specified donee, the will, card or other document or an executed copy thereof may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document or an executed copy thereof may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. If the document is executed pursuant to a driver's license application or renewal, it shall be microfilmed and filed in the statewide organ and tissue donor registry provided pursuant to Section 66-5-10 NMSA 1978. Upon request of authorized hospital and/or organ and tissue donor program personnel, immediately prior to or after the donor's death, the New Mexico state police shall verify the donor information on the microfilmed document. The motor vehicle division of the transportation department shall produce a copy of the document upon request to authorized hospital personnel or any other interested party immediately prior to or after the donor's death.

History: 1953 Comp., § 12-11-10, enacted by Laws 1969, ch. 105, § 5; 1987, ch. 69, § 3.

24-6-6. Amendment or revocation of the gift.

A. If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement;

(2) an oral statement made in the presence of two persons and communicated to the donee;

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) a signed card or document found on his person or in his effects.

B. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in Subsection A of this section, by destruction, cancellation or mutilation of the document and all executed copies thereof or in the case of a driver's license and the document executed pursuant to application for or renewal of such driver's license, by written notice to the motor vehicle division of the transportation department revoking the gift or by signing a donor revocation statement in person at any motor vehicle field office in the presence and with the signature of one witness.

C. Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in Subsection A of this section.

History: 1953 Comp., § 12-11-11, enacted by Laws 1969, ch. 105, § 6; 1987, ch. 69, § 4.

Cross-references. - As to manner of executing gifts, see 24-6-4 NMSA 1978.

24-6-7. Rights and duties at death.

A. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or some other persons under obligation to dispose of the body.

B. The time of death shall be determined by a physician who attends the donor at his death, or if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

C. A person who acts in good faith in accord with the terms of the Uniform Anatomical Gift Act [this article], or under the anatomical gift laws of another state is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for such action.

D. The provisions of the Uniform Anatomical Gift Act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

E. In respect to a gift of an eye, a licensed funeral service practitioner who has completed a course in eye enucleation conducted and certified by an accredited school of medicine and who holds a certificate of competence for completing such course may enucleate eyes for a gift after the death of a donor. A written release authorizing the enucleation shall be obtained prior to the performance of the eye enucleation from a relative or other person in order of priority stated in Subsection B of Section 24-6-2 NMSA 1978. A licensed funeral service practitioner acting in accordance with this

subsection is not liable for damages in any civil act or subject to prosecution in any criminal proceeding for performing the eye enucleation.

History: 1953 Comp., § 12-11-12, enacted by Laws 1969, ch. 105, § 7; 1979, ch. 15, § 1.

Cross-references. - As to medical investigations of deaths generally, see 24-11-1 NMSA 1978 et seq.

As to disposition of dead bodies, see 24-12-1 NMSA 1978 et seq.

24-6-8. Uniformity of interpretation.

This act [24-6-1 to 24-6-9 NMSA 1978] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1953 Comp., § 12-11-13, enacted by Laws 1969, ch. 105, § 8.

24-6-9. Short title.

Chapter 24, Article 6 NMSA 1978 may be cited as the "Uniform Anatomical Gift Act".

History: 1953 Comp., § 12-11-14, enacted by Laws 1969, ch. 105, § 9; 1987, ch. 74, § 2.

24-6-10. Organ and tissue donation policy and procedure; duties; immunity from liability.

A. Every hospital in New Mexico shall adopt and implement an organ and tissue donation policy and procedure to assist the medical, surgical and nursing staff in identifying and evaluating potential organ or tissue donors.

B. The organ and tissue donation policy and procedure shall contain information on acceptable donor criteria, methods for routine education of the hospital staff about the policy and procedure, the name and telephone number of the local organ procurement agency and eye bank which will provide a standard organ and tissue donation consent form, mechanisms for informing the next of kin of a potential donor about organ and tissue donation options and provisions for the maintenance and procurement of donated organs and tissues.

C. Every hospital's written policy and procedure for the identification of potential organ and tissue donors shall:

(1) assure that families of potential organ or tissue donors are made aware of the option of organ or tissue donation and the option to decline;

(2) encourage discretion and sensitivity with respect to the circumstances, views and beliefs of those families; and

(3) require that the appropriate organ procurement agency or eye bank be notified when a potential organ or tissue donor is identified.

D. All physicians and hospital personnel shall make every reasonable effort to carry out the organ and tissue donation policy and procedure adopted by the hospital so that the wishes of a donor may be conveyed to an appropriate local organ procurement agency or eye bank and the necessary donation documents may be properly executed.

E. Every hospital shall develop and implement a policy and procedure for the determination of brain death pursuant to Section 12-2-4 NMSA 1978.

F. The health and environment department [department of health] shall issue an annual report summarizing the data pertaining to the implementation of this section and its impact on organ and tissue procurement activity.

G. Laws pertaining to notification of the office of the medical investigator should be complied with in all cases of reportable deaths.

H. Failure to comply with any provision of this section shall not subject any physician, hospital, hospital employee or other person to civil or criminal liability for such failure.

I. As used in this section, "hospital" means any general acute care hospital in New Mexico.

History: 1978 Comp., § 24-6-10, enacted by Laws 1987, ch. 74, § 3.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-6-11. Human organ or tissue transfers; prohibited actions; penalty.

A. No person may acquire, receive or otherwise transfer for valuable consideration any human organ or tissue.

B. All costs which are incurred at the request of an organ procurement agency or eye bank and which are related to the evaluation of a potential organ or tissue donor, maintenance of organ or tissue viability following a brain death declaration or removal of donated organs and tissues shall be paid by the receiving organ procurement agency or eye bank. The next of kin or the estate of the donor shall not be responsible for payment of any of these costs.

C. Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: 1978 Comp., § 24-6-11, enacted by Laws 1987, ch. 74, § 4.

ARTICLE 7
RIGHT TO DIE

24-7-1. Short title.

This act [24-7-1 to 24-7-10 NMSA 1978] may be cited as the "Right to Die Act".

History: 1953 Comp., § 12-35-1, enacted by Laws 1977, ch. 287, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Patient's right to refuse treatment allegedly necessary to sustain life, 93 A.L.R.3d 67.

Judicial power to order discontinuance of life-sustaining treatment, 48 A.L.R.4th 67.

Living wills: validity, construction, and effect, 49 A.L.R.4th 812.

Tortious maintenance or removal of life supports, 58 A.L.R.4th 222.

Law reviews. - For lecture, "Euthanasia and the right to die: Nancy Cruzan and New Mexico," 20 N.M.L. Rev. 675 (1990).

24-7-2. Definitions.

As used in the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978]:

A. "family members" means either the incompetent person's spouse and children over the age of eighteen or, if the incompetent person has no spouse and no children over the age of eighteen, the incompetent person's parents or, if neither parent is alive, the incompetent person's adult siblings;

B. "irreversible coma" means that state in which brainstem functions remain but the major components of the cerebrum are irreversibly destroyed;

C. "maintenance medical treatment" means medical treatment designed solely to sustain the life processes;

D. "minor" means a person who has not reached the age of majority;

E. "physician" means an individual licensed to practice medicine in New Mexico; and

F. "terminal illness" means an illness that will result in death as defined in Section 12-2-4 NMSA 1978, regardless of the use or discontinuance of maintenance medical treatment.

History: 1953 Comp., § 12-35-2, enacted by Laws 1977, ch. 287, § 2; 1984, ch. 99, § 1.

24-7-3. Execution of a document.

A. An individual of sound mind and having reached the age of majority may execute a document directing that if he is ever certified under the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] as suffering from a terminal illness or being in an irreversible coma, maintenance medical treatment shall not be utilized for the prolongation of his life.

B. A document described in Subsection A of this section is not valid unless it has been executed with the same formalities as required of a valid will pursuant to the provisions of the Probate Code.

History: 1953 Comp., § 12-35-3, enacted by Laws 1977, ch. 287, § 3; 1984, ch. 99, § 2.

Cross-references. - As to concealment, destruction, falsification or forgery of a document, see 24-7-10 NMSA 1978.

As to age of majority, see 28-6-1 NMSA 1978.

Probate Code. - See 45-1-101 NMSA 1978 and notes thereto.

24-7-4. Execution of a document for the benefit of a terminally ill minor or a minor in an irreversible coma.

A. If a minor has been certified under the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] as suffering a terminal illness or an irreversible coma, the following individual may execute the document on his behalf:

(1) the spouse, if he has reached the age of majority; or

(2) if there is no spouse or if the spouse is not available at the time of the certification or is otherwise unable to act, then either the parent or guardian of the minor.

B. An individual named in Subsection A of this section may not execute a document:

(1) if he has actual notice of contrary indications by the minor who is terminally ill or is in an irreversible coma; or

(2) when executing as a parent or guardian, if he has actual notice of opposition by either another parent or guardian or a spouse who has attained the age of majority.

C. A document described in Subsection A of this section is not valid unless it has been executed with the same formalities as required of a valid will under the Probate Code and has been certified upon its face by a district court judge pursuant to Subsection D of this section.

D. Any person executing a document pursuant to the provisions of this section shall petition the district court of the county in which the minor is domiciled, or the county in which the minor is being maintained, for certification upon the face of the document. The court shall appoint a guardian ad litem to represent the minor and may hold an evidentiary hearing before certification. All costs shall be charged to the petitioner. If the district court judge is satisfied that all requirements of the Right to Die Act have been satisfied, that the document was executed in good faith and that the certification of the terminal illness or irreversible coma was in good faith, he shall certify the document.

History: 1953 Comp., § 12-35-4, enacted by Laws 1977, ch. 287, § 4; 1984, ch. 99, § 3.

Cross-references. - As to concealment, destruction, falsification or forgery of a document, see 24-7-10 NMSA 1978.

As to age of majority, see 28-6-1 NMSA 1978.

Probate Code. - See 45-1-101 NMSA 1978 and notes thereto.

24-7-5. Certification of a terminal illness or irreversible coma.

A. For purposes of the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978], certification of a terminal illness or irreversible coma may be rendered only in writing by two physicians, one of whom is the physician in charge of the individual who is terminally ill or in an irreversible coma. A copy of any such certification shall be kept in the records of the medical facility where the patient is being maintained. If the patient is not being maintained in a medical facility, a copy shall be retained by the physician in charge in his own case records.

B. Individual attending physicians may decline to participate in the withholding or withdrawal of maintenance medical treatment and be immune from civil or criminal liability. In exercising this right, however, the attending physician must take appropriate steps to transfer the patient to another qualified physician.

C. A physician who certifies a terminal illness or irreversible coma under this section is presumed to be acting in good faith. Unless it is alleged and proved that his action violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

History: 1953 Comp., § 12-35-5, enacted by Laws 1977, ch. 287, § 5; 1984, ch. 99, § 4.

Cross-references. - As to physician's immunity from liability, see 24-7-7 NMSA 1978.

24-7-6. Revocation of a document.

A. An individual who has executed a document under the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] may, at any time thereafter, revoke the document. Revocation may be accomplished by destroying the document, or by contrary indication expressed in the presence of one witness who has reached the age of majority.

B. A minor may revoke the document in the manner provided under Subsection A of this section. During the remainder of his terminal illness, any such revocation may constitute actual notice of his contrary indication.

History: 1953 Comp., § 12-35-6, enacted by Laws 1977, ch. 287, § 6.

Cross-references. - As to age of majority, see 28-6-1 NMSA 1978.

24-7-7. Physician's immunity from liability.

A. After certification of a terminal illness or an irreversible coma under the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978], a physician who relies on a document executed under that act, of which he has no actual notice of revocation or contrary indication, and who withholds maintenance medical treatment from a terminally ill individual or an individual in an irreversible coma who executed the document is presumed to be acting in good faith. Unless it is alleged and proved that the physician's actions violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

B. A physician who relies on a document executed on behalf of a terminally ill minor or a minor in an irreversible coma under the Right to Die Act and certified on its face by a district court judge pursuant to Section 24-7-4 NMSA 1978 and who withholds maintenance medical treatment from the terminally ill minor on whose behalf the document was executed is presumed to be acting in good faith if he has no actual notice of revocation or contrary indication. Unless it is alleged and proved that the physician's actions violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

C. In the absence of actual notice to the contrary, a physician may presume that an individual who executed a document under the Right to Die Act was of sound mind when the document was executed.

D. Any hospital or medical institution or its employees who act or refrain from acting in reasonable reliance on and in compliance with a document executed under the Right to Die Act are immune from civil or criminal liability that otherwise might be incurred.

History: 1953 Comp., § 12-35-7, enacted by Laws 1977, ch. 287, § 7; 1984, ch. 99, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 70 C.J.S. Physicians and Surgeons § 7.

24-7-8. Insurance.

A. The withholding of maintenance medical treatment from any individual pursuant to the provisions of the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] shall not, for any purpose, constitute a suicide.

B. The execution of a document pursuant to the Right to Die Act shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding of maintenance medical treatment under the Right to Die Act from an insured individual, notwithstanding any term of the policy to the contrary.

C. No physician, health facility or other health care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan or nonprofit hospital service plan shall require any person to execute a document pursuant to the Right to Die Act as a condition for being insured for, or receiving, health care service.

History: 1953 Comp., § 12-35-8, enacted by Laws 1977, ch. 287, § 8.

24-7-8.1. Substituted consent.

A. When an incompetent person who has not executed a document under the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] is certified as terminally ill or in an irreversible coma under the procedures described in Section 24-7-5 NMSA 1978, a physician may remove maintenance medical treatment from that person when all family members who can be contacted through reasonable diligence agree in good faith that the patient, if competent, would choose to forego that treatment. This provision is not intended to limit existing authority in the family to consent to other forms of medical care for incompetent family members.

B. A physician who removes maintenance medical treatment from a patient under the provisions of this section is presumed to be acting in good faith. Unless it is alleged and proved that the physician's actions violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal judgment liability that otherwise might be incurred.

History: 1978 Comp., § 24-7-8.1, enacted by Laws 1984, ch. 99, § 6.

24-7-9. Cumulative provisions.

Nothing in the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978] shall impair or supersede any existing legal right or legal responsibility which any person may have to effect the withholding or nonutilization of any maintenance medical treatment in any lawful manner. In such respect the provisions of the Right to Die Act are cumulative.

History: 1953 Comp., § 12-35-9, enacted by Laws 1977, ch. 287, § 9.

24-7-10. Penalties.

A. Whoever knowingly and willfully conceals, destroys, falsifies or forges a document with intent to create the false impression that another person has directed that no maintenance medical treatment be utilized for the prolongation of his life or the life of a minor, or whoever knowingly and willfully conceals evidence of revocation of a document executed pursuant to the Right to Die Act [24-7-1 to 24-7-10 NMSA 1978], is guilty of a second degree felony, punishable by imprisonment in the penitentiary for a period of not less than ten years nor more than fifty years or a fine of not more than ten thousand dollars ($10,000) or both.

B. Whoever knowingly and willfully conceals, destroys, falsifies or forges a document with intent to create the false impression that another person has not directed that maintenance medical treatment not be utilized for the prolongation of his life is guilty of a third degree felony, punishable by imprisonment in the penitentiary for a term of not less than two years nor more than ten years or a fine of not more than five thousand dollars ($5,000) or both.

C. Whoever executes a document under the Right to Die Act for the benefit of a terminally ill minor or a minor in an irreversible coma and who either has actual notice of contrary indications by the minor or, when executing as a parent or guardian, has actual notice of opposition by either another parent or guardian or a spouse is guilty of a second degree felony, punishable by imprisonment in the penitentiary for a period of not less than ten years nor more than fifty years or by a fine of not more than ten thousand dollars ($10,000) or both.

History: 1953 Comp., § 12-35-10, enacted by Laws 1977, ch. 287, § 10; 1984, ch. 99, § 7.

Cross-references. - As to execution of documents generally, see 24-7-3 NMSA 1978.

As to execution of documents for minors, see 24-7-4 NMSA 1978.

24-7-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 99, § 9, repeals 24-7-11 NMSA 1978, as enacted by Laws 1977, ch. 287, § 11, relating to the applicability of the Right to Die Act. For provisions of former section, see 1981 replacement pamphlet.

Laws 1984, ch. 99, contains no effective date provision but was enacted at the session which adjourned on February 16, 1984. See N.M. Const., art. IV, § 23.

ARTICLE 8
FAMILY PLANNING

24-8-1. Short title.

This act [24-8-1 to 24-8-8 NMSA 1978] may be cited as the "Family Planning Act".

History: 1953 Comp., § 12-30-1, enacted by Laws 1973, ch. 107, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 12 Am. Jur. 2d Birth Control §§ 1 to 6.

Validity of regulations as to contraceptives or the dissemination of birth control information, 96 A.L.R.2d 955.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive, 70 A.L.R.3d 315.

Misrepresentation regarding sterility or use of birth control, 31 A.L.R.4th 389.

1 C.J.S. Abortion and Birth Control; Family Planning §§ 1 to 12; 39A C.J.S. Health and Environment § 43.

24-8-2. Definitions.

As used in the Family Planning Act [24-8-1 to 24-8-8 NMSA 1978]:

A. "contraceptive procedures" means any medically accepted procedure to prevent pregnancy;

B. "family planning services" includes contraceptive procedures and services (diagnosis, treatment, supplies and follow-up), social services, educational and informational services;

C. "health facility" means a hospital, clinic, nursing home, intermediate care facility or pharmacy;

D. "medically indigent" means a person who has insufficient funds to pay for family planning services;

E. "local governmental units" means counties, municipalities and public school districts and any of their agencies, departments, commissions, committees, institutions and educational institutions;

F. "physician" means a person licensed or authorized to practice medicine or osteopathy under the provisions of Sections 61-6-1 through 61-6-28 and 61-10-1 through 61-10-21 NMSA 1978; and

G. "state" means the state and its agencies, departments, commissions, committees, institutions and educational institutions.

History: 1953 Comp., § 12-30-2, enacted by Laws 1973, ch. 107, § 2.

Law reviews. - For comment, "Voluntary Sterilization in New Mexico: Who Must Consent?" see 7 N.M. L. Rev. 121 (1976-77).

24-8-3. Legislative findings; purpose of act.

A. The legislature finds that:

(1) family planning has been recognized as an essential component of standard health care and has been recognized nationally and internationally as a universal human right;

(2) continuing population growth causes or aggravates many social, economic and environmental problems, both in this state and in the nation;

(3) family planning services are not available as a practical matter to many persons in this state;

(4) it is desirable that family planning services be readily accessible to all who want and need them; and

(5) dissemination of information about family planning by the state and its local governmental units is consistent with public policy.

B. It is the purpose of the Family Planning Act [24-8-1 to 24-8-8 NMSA 1978] to assure that comprehensive family planning services are accessible on a voluntary basis to all who want and need them.

History: 1953 Comp., § 12-30-3, enacted by Laws 1973, ch. 107, § 3.

24-8-4. Prohibition against interference with medical judgment of physicians.

The Family Planning Act [24-8-1 to 24-8-8 NMSA 1978] does not prohibit or inhibit any person from refusing to provide any family planning service on the grounds that there

are valid medical reasons for the refusal and those reasons are based upon the judgment of a physician given in the specific case of the person for whom services are refused.

History: 1953 Comp., § 12-30-4, enacted by Laws 1973, ch. 107, § 4.

24-8-5. Prohibition against imposition of standards and requirements as prerequisites for receipt of requested family planning services.

Neither the state, its local governmental units nor any health facility furnishing family planning services shall subject any person to any standard or requirement as a prerequisite to the receipt of any requested family planning service except for:

A. a requirement of referral to a physician when the requested family planning service is something other than information about family planning or nonprescription items;

B. any requirement imposed by law or regulation as a prerequisite to the receipt of a family planning service; or

C. payment for the service when payment is required in the ordinary course of providing the particular service to the person involved.

History: 1953 Comp., § 12-30-5, enacted by Laws 1973, ch. 107, § 5.

Law reviews. - For comment, "Voluntary Sterilization in New Mexico: Who Must Consent?" see 7 N.M. L. Rev. 121 (1976-77).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M. L. Rev. 279 (1980).

24-8-6. Health facility licensure; affirmative statement of compliance required as condition of licensure; prohibition against certain policies of health facilities, state and local governmental units.

A. No health facility shall include in its bylaws or other governing policy statement a statement that:

(1) interferes with the physician-patient relationship in connection with the provision of any family planning service; or

(2) establishes or authorizes any standard or requirement in violation of Section 5 [24-8-5 NMSA 1978] of the Family Planning Act, provided that nothing in the Family Planning Act [24-8-1 to 24-8-8 NMSA 1978] shall be construed to require any hospital or clinic

that objects on moral or religious grounds to admit any person for the purpose of being sterilized.

B. Neither the state nor its local governmental units shall have any written or unwritten policy that interferes with the physician-patient relationship in connection with the provision of family planning services except for provisions required by law or regulations relating to payment from public funds to a provider of family planning services.

C. No license or a renewal of a license shall be issued by the state to a health facility if it is in violation of the provisions of Subsection A of this section.

History: 1953 Comp., § 12-30-6, enacted by Laws 1973, ch. 107, § 6.

Cross-references. - As to licensing of health facilities generally, see 24-1-5 NMSA 1978.

24-8-7. Publicly funded family planning services; provision of certain services to medically indigent persons free of charge and to other persons at a cost consistent with their ability to pay.

To the extent that public funds are available, in any family planning services program operated by the state and its governmental units and in any family planning services program in which public funds are expended:

A. family planning services consisting only of information about family planning shall be furnished to persons free of charge; and

B. other family planning services shall be furnished to medically indigent persons free of charge and to all other persons at a cost consistent with their ability to pay.

History: 1953 Comp., § 12-30-7, enacted by Laws 1973, ch. 107, § 7.

24-8-8. Coordination of family planning services.

Any family planning services program developed or operated by the state or its local governmental units shall be developed and operated in coordination with other public and private family planning services programs existing in the state.

History: 1953 Comp., § 12-30-8, enacted by Laws 1973, ch. 107, § 8.

ARTICLE 9
STERILIZATION

24-9-1. Sterilization; consent of abandoning spouse unnecessary.

Any person, otherwise capable of consenting to medical treatment, need not obtain the consent of his spouse for his voluntary medical sterilization if such person has been abandoned by his spouse.

History: 1953 Comp., § 12-3-43, enacted by Laws 1971, ch. 14, § 3; 1973, ch. 266, § 1.

Cross-references. - As to prohibition against requiring special qualifications of individuals upon whom sterilization operation is to be performed, see 24-1-14 NMSA 1978.

Law reviews. - For comment, "Voluntary Sterilization in New Mexico: Who Must Consent?" see 7 N.M. L. Rev. 121 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health §§ 32, 52.

Legal aspects of voluntary sterilization of man or woman, 93 A.L.R. 573.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures, 27 A.L.R.3d 906.

Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

Promise: recovery against physician on basis of breach of contract to achieve particular result or cure, 43 A.L.R.3d 1221.

Asexualization or sterilization of criminals or defectives, 53 A.L.R.3d 960.

When a statute of limitations begins to run against malpractice action in connection with sterilization or birth control procedures, 93 A.L.R.3d 218.

39A C.J.S. Health and Environment § 43.

ARTICLE 9A
MATERNAL, FETAL AND INFANT EXPERIMENTATION

24-9A-1. Definitions.

As used in the Maternal, Fetal and Infant Experimentation Act [24-9A-1 to 24-9A-7 NMSA 1978]:

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

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

C. "health" means physical or mental health;

D. "clinical research" means any biomedical or behavioral research involving human subjects, including the unborn, conducted according to a formal procedure. The term is to be construed liberally to embrace research concerning all physiological processes in man and includes research involving human in vitro fertilization, but shall not include diagnostic testing, treatment, therapy or related procedures conducted by formal protocols deemed necessary for the care of the particular patient upon whom such activity is performed and shall not include human in vitro fertilization performed to treat infertility; provided that this procedure shall include provisions to insure that each living fertilized ovum, zygote or embryo is implanted in a human female recipient, and no physician may stipulate that a woman must abort in the event the pregnancy should produce a deformed or handicapped child. Provided that emergency medical procedures necessary to preserve the life or health of the mother or the fetus shall not be considered to be clinical research;

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

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

(2) controlled research studies necessary to establish accepted methods designed to meet his needs; or

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

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

G. "fetus" means the product of conception from the time of conception until the expulsion or extraction of the fetus or the opening of the uterine cavity, but shall not include the placenta, extraembryonic membranes, umbilical cord, extraembryonic fluids and their resident cell types and cultured cells;

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

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

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

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

History: Laws 1979, ch. 132, § 1; 1985, ch. 98, § 1.

24-9A-2. Pregnant woman.

A. No woman, known to be pregnant according to generally accepted medical standards, shall be involved as a subject in any clinical research activity unless:

(1) the purpose of the activity is to meet the health needs of the mother or the fetus and the fetus will be placed at risk only to the minimum extent necessary to meet such needs; or

(2) there is no significant risk to the fetus.

B. An activity permitted under Subsection A of this section may be conducted only if the mother is legally competent and has given her informed consent after having been fully informed regarding possible impact on the fetus.

History: Laws 1979, ch. 132, § 2.

24-9A-3. Fetus.

A. No fetus shall be involved as a subject in any clinical research activity unless the purpose of the activity is to meet the health needs of the particular fetus and the fetus will be placed at risk only to the minimum extent necessary to meet such needs or no significant risk to the fetus is imposed by the research activity.

B. An activity permitted under Subsection A of this section shall be conducted only if the mother is legally competent and has given her informed consent.

History: Laws 1979, ch. 132, § 3.

24-9A-4. Live-born infant.

A. No live-born infant shall be involved as a subject in any clinical research activity unless the purpose of the activity is to meet the health needs of that particular infant, and the infant will be placed at risk only to the minimum extent necessary to meet such needs or no significant risk to such infant is imposed by the research activity.

B. An activity permitted under Subsection A of this section shall be conducted only if:

(1) the nature of the investigation is such that adults or mentally competent persons would not be suitable subjects; and

(2) the mother or father or the infant's legal guardian is mentally competent and has given his or her informed consent.

History: Laws 1979, ch. 132, § 4.

24-9A-5. Research activity.

A. No clinical research activity involving fetuses, live-born infants or pregnant women shall be conducted unless:

(1) appropriate studies on animals and nonpregnant human beings have been completed;

(2) anyone engaged in conducting the research activity will have no part in:

(a) any decisions as to the timing, method and procedures used to terminate the pregnancy; and

(b) determining the viability of the fetus at the termination of the pregnancy; and

(3) no procedural changes which may cause significant risk to the fetus or the pregnant woman will be introduced into the procedure for terminating the pregnancy solely in the interest of the research activity.

B. No inducements, monetary or otherwise, shall be offered to any woman to terminate her pregnancy for the purpose of subjecting her fetus or live-born infant to clinical research activity.

C. No consent to involve a pregnant woman, fetus or infant as a subject in clinical research activity shall be valid unless the pregnant woman or the parent or guardian of the infant has been fully informed of the following:

(1) a fair explanation of the procedures to be followed and their purposes, including identification of any procedures which are experimental;

(2) a description of any attendant discomforts and risks reasonably to be expected;

(3) a description of any benefits reasonably to be expected;

(4) a disclosure of any appropriate alternative procedures that might be advantageous for the subject;

(5) an offer to answer any inquiries concerning the procedure; and

(6) an instruction that the person who gave the consent is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject.

History: Laws 1979, ch. 132, § 5.

24-9A-6. Penalty.

Whoever knowingly and willfully violates the provisions of Section 2, 3 or 4 [24-9A-2, 24-9A-3 or 24-9A-4 NMSA 1978] of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for a definite term of less than one year, or to the payment of a fine of not more than one thousand dollars ($1,000), or to both imprisonment and fine in the discretion of the judge.

History: Laws 1979, ch. 132, § 6.

24-9A-7. Short title.

Sections 1 through 7 [24-9A-1 to 24-9A-7 NMSA 1978] of this act may be cited as the "Maternal, Fetal and Infant Experimentation Act".

History: Laws 1979, ch. 132, § 7.

ARTICLE 10
CONSENT TO MEDICAL CARE; EMERGENCY CARE; TRANSFUSIONS

24-10-1. Emancipated minors; hospital, medical and surgical care.

Notwithstanding any other provision of the law, and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage may give consent to the furnishing of hospital, medical and surgical care to such minor, and the consent is not subject to disaffirmance because of minority. The consent of a parent of an emancipated minor or of a minor who has contracted a lawful marriage is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of the marriage or judgment of divorce shall not deprive the minor of his adult status once attained.

History: 1953 Comp., § 12-12-1, enacted by Laws 1963, ch. 32, § 1; recompiled as 1953 Comp., § 12-25-1, by Laws 1972, ch. 51, § 9.

Cross-references. - As to right to die, see 24-7-1 NMSA 1978 et seq.

As to age of majority, see 28-6-1 NMSA 1978.

As to effect of minority upon limitations period for malpractice actions, see 41-5-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Power of courts or other public agencies, in the absence of statutory authority, to order compulsory medical care for adult, 9 A.L.R.3d 1391.

Voluntary acts: what voluntary acts of child, other than marriage or entry in military service, terminate parent's obligation to support, 32 A.L.R.3d 1055.

Power of court or other public agency to order medical treatment over parental religious objection for child whose life is not immediately endangered, 52 A.L.R.3d 1118.

Medical practitioner's liability for treatment given child without parent's consent, 67 A.L.R.4th 511.

43 C.J.S. Infants § 116.

24-10-2. Consent for emergency attention by person in loco parentis.

Notwithstanding any other provision of the law, in cases of emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and the parents of the minor cannot be located for the purpose of consenting thereto, after reasonable efforts have been made under the circumstances, consent for the emergency attention may be given by any person standing in loco parentis to the minor.

History: 1953 Comp., § 12-12-2, enacted by Laws 1963, ch. 32, § 2; recompiled as 1953 Comp., § 12-25-2, by Laws 1972, ch. 51, § 9.

Cross-references. - As to age of majority, see 28-6-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Infants §§ 16, 17, 55, 72; 59 Am. Jur. 2d Parent and Child §§ 11, 48, 74, 88.

43 C.J.S. Infants §§ 93, 181.

24-10-3. [Persons rendering emergency care; release from liability.]

No person who shall administer emergency care in good faith at or near the scene of an emergency, as defined herein, shall be held liable for any civil damages as a result of any action or omission by such person in administering said care, except for gross

negligence; provided that nothing herein shall apply to the administering of such care where the same is rendered for remuneration or with the expectation of remuneration or is rendered by any person or agent of a principal who was at the scene of the accident or emergency because he or his principal was soliciting business or performing or seeking to perform some services for remuneration.

History: 1953 Comp., § 12-12-3, enacted by Laws 1963, ch. 59, § 1; recompiled as 1953 Comp., § 12-25-3, by Laws 1972, ch. 51, § 9.

Cross-references. - As to medical malpractice generally, see 41-5-1 NMSA 1978 et seq.

Law reviews. - For note, "The New Mexico Medico - Legal Malpractice Panel - An Analysis," see 3 N.M. L. Rev. 311 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, § 160.

Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

Rescue doctrine: liability of one who negligently causes motor vehicle accident for injuries to person subsequently attempting to rescue persons or property, 73 A.L.R.4th 737.

65 C.J.S. Negligence § 63(107).

24-10-4. [Definition of emergency.]

As used in this act [24-10-3, 24-10-4 NMSA 1978] "emergency" means an unexpected occurrence involving injury or illness to persons, including motor vehicle accidents and collisions, disasters, and other accidents and events of similar nature occurring in public or private places.

History: 1953 Comp., § 12-12-4, enacted by Laws 1963, ch. 59, § 2; recompiled as 1953 Comp., § 12-25-4, by Laws 1972, ch. 51, § 9.

24-10-5. Transfusions; limited liability.

The procuring, furnishing, donating, processing, distributing or using of human whole blood, plasma, blood products, blood derivatives, human tissue or organs or any component thereof shall not give rise to any implied warranties of any type, and the doctrine of strict tort liability shall not be applicable to the transmission of hepatitis or human immunodeficiency virus in the blood, plasma, blood products, blood derivatives,

human tissue or organs or any component thereof. Nothing in this section shall be construed as affecting the liability of any person, firm, corporation or other organization for negligence or willful misconduct.

History: 1953 Comp., § 12-12-5, enacted by Laws 1971, ch. 119, § 1; 1953 Comp., § 12-25-5 by Laws 1972, ch. 51, § 9; 1978 Comp., § 24-10-5; Laws 1987, ch. 104, § 1.

Law reviews. - For note, "The New Mexico Medico - Legal Malpractice Panel - An Analysis," see 3 N.M. L. Rev. 311 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Hospitals and Asylums § 14; 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 132, 159, 161, 173, 178.

Application of rule of strict liability in tort to person or entity rendering medical services, 100 A.L.R.3d 1205.

Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion, 20 A.L.R.4th 136.

Liability of blood supplier or donor for injury or death resulting from blood transfusion, 24 A.L.R.4th 508.

Discovery of identity of blood donor, 56 A.L.R.4th 755.

ARTICLE 10A
EMERGENCY MEDICAL SERVICES FUND

24-10A-1. Short title.

Chapter 24, Article 10A NMSA 1978 may be cited as the "Emergency Medical Services Fund Act".

History: 1978 Comp., § 24-10A-1, enacted by Laws 1978, ch. 178, § 1; 1987, ch. 246, § 1.

24-10A-2. Purpose of act.

It is the purpose of the Emergency Medical Services Fund Act [this article] to make funds available to incorporated municipalities, counties and fire districts of the state, in proportion to their needs, for use in the establishment of emergency medical services; the purchase, repair and maintenance of emergency medical services vehicles, equipment and supplies; and the training and licensing of local emergency medical services personnel in order to reduce injury and loss of life.

History: 1978 Comp., § 24-10A-2, enacted by Laws 1978, ch. 178, § 2; 1987, ch. 246, § 2.

24-10A-3. Emergency medical services fund created; funding.

A. There is created in the state treasury the "emergency medical services fund". All money in the fund shall not revert at the end of any fiscal year.

B. In addition to all other fees collected by registration of any vehicle pursuant to the Motor Vehicle Code or the Motor Transportation Act, there is imposed on each registration an emergency medical services fee of one dollar ($1.00) to be transferred to the emergency medical services fund in the month following collection.

C. The emergency medical services bureau of the health services division of the health and environment department [department of health] shall administer the emergency medical services fund and provide for the distribution of the fund pursuant to the Emergency Medical Services Fund Act [this article].

D. The state highway and transportation department shall be reimbursed from the emergency medical services fund for its expenses incurred in the initiation of procedures necessary for the collection of the emergency medical services fee, including expenses incurred prior to the effective date of this 1987 amendment.

History: 1978 Comp., § 24-10A-3, enacted by Laws 1978, ch. 178, § 3; 1987, ch. 246, § 3; 1989, ch. 324, § 18.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

Motor Transportation Act. - See 65-1-1 NMSA 1978 and notes thereto.

24-10A-4. Determination of needs.

Annually on or before March 15, the emergency medical services bureau of the health services division of the health and environment department [department of health] shall consider and determine, in accordance with a formula adopted by regulation, the amount of distribution to incorporated municipalities, counties and fire districts which have applied for money from the emergency medical services fund and shall certify to the state treasurer the names of the incorporated municipalities, counties and fire districts which have demonstrated need for assistance of a distribution from the money in the emergency medical services fund, and the amount required by each, in accordance with the provisions of the Emergency Medical Services Fund Act [this article]. In making this determination and certification, the bureau shall ensure that no incorporated municipality, county or fire district shall receive money from the emergency medical services fund for the purpose of accumulation. Further, the bureau shall certify

that each local recipient and the proposal are in compliance with the state emergency medical services plan approved by the health and environment department.

History: 1978 Comp., § 24-10A-4, enacted by Laws 1978, ch. 178, § 4; 1979, ch. 141, § 1; 1987, ch. 246, § 4.

Cross-references. - As to emergency medical services bureau of health and environment department, see 24-10B-3, 24-10B-4 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10A-5. Determination of needs; review.

The emergency medical services bureau of the health services division of the health and environment department [department of health] shall promptly notify each incorporated municipality, county and fire district affected of its determination and any such municipality, county or fire district may appeal to the bureau for reconsideration within ten working days after notification of the determination. The bureau shall refer the appeal to the emergency medical service advisory committee, established pursuant to Section 24-10B-7 NMSA 1978, for its review and recommendation. Upon receiving the recommendation, the bureau shall reconsider the determination and shall certify to the state treasurer on or before June 30 the results of all such reconsiderations. If no appeal is made, the determination shall be final.

History: 1978 Comp., § 24-10A-5, enacted by Laws 1978, ch. 178, § 5; 1987, ch. 246, § 5.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10A-6. Distribution of emergency medical services fund.

On or before July 31, the state treasurer shall distribute from the money in the emergency medical services fund to each incorporated municipality, county or fire district the amount which the emergency medical services bureau of the health services division of the health and environment department [department of health] has certified. Payment from the emergency medical services fund shall be made to the treasurer of the incorporated municipality, county or fire district upon vouchers signed by the state treasurer. No more than twenty thousand dollars ($20,000) may be distributed from the emergency medical services fund through any one county, municipality or fire district in any one fiscal year on behalf of any one local recipient whose proposal for assistance has been approved by the incorporated municipality, county or fire district and the emergency medical services bureau.

History: 1978 Comp., § 24-10A-6, enacted by Laws 1978, ch. 178, § 6; 1979, ch. 141, § 2; 1987, ch. 246, § 6.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10A-7. Expenditures from emergency medical services fund.

Any money distributed from the emergency medical services fund shall be expended only for the establishment of emergency medical services; the purchase, repair and maintenance of emergency medical services vehicles, equipment and supplies; and the training and licensing of local emergency medical services personnel.

History: 1978 Comp., § 24-10A-7, enacted by Laws 1978, ch. 178, § 7; 1979, ch. 141, § 3; 1987, ch. 246, § 7.

24-10A-8. Control of expenditures.

Money distributed from the emergency medical services fund shall be expended only for the purposes stated in the application to the emergency medical services bureau of the health services division of the health and environment department [department of health] and shall be expended on the authorizaton [authorization] of the chief executive of the incorporated municipality, county or fire district upon vouchers issued by its treasurer.

History: 1978 Comp., § 24-10A-8, enacted by Laws 1978, ch. 178, § 8; 1987, ch. 246, § 8.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10A-9. Inspection by the emergency medical services bureau.

The emergency medical services bureau of the health services division of the health and environment department [department of health] shall have the authority at all normal hours of operation to enter in and upon, for purposes of examination and inspection, all buildings and premises where emergency medical services vehicles, equipment and supplies acquired with expenditures from the emergency medical services fund are housed.

History: 1978 Comp., § 24-10A-9, enacted by Laws 1978, ch. 178, § 9; 1987, ch. 246, § 9.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

ARTICLE 10B
EMERGENCY MEDICAL SERVICES SYSTEM

24-10B-1. Short title.

This act [24-10B-1 to 24-10B-11 NMSA 1978] may be cited as the "Emergency Medical Services Act".

History: Laws 1983, ch. 190, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

24-10B-2. Purpose.

The purpose of the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978] is to provide for the development of a comprehensive emergency medical services system in the state.

History: Laws 1983, ch. 190, § 2.

24-10B-3. Definitions.

As used in the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978]:

A. "academy" means a separately funded emergency medical technician training program administered through the university of New Mexico school of medicine;

B. "advanced life support" means an advanced level of prehospital and hospital-to-hospital emergency care that includes basic life support functions as well as cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures taught in a bureau-approved emergency medical technician advanced training course;

C. "basic life support" means that level of prehospital and hospital-to-hospital emergency care, as taught in a bureau-approved emergency medical technician basic training course, which requires knowledge in the use of emergency driving techniques, use of the emergency medical services statewide communications network and use of specialized medical equipment and procedures such as the use of advanced airway adjuncts and oxygen therapy, in addition to cardiopulmonary resuscitation and other first aid procedures;

D. "bureau" means the emergency medical services bureau of the health services division of the health and environment department [department of health];

E. "commission" means the state corporation commission;

F. "department" means the health and environment department [department of health];

G. "emergency medical services" means the services rendered by basic or advanced life support personnel in responding to the perceived individual needs for immediate medical care in order to prevent loss of life or aggravation of physical or psychological illness or injury;

H. "medical control" means supervision provided by or under the direction of physicians at a medical facility to prehospital basic or advanced life support personnel by protocol, direct radio or telephonic communications and quality assurance programs; and

I. "protocol" means a predetermined, written medical care plan and includes standing orders.

History: Laws 1983, ch. 190, § 3.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10B-4. Bureau; duties.

The bureau is designated as the lead agency for emergency medical services and shall establish and maintain a program for regional planning and development, improvement, expansion and direction of emergency medical services throughout the state, including but not limited to:

A. design, development, implementation and coordination of communications systems to join the personnel, facilities and equipment of a given region or system that will allow for medical control of prehospital or hospital-to-hospital care;

B. provision of technical assistance to the commission for further development and implementation of standards for certification of ambulance services, vehicles and equipment;

C. collection of data and statistics to evaluate the availability, operation and quality of emergency medical services in the state;

D. adoption of minimum standards for medical control;

E. adoption of minimum standards for basic life support and advanced life support training programs with consultation from the emergency medical services academy of the university of New Mexico, ensuring the local availability of such programs and approval of training and continuing education programs for emergency medical services personnel; and

F. adoption of guidelines for the survey and elective designation of medical facilities according to critical care categories with consultation from the state medical society and the state hospital association.

History: Laws 1983, ch. 190, § 4.

24-10B-5. Personnel licensure required.

A. The bureau shall by rule adopt and enforce licensure and certification requirements, including minimum training standards and continuing education, for all persons who provide basic or advanced life support services within the state, whether services are provided on a paid or volunteer basis. When setting requirements for licensure of persons also subject to the Ambulance Standards Act [65-6-1 to 65-6-6 NMSA 1978], the bureau shall consult with the commission.

B. In addition to the requirements specified in Subsection A of this section, the bureau may:

(1) prohibit the use of "emergency medical technician," "paramedic" or similar terms connoting expertise in basic or advanced life support by any person not licensed or certified under the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978];

(2) deny, suspend or revoke licensure or certification in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]; and

(3) establish a schedule of reasonable fees for application, examination, licensure or certification and regular renewal thereof.

History: Laws 1983, ch. 190, § 5.

24-10B-6. Treatment authorized.

A. Notwithstanding the provisions of Sections 61-6-1 through 61-6-31 NMSA 1978 or the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978], any licensed basic life support personnel may, in the case of an emergency, render basic life support.

B. In addition to the activities allowed under the provisions of Subsection A of this section, any licensed advanced life support personnel, under medical control, may render advanced life support.

C. Individuals licensed or certified under Sections 61-6-1 through 61-6-31 NMSA 1978, Sections 61-10-1 through 61-10-22 NMSA 1978 or the Nursing Practice Act are not required to be licensed or certified under the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978].

History: Laws 1983, ch. 190, § 6.

24-10B-7. Emergency medical services advisory committee.

Pursuant to Section 9-7-11 NMSA 1978, the secretary of health and environment [secretary of health] shall appoint an advisory committee to advise the bureau in carrying out the provisions of the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978]. The advisory committee shall include representatives from the state medical society, the state emergency medical technicians' association, the state firemen's association, emergency medical service regional planning bodies and other interested provider and consumer groups.

History: Laws 1983, ch. 190, § 7.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-10B-8. Liability.

In any claim for civil damages arising out of the provision of emergency medical services by personnel described in Section 5 [24-10B-5 NMSA 1978] of the Emergency Medical Services Act, those personnel shall be considered health care providers for purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] if the claim is against a governmental entity or a public employee as defined by that act.

History: Laws 1983, ch. 190, § 8.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability for injury or death allegedly caused by activities of hospital "rescue team,", 64 A.L.R.4th 1200.

Application of "firemen's rule" to bar recovery by emergency medical personnel injured in responding to, or at scene of, emergency, 89 A.L.R.4th 1079.

24-10B-9. Emergency first aid.

Nothing in the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978] shall prevent fire and rescue services, public safety organizations and other trained units or individuals from rendering emergency first aid service to the public commensurate with their training. Nothing in the Emergency Medical Services Act shall be construed to supersede the provisions of the Search and Rescue Act [24-15A-1 to 24-15A-6 NMSA 1978].

History: Laws 1983, ch. 190, § 9.

24-10B-10. Enforcement.

The department may bring civil action in any district court to enforce any of the provisions of the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978].

History: Laws 1983, ch. 190, § 10.

24-10B-11. Summoning emergency vehicle without cause; penalty.

Any person who willfully summons an ambulance or emergency response vehicle or reports that one is needed when that person knows that the ambulance or emergency response vehicle is not needed is guilty of a petty misdemeanor.

History: Laws 1983, ch. 190, § 11.

Cross-references. - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

ARTICLE 11
MEDICAL INVESTIGATIONS

24-11-1. Board of medical investigators; creation; membership; compensation.

There is created the "board of medical investigators", consisting of the dean of the medical school at the university of New Mexico, the secretary of health and environment [secretary of health], the chief of the state police and the chairman of the state board of thanatopractice of the state of New Mexico. The members of the board of medical investigators shall receive no compensation for their services as board members other than as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1953 Comp., § 12-17-1, enacted by Laws 1971, ch. 112, § 1; and recompiled as 1953 Comp., § 12-29-1, by Laws 1972, ch. 51, § 9; 1973, ch. 286, § 1; 1977, ch. 253, § 38; 1981, ch. 96, § 1.

Cross-references. - As to chairman of state board of thanatopractice, see 61-29A-4 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 18 Am. Jur. 2d Coroners or Medical Examiners § 1 et seq.

18 C.J.S. Coroners § 1 et seq.

24-11-2. Meetings; duties.

A. The board of medical investigations shall meet at least annually and as often as necessary to conduct the business of the board. Additional meetings may be called by the chairman or by a majority of the members of the board.

B. At the first annual meeting of the board, the members shall elect one of their number as chairman.

C. The board of medical investigations shall formulate broad policy for the operation of the office of the state medical investigator and the offices of the district medical investigators.

D. The board of medical investigations shall employ and fix the compensation of a qualified state medical investigator who shall be assigned as an employee of the university of New Mexico school of medicine.

History: 1953 Comp., § 12-17-2, enacted by Laws 1971, ch. 112, § 2; recompiled as 1953 Comp., § 12-29-2, by Laws 1972, ch. 51, § 9; 1973, ch. 286, § 2.

24-11-3. State medical investigator; qualifications; duties; office.

A. The state medical investigator shall be a physician licensed to practice in New Mexico. Insofar as practicable, the medical investigator shall be trained in the fields of pathology and forensic medicine.

B. The state medical investigator shall maintain his office at the school of medicine at the university of New Mexico.

C. The state medical investigator shall appoint district medical investigators and where necessary deputy medical investigators who shall serve at his pleasure. The state medical investigator may assign deputy medical investigators to districts to work under the supervision of a district medical investigator. The district medical investigator shall be a licensed physician. When deemed necessary by the state medical investigator, he may direct a deputy or district medical examiner to enter another district for the purpose of carrying out medical investigations.

D. Any district created by the state medical investigator to be staffed by a district medical investigator shall be co-extensive with one or more counties.

E. The state medical investigator may enter into agreements for services to be performed by persons in the course of medical investigations.

F. The state medical investigator shall, subject to the approval of the board of medical investigations, promulgate rules and regulations for the proper investigation of deaths occurring within this state.

G. The state medical investigator shall maintain records of the deaths occurring within this state which are investigated by either state or district medical investigators.

H. In addition to other duties prescribed in this section, the state medical investigator shall also serve as the district medical investigator for Bernalillo county.

I. Funds for the operation of the state and district medical investigators' offices shall be appropriated to and administered by the university of New Mexico school of medicine.

History: 1953 Comp., § 12-17-3, enacted by Laws 1971, ch. 112, § 3; recompiled as 1953 Comp., § 12-29-3, by Laws 1972, ch. 51, § 9; 1973, ch. 286, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 18 C.J.S. Coroners §§ 3 to 9.

24-11-4. [References to coroner.]

As used in the New Mexico Statutes Annotated, 1978 Compilation, "coroner" means the district medical investigator.

History: 1953 Comp., § 15-43-43.1, enacted by Laws 1971, ch. 112, § 10.

24-11-5. Reports of violent death.

When any person comes to a sudden, violent or untimely death or is found dead and the cause of death is unknown, anyone who becomes aware of the death shall report it immediately to law enforcement authorities or the office of the state or district medical investigator. The public official so notified, shall in turn notify either, or both, the appropriate law enforcement authorities or the office of the state or district medical investigator. The state or district medical investigator, or a deputy medical investigator under his direction, shall, without delay, view and take legal custody of the body.

History: 1953 Comp., § 15-43-44, enacted by Laws 1961, ch. 91, § 2; 1971, ch. 112, § 4; 1973, ch. 286, § 4; 1975, ch. 7, § 1.

Cross-references. - As to failure to report death, see 24-11-10 NMSA 1978.

24-11-6. Death certificate; release of body; reports.

A. If, after viewing the body, notifying the law enforcement agency with jurisdiction and making an investigation, the state or district medical investigator is satisfied that the death was not caused by criminal act or omission and that there are no suspicious circumstances about the death, he shall execute a death certificate in the form required by law. He shall also execute a certificate on a form prescribed by the health and social services department [department of health], authorizing release of the body to the funeral director for burial. In those cases in which the investigation is performed by a deputy medical investigator, if, after viewing the body, notifying the law enforcement agency with jurisdiction and making an investigation, he is satisfied that the death was not caused by criminal act or omission and that there are no suspicious circumstances about the death, he shall report this finding to the state or district medical investigator under whose direction he is working. Upon receipt of a report from a deputy medical investigator under this subsection, the state or district medical investigator may execute a death certificate and a certificate authorizing release of the body for burial.

B. In those cases where the death resulted from a motor vehicle accident on a public highway, and the state, district or deputy medical investigator performs or causes to be performed a test or tests to determine the alcoholic content of the deceased's blood, a copy of the report of this test shall be sent to the planning division of the state highway department for the department's use only for statistical purposes. The copy of the report sent to the planning division of the state highway department of the results shall not contain any identification of the deceased and shall not be subject to judicial process.

History: 1953 Comp., § 15-43-45, enacted by Laws 1961, ch. 91, § 3; 1969, ch. 36, § 1; 1971, ch. 112, § 5; 1973, ch. 286, § 5; 1975, ch. 7, § 2.

Cross-references. - As to disposition of dead bodies generally, see 24-12-1 NMSA 1978 et seq.

Bracketed material. - The health and social services department, referred to in the second sentence in Subsection A, was abolished and its property, personnel, etc., transferred to the health and environment department by Laws 1977, ch. 253, §§ 5 and 14. Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department and enacts a new 9-7-4 NMSA 1978 creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

Use of original report. - Under Subsection B, no evidentiary limitation is placed on an original report which identifies the deceased person; to disallow its use in civil and criminal cases would render the report valueless. South v. Lucero, 92 N.M. 798, 595 P.2d 768 (Ct. App. 1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 18 Am. Jur. 2d Coroners or Medical Examiners § 1 et seq.

Admissibility of finding of coroner to show cause of death in workmen's compensation cases, 6 A.L.R. 548.

Insurance: coroner's verdict or report as evidence on issue of suicide, 28 A.L.R.2d 352.

Homicide: cremation of victim's body as violation of accused's right, 70 A.L.R.4th 1091.

18 C.J.S. Coroners § 23.

24-11-7. Examination; autopsy; inquest.

If the deceased is unidentified, the state, district or deputy medical investigator may order the body fingerprinted and photographed. When the state, district or deputy medical investigator suspects a death was caused by a criminal act or omission or the cause of death is obscure, he shall order an autopsy performed by a qualified pathologist certified by the state board of medical examiners who shall record every fact

found in the examination tending to show the identity and condition of the body and the time, manner and cause of death. The pathologist shall sign the report under oath and deliver it to the state, district or deputy medical investigator within a reasonable time. The state, district or deputy medical investigator may take the testimony of the pathologist and any other persons and this testimony, combined with the written report of the pathologist, constitutes an inquest.

History: 1953 Comp., § 15-43-46, enacted by Laws 1961, ch. 91, § 4; 1971, ch. 112, § 6; 1973, ch. 286, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 18 Am. Jur. 2d Coroners or Medical Examiners §§ 7 to 15.

When holding of inquest on autopsy justified, 48 A.L.R. 1209.

Reviewing, setting aside or quashing verdict at coroner's inquest, 78 A.L.R.2d 1218.

18 C.J.S. Coroners §§ 10 to 26.

24-11-8. Reports to district attorney.

The state or district medical investigator shall promptly report his findings, or the findings of a deputy medical investigator that has performed an investigation under his direction, to the district attorney in each death investigated. Upon request of the district attorney, the state or district medical investigator shall send a complete record of the medical investigation in any case, including a transcript of the testimony of witnesses examined at any inquest.

History: 1953 Comp., § 15-43-47, enacted by Laws 1961, ch. 91, § 5; 1971, ch. 112, § 7; 1973, ch. 286, § 7.

24-11-9. Subpoena; oath.

The state, district or deputy medical investigator may administer oaths and may issue a subpoena to compel the attendance and production of evidence by any necessary witness and the subpoena may be enforced in the district court. Any subpoena shall be served without cost by the sheriff or any deputy or by any member of the New Mexico state police.

History: 1953 Comp., § 15-43-48, enacted by Laws 1961, ch. 91, § 6; 1971, ch. 112, § 8; 1973, ch. 286, § 8.

24-11-10. Penalties.

A. It is unlawful to:

(1) willfully and without good cause neglect or refuse to report a death to law enforcement authorities or the office of the state or district medical investigator as required by law; or

(2) willfully and unnecessarily touch, remove or disturb any dead body required by law to be reported to the state or district medical investigator, or any article on or near the body or disturb its surroundings until authority is granted by the state, district or deputy medical investigator.

B. Any person violating this section is guilty of a petty misdemeanor.

History: 1953 Comp., § 15-43-50, enacted by Laws 1961, ch. 91, § 8; 1971, ch. 112, § 9; 1973, ch. 286, § 9; 1975, ch. 7, § 3.

Cross-references. - As to duty to report deaths, see 24-11-5 NMSA 1978.

As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

ARTICLE 12
DISPOSITION OF DEAD BODIES

24-12-1. Notification of relatives of deceased.

A. State, county or municipal officials having charge or control of bodies to be buried at public expense shall use due diligence to notify the relatives of the deceased.

B. If no claimant is found who will assume the cost of burial, the official having charge or control of the body shall notify the medical investigator stating, when possible, the name, age, sex and cause of death of any person required to be buried at public expense.

C. The body shall be embalmed according to regulations of the state agency having jurisdiction. After the exercise of due diligence required in Subsection A of this section, and the report to the medical investigator required in Subsection B of this section, the medical investigator shall be furnished detailed data demonstrating such due diligence and the fact that no claimant has been found. When the medical investigator has determined that due diligence has been exercised and that reasonable opportunity has been afforded relatives to claim the body and that the body has not been claimed, he shall issue his certificate determining that the remains are unclaimed. In no case shall an unclaimed body be disposed of in less than two weeks from the date of the discovery of the body.

History: Laws 1941, ch. 148, § 1; 1941 Comp., § 71-501; 1953 Comp., § 12-7-1; reenacted by Laws 1973, ch. 354, § 1; 1977, ch. 204, § 1.

Cross-references. - As to medical investigations generally, see 24-11-1 NMSA et seq.

As to burial of indigents generally, see 24-13-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies § 1 et seq.

Dead bodies: liability for improper manner of reinterment, 53 A.L.R.4th 394.

25A C.J.S. Dead Bodies § 1 et seq.

24-12-2. Disposition of unclaimed body; transmission of records of institution.

A. Upon the issuance of his certificate that the remains are unclaimed, the medical investigator shall retain the body for use only for medical education or shall certify that the body is unnecessary or unsuited for medical education and release it to the state, county or municipal officials having charge or control of the body for burial.

B. If the body is retained for use in medical education, the facility or person receiving the body for such use shall pay the costs of preservation and transportation of the body and shall keep a permanent record of bodies received.

C. If a deceased person was an inmate of a public institution, the institution shall transmit, upon request of the medical investigator, a brief medical history of the unclaimed dead person for purposes of identification and permanent record. The records shall be open to inspection by any state or county official or district attorney.

History: Laws 1941, ch. 148, §§ 3 to 5; 1941 Comp., §§ 71-503 to 71-505; 1953 Comp., § 12-7-2, reenacted by Laws 1973, ch. 354, § 2; 1977, ch. 204, § 2.

Repeals and reenactments. - Laws 1973, ch. 354, § 2, repealed 12-7-2, 1953 Comp., relating to conduct of postmortem examinations, and enacted a new 24-12-2 NMSA 1978. Provisions relating to postmortem examinations presently appear in 24-12-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Homicide: cremation of victim's body as violation of accused's right, 70 A.L.R.4th 1091.

24-12-3. Penalties.

A. Any person who conducts a postmortem examination on an unclaimed body without express permission of the medical investigator is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or by the imposition of a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine.

B. Any person who unlawfully disposes of, uses or sells an unclaimed body is guilty of a fourth degree felony and shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than five years or by the imposition of a fine of not more than five thousand dollars ($5,000), or both such imprisonment and fine.

History: Laws 1941, ch. 148, §§ 2, 4; 1941 Comp., §§ 71-502, 71-504; 1953 Comp., § 12-7-4, reenacted by Laws 1973, ch. 354, § 3.

Cross-references. - As to medical investigations generally, see 24-11-1 NMSA 1978 et seq.

Repeals and reenactments. - Laws 1973, ch. 354, § 3, repeals 12-7-4, 1953 Comp., relating to disposition of unclaimed bodies, and enacts the above section. Provisions relating to the disposition of unclaimed bodies presently appear in 24-12-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies §§ 4, 44 to 47, 58, 112.

Validity, construction and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 A.L.R.3d 1071.

25A C.J.S. Dead Bodies § 10.

24-12-4. Postmortem examinations and autopsies; consent required.

A. An autopsy or postmortem examination may be performed on the body of a deceased person by a physician or surgeon whenever consent to the procedure has been given:

(1) by written authorization signed by the deceased during his lifetime;

(2) by authorization of any person or on behalf of any entity whom the deceased designated in writing during his lifetime to take charge of his body for burial or other purposes;

(3) by authorization of the deceased's surviving spouse;

(4) by authorization of an adult child, parent or adult brother or sister of the deceased if there is no surviving spouse or if the surviving spouse is unavailable, incompetent or has not claimed the body for burial after notification of the death of the decedent;

(5) by authorization of any other relative of the deceased if none of the persons enumerated in Paragraphs (2) through (4) of this subsection are available or competent to give authorization; or

(6) by authorization of the public official, agency or person having custody of the body for burial if none of the persons enumerated in Paragraphs (2) through (5) of this subsection are available or competent to give authorization.

B. An autopsy or postmortem examination shall not be performed under authorization given under the provisions of Paragraph (4) of Subsection A of this section by any one of the persons enumerated if, before the procedure is performed, any one of the other persons enumerated objects in writing to the physician or surgeon by whom the procedure is to be performed.

C. An autopsy or postmortem examination may be performed by a pathologist at the written direction of the district attorney or his authorized representative in any case in which the district attorney is conducting a criminal investigation.

D. An autopsy or postmortem examination may be performed by a pathologist at the direction of the state, district or deputy medical investigator when he suspects the death was caused by a criminal act or omission or if the cause of death is obscure.

History: 1953 Comp., § 12-7-9, enacted by Laws 1965, ch. 86, § 1; reenacted by 1973, ch. 354, § 4.

Cross-references. - As to medical investigations generally, see 24-11-1 NMSA 1978 et seq.

Purpose of Subsection D is to authorize a medical investigator to order an autopsy when he suspects that criminal conduct caused a death or that the cause of a death is obscure, even when no consent is obtained. In re Johnson, 94 N.M. 491, 612 P.2d 1302 (1980).

State registrar shall issue permit to disinter when medical investigator so requires pursuant to the duties and responsibilities of his office. In re Johnson, 94 N.M. 491, 612 P.2d 1302 (1980).

Requirement of notice of intended autopsy or disinterment. - Under some circumstances due process may require than an interested relative be given notice of an intended autopsy or disinterment of a deceased. In re Johnson, 94 N.M. 491, 612 P.2d 1302 (1980).

Immunity for wrongful decision to perform autopsy. - In an action for damages on the basis of an alleged wrongful decision to perform an autopsy, even if this section, which provides for consent for postmortem examinations created a private cause of action, it did not override the state medical investigator's grant of immunity under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978]. Begay v. State, 104 N.M. 483, 723 P.2d 252 (Ct. App. 1985).

Religious freedom suit where consent not given. - The right given by this statute to a number of alternative persons to authorize an autopsy is not co-extensive with the right of any of those same statutorily-named persons to assert a violation of a personal religious freedom if his consent was not obtained. Smialek v. Begay, 104 N.M. 375, 721 P.2d 1306, cert. denied, 479 U.S. 1020, 107 S. Ct. 677, 93 L. Ed. 2d 727 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies §§ 59, 60, 64 to 69.

When holding of autopsy justified, 48 A.L.R. 1209.

Privilege of physician as to facts learned on autopsy, 58 A.L.R. 1134.

Removal and reinterment of remains, 21 A.L.R.2d 472.

Power of court to order disinterment and autopsy or examination for evidential purposes in a civil case, 21 A.L.R.2d 538.

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 A.L.R.2d 244, 18 A.L.R.4th 858.

Insurance policy, time for making autopsy or making demand therefor, 30 A.L.R.2d 837.

Disinterment in criminal cases, 63 A.L.R.3d 1294.

Liability for wrongful autopsy, 18 A.L.R.4th 858.

25A C.J.S. Dead Bodies § 8(3).

ARTICLE 13
BURIAL OF INDIGENTS

24-13-1. [Burial of indigents.]

It shall be the duty of the board of county commissioners of each county in this state to cause to be decently interred, the body of any dead person having no visible estate out of which to defray the cost of his burial, and when no relative or friend of such decedent will undertake to bury him.

History: Laws 1939, ch. 224, § 1; 1941 Comp., § 73-204; 1953 Comp., § 13-2-4.

Cross-references. - As to disposition of dead bodies generally, see 24-12-1 NMSA 1978 et seq.

For definitions applicable to provisions of this article, see 27-1-1 NMSA 1978.

County's responsibility for burial of indigents does not rest upon residence of the indigents. 1941-42 Op. Att'y Gen. No. 4081.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies § 19.

24-13-2. [Persons deemed to be indigents for burial.]

No deceased person shall be considered to be an indigent if there are any sums, no matter how small, with which to defray the cost of such burial.

History: Laws 1939, ch. 224, § 2; 1941 Comp., § 73-205; 1953 Comp., § 13-2-5.

24-13-3. Expenses for burial.

The expenses for the burial or cremation of an indigent person may be paid by the county out of the general fund in an amount up to six hundred dollars ($600) for the burial of any adult or minor.

History: Laws 1939, ch. 224, § 3; 1941 Comp., § 73-206; 1953 Comp., § 13-2-6; Laws 1957, ch. 123, § 1; 1959, ch. 59, § 1; 1987, ch. 274, § 1; 1991, ch. 6, § 1.

The 1991 amendment, effective March 9, 1991, rewrote the section following "general fund in", which read "the amount of three hundred dollars ($300) for the burial of any adult or minor over the age of six years and three hundred dollars ($300) for the burial of any minor up to the age of six years".

Commissioners are under duty to pay $100 (now $600) for burial of indigent regardless of the particular circumstances prior to the indigent's burial. 1970 Op. Att'y Gen. No. 70-44.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 25A C.J.S. Dead Bodies § 7.

24-13-4. Burial after investigation; cost of opening and closing grave.

The board of county commissioners, after proper investigation, shall cause any deceased indigent to be decently interred or cremated. The cost of opening and closing a grave shall not exceed thirty-five dollars ($35.00), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978.

History: Laws 1939, ch. 224, § 4; 1941 Comp., § 73-207; 1953 Comp., § 13-2-7; Laws 1957, ch. 123, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies §§ 75, 78 to 81.

25A C.J.S. Dead Bodies §§ 4(3), 8(4).

24-13-5. [Payment for burial of person not indigent; liability of commissioners.]

If the board of county commissioners of any county within this state shall pay to any person any sum purporting to be for the burial of an indigent person when in fact such deceased person was known by the board of county commissioners to be not an indigent, as above defined, said county commissioners shall be liable either personally or officially to the county which they represent in double the amount which they have paid.

History: Laws 1939, ch. 224, § 5; 1941 Comp., § 73-208; 1953 Comp., § 13-2-8.

24-13-6. [Money received from relatives; duty of funeral director.]

That should any funeral director or other person allowed by law to conduct the business of a funeral director, accept moneys from the relatives or friend of a deceased person whom the county commissioners have determined to be an indigent, said funeral director must immediately notify the board of county commissioners of said county of said payment or offer for payment, and said county commissioners shall not thereafter pay for the alleged indigent burial involved, or if said county commissioners have already paid for such burial, the funeral director shall immediately refund the moneys paid to him by the county commissioners for said burial.

History: Laws 1939, ch. 224, § 6; 1941 Comp., § 73-209; 1953 Comp., § 13-2-9.

24-13-7. [Failure of funeral director to notify commissioners of money received; liability of funeral director.]

If any funeral director or other person authorized by law to conduct the business of a funeral director, shall receive or contract to receive any moneys or thing of value from relatives or friends of a deceased alleged indigent whose burial expenses are paid or to be paid by the board of county commissioners, and shall fail to notify the county commissioners of said fact, said funeral director or other person authorized by law to conduct the business of a funeral director, shall be liable to said county in an amount double the amount paid or to be paid by said county commissioners of said county.

History: Laws 1939, ch. 224, § 7; 1941 Comp., § 73-211; 1953 Comp., § 13-2-11.

24-13-8. [District attorneys to enforce burial act.]

The various district attorneys of this state are hereby expressly empowered and directed to enforce the provisions of this act [24-13-1 to 24-13-8 NMSA 1978] on behalf of the various counties which they represent.

History: Laws 1939, ch. 224, § 8; 1941 Comp., § 73-211; 1953 Comp., § 13-2-11.

ARTICLE 14
VITAL STATISTICS

24-14-1. Short title.

This act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] may be cited as the "Vital Statistics Act".

History: 1953 Comp., § 12-4-23, enacted by Laws 1961, ch. 44, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 51.

Who is a physician or surgeon within statute in relation to vital statistics, 8 A.L.R. 1070.

Death certificate as evidence, 17 A.L.R. 359, 42 A.L.R. 1454, 96 A.L.R. 324.

Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

39A C.J.S. Health and Environment § 41.

24-14-2. Definitions.

As used in the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978]:

A. "vital statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced abortion and related reports;

B. "system of vital statistics" includes the registration, collection, preservation, amendment and certification of vital records and related activities, including the tabulation, analysis and publication of statistical data derived from these records;

C. "filing" means the presentation of a certificate, report or other record of a birth, death, spontaneous fetal death or adoption for registration by the vital statistics bureau;

D. "registration" means the acceptance by the vital statistics bureau and the incorporation in its official records of certificates, reports or other records provided for in the Vital Statistics Act of births, deaths, spontaneous fetal deaths, adoptions and legitimations;

E. "live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after the expulsion

or extraction breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;

F. "spontaneous fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, resulting in other than a live birth and which is not an induced abortion; and death is indicated by the fact that after the expulsion or extraction the fetus does not breathe or show any other evidence of life as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles;

G. "dead body" means a human body, or parts of such body or bones thereof other than skeletal remains which can be classified as artifacts, dead within the meaning of Section 12-2-4 NMSA 1978;

H. "final disposition" means the burial, interment, cremation, entombment, pulverization or other authorized disposition of a dead body or fetus;

I. "department" means the health and environment department [department of health];

J. "court" means a court of competent jurisdiction;

K. "state registrar" means the designated employee of the health services division of the health and environment department [department of health];

L. "vital records" means certificates of birth and death;

M. "induced abortion" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant;

N. "physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this state; and

O. "institution" means any establishment, public or private:

(1) which provides in-patient medical, surgical, or diagnostic care or treatment;

(2) which provides nursing, custodial or domiciliary care; or

(3) to which persons are committed by law.

History: 1953 Comp., § 12-4-24, enacted by Laws 1961, ch. 44, § 2; 1973, ch. 264, § 1; 1977, ch. 206, § 1; 1977, ch. 253, § 26; 1981, ch. 309, § 1.

Cross-references. - As to department of health, see 9-7-4 NMSA 1978.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-14-3. Vital statistics unit [bureau]; state system.

There is established in the health services division of the department a "vital statistics bureau" for the purpose of installing, maintaining and operating a system of vital statistics throughout this state, and carrying out all regulations relating to vital statistics established by the department.

History: 1953 Comp., § 12-4-25, enacted by Laws 1961, ch. 44, § 3; 1973, ch. 264, § 2; 1977, ch. 253, § 27; 1981, ch. 309, § 2.

24-14-4. State registrar; appointment.

The director [secretary] of the department shall appoint the state registrar in accordance with provisions of the state Personnel Act.

History: 1953 Comp., § 12-4-26, enacted by Laws 1961, ch. 44, § 4; 1973, ch. 264, § 3.

Bracketed material. - The administrative head of the department of health is the secretary. See 24-14-2I and 9-7-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

24-14-5. Duties of state registrar.

A. The state registrar shall:

(1) administer and enforce the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] and regulations issued pursuant to it, and issue instructions for the efficient administration of the state system of vital statistics;

(2) direct and supervise the state system of vital statistics and be custodian of its records;

(3) direct, supervise and control the activities of all public employees, other than hospital employees, when they are engaged in activities pertaining to the operation of the vital statistics system;

(4) prescribe, with the approval of the department, and after consultation with medical records professionals in the state, furnish and distribute such forms as are required by the Vital Statistics Act;

(5) prepare and publish reports of vital statistics of this state and such other reports as may be required by the department;

(6) conduct training programs to promote uniformity of policy and procedures throughout the state; and

(7) provide to local health agencies copies of or data derived from certificates and reports required under the Vital Statistics Act as determined necessary for local health planning and program activities. The copies or data shall remain the property of the vital statistics bureau, and the uses which may be made of them shall be prescribed by the state registrar.

B. The state registrar may establish or designate offices in the state to aid in the efficient administration of the system of vital statistics and may delegate such functions and duties vested in him to employees of the vital statistics bureau and to employees of any office of the state or political subdivision designated to aid in administering the Vital Statistics Act.

History: 1953 Comp., § 12-4-27, enacted by Laws 1961, ch. 44, § 5; 1973, ch. 264, § 4; 1977, ch. 253, § 28; 1981, ch. 309, § 3.

24-14-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 309, § 26, repeals 24-14-6 NMSA 1978, as enacted by Laws 1961, ch. 44, § 6, relating to registration districts. For provisions of former section, see 1979 replacement pamphlet.

Laws 1981, ch. 309, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

24-14-7. Appointment and removal of local registrars.

The state registrar:

A. may appoint local registrars in order to carry out the provisions of the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978]; and

B. may remove local registrars for reasonable cause.

History: 1953 Comp., § 12-4-29, enacted by Laws 1961, ch. 44, § 7; 1981, ch. 309, § 4.

24-14-8. Duties of local registrar.

The local registrar shall:

A. administer and enforce the provisions of the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] and instructions, rules and regulations issued pursuant thereto;

B. require that certificates be completed and filed in accordance with the Vital Statistics Act and the rules and regulations issued pursuant thereto; and

C. transmit to the state registrar bimonthly, or more frequently when directed by that official, the certificates, reports or other returns filed with him.

History: 1953 Comp., § 12-4-30, enacted by Laws 1961, ch. 44, § 8; 1981, ch. 309, § 5.

24-14-9 to 24-14-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 309, § 26, repeals 24-14-9 to 24-14-11 NMSA 1978, as enacted by Laws 1961, ch. 44, § 11, and amended by Laws 1977, ch. 253, §§ 29 and 30, relating to the compensation of, and payment of fees to, the subregistrar and insufficiency of county funds. For provisions of former sections, see 1979 replacement pamphlet.

Laws 1981, ch. 309, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

24-14-12. Form contents of certificates and reports.

A. In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports and other returns required by the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] or by regulations adopted pursuant to that act shall include as a minimum the items recommended by the federal agency responsible for national vital statistics subject to the approval of modifications by the department.

B. Each certificate, report and other document required to be registered under the Vital Statistics Act shall be on a form or in a format prescribed by the state registrar.

C. All vital records shall contain the date received for registration.

D. Information required in certificates or reports required or authorized by the Vital Statistics Act may be filed and registered by photographic, electronic or other means as prescribed by the state registrar; provided that certificates shall be filed and registered by either physical or photographic means.

History: 1953 Comp., § 12-4-34, enacted by Laws 1961, ch. 44, § 12; 1973, ch. 264, § 7; 1977, ch. 253, § 31; 1981, ch. 309, § 6.

24-14-13. Birth registration.

A. A certificate of birth for each live birth which occurs in this state shall be filed with the vital statistics bureau or as otherwise directed by the state registrar within ten days after the birth and shall be registered if it has been completed and filed in accordance with this section. When a birth, however, occurs on a moving conveyance, a birth certificate shall be registered in this state and the place where the child is first removed shall be considered the place of birth.

B. When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required and file it as directed in this section. The physician or other person in attendance shall certify the medical information required by the certificate within ten working days after the birth in accordance with policies established by the institution where the birth occurred. The person in charge of the institution or his designee shall complete and sign the certificate.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) the physician in attendance at or immediately after the birth;

(2) any other person in attendance at or immediately after the birth or in the absence of this person; or

(3) the father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

D. If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined pursuant to Subsection F of this section, or otherwise by a court in which case the name of the father as determined by the court shall be entered.

E. If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father unless a determination of paternity has been made by a court, in which case the name of the father as determined by the court shall be entered.

F. If a married mother claims that her husband is not the father of the child, and if the husband agrees that he is not the father and the putative father agrees that he is the father, then an affidavit of paternity may be signed by the respective parties and duly notarized. Upon filing this affidavit with the state registrar, the name of the nonhusband shall be entered on the certificate as the father.

History: 1953 Comp., § 12-4-35, enacted by Laws 1961, ch. 44, § 13; 1981, ch. 309, § 7.

Cross-references. - As to requirement for reporting on birth certificate whether blood test for syphilis taken from mother, see 24-1-11 NMSA 1978.

As to issuance of new birth certificates following adoptions, legitimations and paternity determinations, see 24-14-17 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 51.

39A C.J.S. Health and Environment § 41.

24-14-14. Unknown parentage; foundling registration.

A. Whoever assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within ten days the following information:

(1) the date and place of finding;

(2) sex, color or race and approximate age of child;

(3) name and address of the person or institution with whom the child has been placed for care;

(4) name given to the child by the custodian; and

(5) other data required by the state registrar.

B. A report registered under this section constitutes the certificate of birth for the infant.

C. If the child is subsequently identified and a standard certificate of birth can be established, any report registered under this section shall be sealed and may be opened only by order of the district court or as provided by regulation.

History: 1953 Comp., § 12-4-36, enacted by Laws 1961, ch. 44, § 14; 1981, ch. 309, § 8.

24-14-15. Delayed registration of births.

A. When the birth of a person born in this state has not been registered, a certificate may be filed in accordance with regulations of the department. The certificate shall be registered subject to evidentiary requirements prescribed by regulation to substantiate the alleged facts of birth.

B. Certificates of birth registered one year or more after the date of birth shall show on their face the date of the delayed registration.

C. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

D. When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reason for this action.

E. The department may by regulation provide for the denial of an application for delayed registration which is not actively prosecuted.

History: 1953 Comp., § 12-4-37, enacted by Laws 1961, ch. 44, § 15; 1981, ch. 309, § 9.

24-14-16. Judicial procedure to establish facts of birth.

A. If a delayed certificate of birth is rejected under the provisions of Section 24-14-15 NMSA 1978, a petition may be filed with a court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

B. The petition shall allege that:

(1) the person for whom a delayed certificate of birth is sought was born in this state;

(2) no record of birth of the person can be found in the vital statistics bureau;

(3) diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Section 24-14-15 NMSA 1978;

(4) the state registrar has refused to register a delayed certificate of birth; and

(5) any other allegations as may be required.

C. The petition shall be accompanied by a statement of the registration official made in accordance with Section 24-14-15 NMSA 1978 and all documentary evidence which was submitted to the registration official in support of the registration. The petition shall be sworn to by the petitioner.

D. The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of birth ten

days' notice of the hearing. The official or his authorized representative may appear and testify in the proceeding.

E. If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage and other findings as the case may require and shall issue an order to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented in the manner prescribed by Section 24-14-15 NMSA 1978 and the date of the court's action.

F. The clerk of the court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the record of birth from which copies may be issued in accordance with Sections 24-14-28 and 24-14-29 NMSA 1978.

History: 1953 Comp., § 12-4-38, enacted by Laws 1961, ch. 44, § 16; 1981, ch. 309, § 10.

24-14-17. New birth certificates following adoption, legitimation and paternity determination.

A. The state registrar shall establish a new certificate of birth for a person born in this state when he receives the following:

(1) a report of adoption as provided in this section, a report of adoption prepared and filed in accordance with the laws of another state or foreign country or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents or the adopted person; or

(2) a request that a new certificate be established and evidence as required by regulation proving that the person has been legitimated or that court has determined the paternity of the person.

B. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination or legitimation shall not be subject to inspection except upon order of a court or in the case of a single adoptive parent.

C. Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection except upon order of a court.

D. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the state registrar as provided in Section 24-14-15 NMSA 1978 before a new certificate of birth is established.

E. For each adoption decreed by a court in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted, shall provide information necessary to establish a new certificate of birth of the person adopted and shall identify the order of adoption and be certified by the clerk of the court.

History: 1953 Comp., § 12-4-39, enacted by Laws 1961, ch. 44, § 17; 1973, ch. 264, § 8; 1981, ch. 309, § 11.

Cross-references. - As to registration of births generally, see 24-14-13 to 24-14-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity and application of statute authorizing change in record of birthplace of adopted child, 14 A.L.R.4th 739.

24-14-18. Report of induced abortions.

A. Each induced abortion which occurs in this state shall be reported to the state registrar within five days by the person in charge of the institution in which the induced abortion was performed. If the induced abortion was performed outside an institution, the attending physician shall prepare and file the report.

B. The reports required under this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics. The report shall not include the name or address of the patient involved in the abortion. The department shall not release the name or address of the physician involved in the abortion. A schedule for the disposition of these reports shall be provided for by regulation.

History: 1953 Comp., § 12-4-39.1, enacted by Laws 1977, ch. 206, § 2; 1981, ch. 309, § 12.

Compiler's note. - Inasmuch as both Laws 1977, ch. 206, § 2, and Laws 1977, ch. 223, § 1, enacted a new 12-4-39.1, 1953 Comp., though dealing with different matters, the provision in Chapter 223 was compiled as 12-4-39.2, 1953 Comp. instead. See now 24-14-19 NMSA 1978.

Law reviews. - For comment, "Perspectives on the Abortion Decision," see 9 N.M. L. Rev. 175 (1978-79).

24-14-19. Adoption of foreign-born; certificate of birth.

A. The state registrar shall establish a certificate of birth for a person of foreign birth adopted under New Mexico law when the registrar receives:

(1) a certified copy of a judgment of adoption granted by the court;

(2) an order issued by the court to establish a certificate of birth for that adopted person; and

(3) any other evidence as provided in Section 24-14-17 NMSA 1978 necessary to establish a new certificate of birth.

B. The certificate of birth established under this section shall be on a form prescribed by the state registrar and shall show the probable country of birth, pursuant to the findings of the court, and shall state that the certificate is not evidence of United States citizenship.

History: 1953 Comp., § 12-4-39.1, enacted by Laws 1977, ch. 223, § 1; 1981, ch. 309, § 13.

Compilation of section. - See compiler's notes under 24-14-18 NMSA 1978.

24-14-20. Death registration.

A. A death certificate for each death which occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978; provided that:

(1) if the place of death is unknown, but the dead body is found in this state, a death certificate shall be filed with a local registrar within ten days after the occurrence. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be approximated by the state medical investigator; and

(2) if death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined by the state medical investigator.

B. The funeral service practitioner or person acting as a funeral service practitioner who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death.

C. The medical certification shall be completed and signed within forty-eight hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by law. In the absence of the physician, or with his approval, the certificate may be completed and signed by his associate physician, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death and death is due to natural causes.

D. When death occurred without medical attendance as set forth in Paragraph C of this section, or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

E. An amended death certificate based on an anatomical observation must be filed within thirty days of the completion of an autopsy.

History: 1953 Comp., § 12-4-40, enacted by Laws 1961, ch. 44, § 18; 1973, ch. 264, § 9; 1981, ch. 309, § 14.

Cross-references. - As to medical investigations of deaths, see 24-11-1 NMSA 1978 et seq.

As to disposition of dead bodies, see 24-12-1 NMSA 1978 et seq.

As to extension of time for registration, see 24-14-24 NMSA 1978.

Issuance of copies by county clerk. - County clerks may not issue copies of death certificates on file in their office unless the vital statistics bureau promulgates regulations authorizing it or unless the legislature amends this article to grant county clerks such authority. 1988 Op. Att'y Gen. No. 88-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 39 Am. Jur. 2d Health § 51.

Death certificate as evidence, 17 A.L.R. 359, 42 A.L.R. 1454, 96 A.L.R. 324.

Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

39A C.J.S. Health and Environment § 41.

24-14-21. Delayed registration of death.

A. When a death occurring in this state has not been registered, a certificate may be filed in accordance with regulations of the board of medical investigators. The certificate shall be registered subject to evidentiary requirements as prescribed by regulation to substantiate the alleged facts of death.

B. Certificates of death registered one year or more after the date of death shall be marked "delayed" and shall show on their face the date of the delayed registration.

History: 1953 Comp., § 12-4-41, enacted by Laws 1961, ch. 44, § 19; 1973, ch. 264, § 10; 1981, ch. 309, § 15.

Cross-references. - As to medical investigations of deaths generally, see 24-11-1 NMSA 1978 et seq.

24-14-22. Reports of spontaneous fetal death.

A. Each spontaneous fetal death, where the fetus has a weight of five hundred grams or more, which occurs in this state shall be reported to the state registrar.

B. When a dead fetus is delivered in an institution, the person in charge of the institution or his designated representative shall prepare and file the report.

C. When the spontaneous fetal death occurs on a moving conveyance and the fetus is first removed from the conveyance in this state, or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of fetal death.

D. When a spontaneous fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery or when inquiry is required by law, the state medical investigator shall investigate the cause of fetal death and shall prepare and file the report.

E. The names of the parents shall be entered on the spontaneous fetal death report in accordance with the provisions of Section 24-14-13 NMSA 1978.

F. Except as otherwise provided in this section, all spontaneous fetal death reports shall be completed and filed with the state registrar within ten days following the spontaneous fetal death.

History: 1953 Comp., § 12-4-42, enacted by Laws 1961, ch. 44, § 20; 1981, ch. 309, § 16.

Cross-references. - As to extension of time for filing certificate, see 24-14-24 NMSA 1978.

24-14-23. Permits; authorization for final disposition.

A. For deaths or spontaneous fetal deaths which have occurred in this state, no burial-transit permit shall be required for final disposition of the remains if the disposition occurs in this state and is performed by a funeral service practitioner or direct disposer.

B. A burial-transit permit shall be issued by the state registrar or a local registrar for those bodies which are to be transported out of the state for final disposition or when final disposition is being made by a person other than a funeral service practitioner or direct disposer.

C. A burial-transit permit issued under the law of another state or country which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

D. A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. The permit shall be issued by the state registrar or state medical investigator to a licensed funeral service practitioner or direct disposer.

E. A permit for cremation of a body shall be required prior to the cremation. The permit shall be issued by the state medical investigator to a licensed funeral service practitioner, direct disposer or any other person who makes the arrangements for final disposition.

History: 1953 Comp., § 12-4-43, enacted by Laws 1961, ch. 44, § 21; 1981, ch. 309, § 17; 1985, ch. 230, § 1.

Cross-references. - As to disposition of dead bodies, see 24-12-1 NMSA 1978 et seq.

As to burial of indigents, see 24-13-1 NMSA 1978 et seq.

State registrar shall issue permit to disinter when medical investigator so requires pursuant to the duties and responsibilities of his office. In re Johnson, 94 N.M. 491, 612 P.2d 1302 (1980).

Requirement of notice of intended autopsy or disinterment. - Under some circumstances due process may require that an interested relative be given notice of an intended autopsy or disinterment of a deceased. In re Johnson, 94 N.M. 491, 612 P.2d 1302 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Dead Bodies §§ 5, 6, 48, 49.

Dead bodies: liability for improper manner of reinterment, 53 A.L.R.4th 394.

39A C.J.S. Health and Environment § 42.

24-14-24. Extension of time.

A. The department may, by regulation and upon conditions as it may prescribe to assure compliance with the purposes of the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978], provide for the extension of the periods prescribed in Sections 24-14-20, 24-14-22 and 24-14-23 NMSA 1978 for the filing of death certificates, spontaneous fetal death reports, medical certifications of cause of death and for the obtaining of burial-transit permits in cases where compliance with the applicable prescribed period would result in undue hardship.

B. Regulations of the department may provide for the issuance of a burial-transit permit prior to the filing of a certificate upon conditions designed to assure compliance with the purposes of the Vital Statistics Act in cases where compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

History: 1953 Comp., § 12-4-44, enacted by Laws 1961, ch. 44, § 22; 1973, ch. 264, § 11; 1977, ch. 253, § 32; 1981, ch. 309, § 18.

Cross-references. - As to issuance of death certificates subsequent to medical investigations, see 24-11-6 NMSA 1978.

As to death certificates, see 24-14-20 NMSA 1978.

As to spontaneous fetal death reports, see 24-14-22 NMSA 1978.

As to burial-transit permits, see 24-14-23 NMSA 1978.

24-14-25. Correction and amendment of vital records.

A. A certificate or report registered under the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] may be amended only in accordance with that act and regulations thereunder adopted by the department to protect the integrity and accuracy of vital statistics records.

B. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of the person or his parent, guardian or legal representative, the state registrar shall amend the original certificate of birth to reflect the new name.

C. Upon request and receipt of a sworn acknowledgement of paternity of a child born out of wedlock signed by both parents, or in the case of a married mother as provided for in Subsection F of Section 24-14-13 NMSA 1978, the state registrar shall amend a

certificate of birth to show the paternity if paternity is not shown on the birth certificate. The certificate shall not be marked "amended".

D. Upon receipt of a duly notarized statement from the person in charge of an institution or from the attending physician indicating that the sex of an individual born in this state has been changed by surgical procedure, together with a certified copy of an order changing the name of the person, the certificate of birth of the individual shall be amended as prescribed by regulation.

E. When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital records and shall advise the applicant of the reason for this action.

F. A certificate or report that is amended under this section shall be marked "amended", except as otherwise provided in this section. The date of the amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "amended".

History: 1953 Comp., § 12-4-45, enacted by Laws 1961, ch. 44, § 23; 1981, ch. 309, § 19.

Cross-references. - As to issuance of new birth certificates following adoptions, legitimations and paternity determinations, see 24-14-17 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 76 C.J.S. Records §§ 23 to 28.

24-14-26. Reproduction of records.

To preserve vital records, the state registrar is authorized to prepare typewritten, photographic, electronic or other reproductions of original records and files in his office. The reproductions when certified by him shall be accepted as the original record. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation.

History: 1953 Comp., § 12-4-46, enacted by Laws 1961, ch. 44, § 24; 1981, ch. 309, § 20.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Photostatic or other method of recording instrument, 57 A.L.R. 159.

24-14-27. Disclosure of records.

A. It is unlawful for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any record except as authorized by law.

B. The department may authorize the disclosure of data contained in vital records for research purposes.

C. When one hundred years have elapsed after the date of birth or fifty years have elapsed after the date of death, the vital records of these events in the custody of the state registrar shall become open public records, and information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records; provided that vital records of birth shall not become open public records prior to the individual's death.

History: 1953 Comp., § 12-4-47, enacted by Laws 1961, ch. 44, § 25; 1981, ch. 309, § 21.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 30.

False news reports as to births, betrothals, marriages, divorces or similar marital matters as libel and slander, 9 A.L.R.3d 559.

76 C.J.S. Records §§ 35 to 41.

24-14-28. Copies or data from the system of vital statistics.

In accordance with the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] and the regulations adopted pursuant to that act:

A. the state registrar shall upon receipt of a written application issue a certified copy of any certificate or record in his custody to anyone demonstrating a tangible and direct interest, except that:

(1) certified copies of birth records shall exclude all medical information unless a complete certificate is specifically requested and the request for a complete certificate is approved by the state registrar; and

(2) issuance of copies of birth records shall be subject to the provisions of the Missing Child Reporting Act [32-8-1 to 32-8-4 NMSA 1978];

B. a certified copy of a certificate or any part thereof, including records reproduced from paper documents or photographic, magnetic or electronic files, shall be considered for all purposes the same as the original and is prima facie evidence of the facts therein stated; provided that the evidentiary value of a certificate or record filed more than one year after the event or a record which has been amended shall be determined by the

judicial or administrative body or official before whom the certificate is offered as evidence;

C. the agency of the United States government responsible for national vital statistics may be furnished copies or data as it may require for national statistics, upon the condition that the data shall not be used for other than statistical purposes unless so authorized by the state registrar;

D. at the discretion of the state registrar, federal, state, local and other public or private agencies may upon request be furnished copies or data for statistical or administrative purposes upon the conditions as may be prescribed by the department;

E. no person shall prepare or issue any report of an induced abortion or any certificate which purports to be an original, certified copy or copy of a certificate of birth, death or spontaneous fetal death or reproduction of a certified copy except as authorized in the Vital Statistics Act or regulations adopted pursuant to that act; and

F. the state registrar may by written agreement transmit copies of records and other reports required by the Vital Statistics Act to offices of vital statistics outside this state when the records or other reports relate to residents of those jurisdictions or persons born outside those jurisdictions. The agreement shall require that the copies be used for statistical purposes only and shall provide for the retention and disposition of copies. Copies received by the state registrar from offices of vital statistics in other states shall be handled in the manner prescribed in this section.

History: 1953 Comp., § 12-4-48, enacted by Laws 1961, ch. 44, § 26; 1972, ch. 34, § 1; 1977, ch. 206, § 3; 1981, ch. 309, § 22; 1987, ch. 25, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 30 Am. Jur. 2d Evidence §§ 1007 to 1009, 1110; 39 Am. Jur. 2d Health § 51; 66 Am. Jur. 2d Records and Recording Laws §§ 13, 14, 28.

Admissibility, under public records exception to hearsay rule, of record kept by public official without express statutory direction or authorization, 80 A.L.R.3d 414.

76 C.J.S. Records §§ 42 to 52.

24-14-29. Fees for copies and searches.

A. The fee for each search of a vital record to produce a certified copy of a birth certificate shall be ten dollars ($10.00) and shall include one certified copy of the record, if available.

B. The fee for the establishment of a delayed record or for the revision or amendment of a vital record, as a result of an adoption, a legitimation, a correction or other court-

ordered change to a vital record, shall be ten dollars ($10.00). The fee shall include one certified copy of the delayed record.

C. The fee for each search of a vital record to produce a certified copy of a death certificate shall be five dollars ($5.00) and shall include one certified copy of the record, if available.

D. Revenue from the fees imposed in this section shall be distributed as follows:

(1) an amount equal to three-fifths of the revenue from the fee imposed by Subsection A of this section, an amount equal to one-half of the revenue from the fee imposed by Subsection B of this section and an amount equal to one-fifth of the revenue from the fee imposed by Subsection C of this section shall be distributed to the day-care fund; and

(2) the remainder of the revenue from the fees imposed by Subsections A, B and C of this section shall be deposited in the state general fund.

History: 1953 Comp., § 12-4-49, enacted by Laws 1961, ch. 44, § 27; 1973, ch. 264, § 12; 1981, ch. 309, § 23; 1987, ch. 62, § 1; 1988, ch. 114, § 1.

Cross-references. - As to state general fund, see 6-4-2 NMSA 1978. As to day-care fund, see 24-14-29.1 NMSA 1978.

County clerks may not issue certified copies of death certificates simply to allow someone the chance to avoid the higher fees charged for the issuance of such certificates by the vital statistics bureau. 1988 Op. Att'y Gen. No. 88-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 13, 14.

76 C.J.S. Records § 38.

24-14-29.1. Day-care fund created; use; appropriation.

There is created in the state treasury a fund to be known as the "day-care fund". The fund shall be invested by the state treasurer as other state funds are invested. The fund shall consist of distributions of revenue collected since July 1, 1987 and future revenues collected pursuant to Section 24-14-29 NMSA 1978. All balances in the day-care fund are appropriated to the human services department for use in implementing the income-eligible day-care program under the Social Services Block Grant Act (Title XX).

History: Laws 1988, ch. 114, § 2; 1989, ch. 324, § 19.

Social Services Block Grant Act. - The federal Social Services Block Grant Act, referred to in the last sentence, appears as various sections throughout 42 U.S.C., including §§ 1397 to 1397e.

24-14-30. Duty to furnish information.

A. Any person having knowledge of the facts regarding any birth, death, spontaneous fetal death or induced abortion shall furnish this information upon demand to the state registrar.

B. Not later than the tenth day of the month following the month of occurrence, each funeral service practitioner shall send to the state registrar a list showing all dead bodies embalmed or otherwise prepared for final disposition during the preceding month. Such list shall be made on forms prescribed by the state registrar.

History: 1953 Comp., § 12-4-50, enacted by Laws 1961, ch. 44, § 28; 1981, ch. 309, § 24.

24-14-31. Penalties.

A. Except for violations of Section 24-14-18 NMSA 1978 and except as provided in Subsection B of this section, any person shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) or be imprisoned for not more than thirty days, or by both fine and imprisonment, who willfully and knowingly:

(1) makes any false statement or supplies any false information in a report, record or certificate required to be filed;

(2) with the intent to deceive, alters, amends or mutilates any report, record or certificate;

(3) uses or attempts to use, furnish to another for use for any purpose of deception, any certificate, record, report or certified copy which has been altered, amended, mutilated or contains false information; or

(4) neglects or violates any of the provisions of the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] or refuses to perform any of the duties imposed upon him by that act.

B. Any person who willfully and knowingly permits inspection of, or discloses information contained in, vital statistics records of adoptions or induced abortions, or copies or issues a copy of all or part of any record of an adoption or induced abortion, except as authorized by law, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978].

History: 1953 Comp., § 12-4-51, enacted by Laws 1961, ch. 44, § 29; 1977, ch. 206, § 4; 1981, ch. 309, § 25.

Cross-references. - As to disclosure of information or records, see 24-14-27 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 10, 11.

76 C.J.S. Records §§ 72 to 76.

ARTICLE 14A
HEALTH INFORMATION SYSTEMS

24-14A-1. Short title.

This act [24-14A-1 to 24-14A-10 NMSA 1978] may be cited as the "Health Information System Act".

History: Laws 1989, ch. 29, § 1.

Cross-references. - As to confidential health records, see 24-1-20 NMSA 1978.

24-14A-2. Definitions.

As used in the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978]:

A. "aggregate data" means data which is obtained by combining like data in a manner which precludes specific identification of a single client or provider;

B. "committee" means the governor's health policy advisory committee;

C. "department" means the health and environment department [department of health];

D. "health information" or "health data" means any data relating to health care, health status, including environmental factors, the health system and health costs;

E. "hospital" means any general or special hospital licensed by the health and environment department [department of health], whether publicly or privately owned;

F. "long-term care facility" means any skilled nursing facility or intermediate care facility licensed by the health and environment department [department of health], whether publicly or privately owned;

G. "private sector data source" includes, but is not limited to, any physician or other licensed health care practitioner, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility and hospital;

H. "public sector data source" includes, but is not limited to, the state and any political subdivision of the state which maintains a database for the purpose of recording health information; and

I. "third party payer" means any public or private payer of health care services and includes health maintenance organizations and health insurers.

History: Laws 1989, ch. 29, § 2.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-14A-3. Health information system; creation; duties of department.

There is created a health information system for the purpose of collection and dissemination of health information from a variety of public and private sector sources. The department, in consultation with the committee, shall establish, operate and maintain the health information system to the extent funds are appropriated to the department for that purpose. In establishing, operating and maintaining the system, the department shall:

A. obtain information on the following health factors:

(1) mortality and natality, including accidental causes of death;

(2) morbidity;

(3) health behavior;

(4) disability;

(5) health system costs, availability, utilization and revenues;

(6) environmental factors;

(7) health personnel;

(8) demographic factors;

(9) social and economic conditions affecting health; and

(10) family status;

B. give the highest priority in data gathering to information needed to implement and monitor progress toward achievement of the state health policy;

C. standardize collection and specific methods of measurement across databases and use scientific sampling or complete enumeration for reporting health information;

D. take adequate measures to provide system security for all data and information acquired under the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978] and protect individual patient and provider confidentiality. The right to privacy for the individual shall be a major consideration in the collection and analysis of data and shall be protected in the reporting of results; and

E. adopt and promulgate regulations necessary to establish and administer the provisions of the Health Information System Act.

History: Laws 1989, ch. 29, § 3.

24-14A-4. Health information system; applicability.

A. All hospitals, long-term care facilities, third party payers and public sector and private sector data sources shall participate in the health information system.

B. Upon making any request for health data pursuant to the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978], the department shall provide reasonable deadlines for compliance and shall give notice that noncompliance may subject the person to a civil penalty pursuant to Section 10 [24-14A-10 NMSA 1978] of the Health Information System Act.

C. Short-term, acute care and nonfederal hospitals shall be required to first submit health data required by regulation to the department for the quarter ending December 31, 1990.

D. Private sector data sources required by regulation to submit data shall be required to first submit health data for a period ending June 30, 1991.

E. New Mexico public sector data sources shall be required to first submit health data to the department, using common data elements, for the quarter ending March 31, 1991.

F. To the extent possible, the system shall be established in a manner to facilitate the exchange of information with other data-bases, including those maintained by the Indian health service and various agencies of the federal government.

History: Laws 1989, ch. 29, § 4.

24-14A-5. Health information system; implementation; regulations.

A. In order to minimize the imposition of new reporting requirements on persons subject to the health data collection provisions of the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978], the regulations to the extent reasonably possible shall provide that:

(1) data shall be collected in a uniform manner;

(2) where possible, data shall be obtained from third-party payers rather than individual providers;

(3) initial data collection shall be through the use of the uniform bill code form 82 (UB-82);

(4) other health data required to be submitted shall be limited to information currently collected in the ordinary course of business or hereafter required by other federal or state laws or regulations to be collected in the ordinary course of business; and

(5) annual surveys or collection of data may be used as an alternative to collection of health data from some health service providers to the extent it can be shown that the information collected will meet validity and quality standards.

B. The department shall implement the health information system in accordance with the following schedule:

(1) necessary system development, including computer programming and support, to enable the collection of data from short-term, acute care and nonfederal hospitals shall be completed by September 1, 1990;

(2) necessary system development, including computer programming and support, to enable the collection of information from other private sector and federal sector sources of data will be complete by April 1, 1991; and

(3) necessary system development for inclusion of state agency database information, such as preparation of a data catalog and selection and implementation of common data elements, shall be complete by October 1, 1990.

E [C]. Regulations to establish which data and source must be reported to the system, the format for reporting data, deadlines for reporting and correcting data submittals, access criteria and other factors necessary for proper implementation of the health information system shall be adopted and promulgated by the secretary of health and environment [secretary of health] no later than March 1, 1990.

History: Laws 1989, ch. 29, § 5.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-14A-6. Health information system; access.

A. Access to data in the health information system shall be provided in accordance with regulations adopted by the department pursuant to the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978].

B. A data provider may obtain data it has submitted to the system, as well as aggregate data, but it may not access data submitted by another provider which is limited only to that provider. In no event may a data provider obtain data regarding an individual patient except in instances where that data was originally submitted by the requesting provider. Prior to the release or dissemination of any data, in any form, providers shall be permitted the opportunity to verify the accuracy of any information pertaining to that provider. Time limits shall be set for the submission and review of data by data providers and penalties shall be established for failure to submit and review the data within the established time.

C. Any person may obtain any aggregate data.

History: Laws 1989, ch. 29, § 6.

24-14A-7. Health information system; reports.

A report in printed format which provides information of use to the general public shall be produced annually. The report shall be made available to health care providers, purchasers, employers, consumers and other interested parties upon request. The department may make the report available on tape or other electronic format.

History: Laws 1989, ch. 29, § 7.

24-14A-8. Health information system; confidentiality.

A. Health information and data collected and disseminated pursuant to the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978] is subject to the confidentiality provisions of Section 14-6-1 NMSA 1978.

B. The individual forms, computer tapes or other forms of data collected by and furnished for the system shall not be public records subject to inspection pursuant to Section 14-2-1 NMSA 1978. Compilations of aggregate data prepared for release or dissemination from the data collected, except for a report prepared for an individual data provider containing information concerning only its transactions, shall be public records.

History: Laws 1989, ch. 29, § 8.

24-14A-9. Health information system; fees.

The department has authority to establish and collect fees to offset partially the costs of producing public-use data aggregations or data for single use special studies. Entities contributing data to the system shall be charged reduced rates. Rates shall be established by regulation and shall be reviewed annually. Fees collected pursuant to this section are appropriated to the department to carry out the provisions of the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978].

History: Laws 1989, ch. 29, § 9.

24-14A-10. Health information system; violation; civil penalty.

A. It is unlawful for any person subject to the data reporting requirements of the Health Information System Act [24-14A-1 to 24-14A-10 NMSA 1978] and the regulations adopted pursuant to that act not to comply with any of those requirements.

B. A civil action may be brought in the name of the state alleging a violation of Subsection A of this section and a petition may be made to the district court for temporary or permanent injunctive relief. In any such action, if the court finds that a person has wilfully violated Subsection A of this section, upon petition to the court there may be recovered on behalf of the state a civil penalty not to exceed one thousand dollars ($1,000).

History: Laws 1989, ch. 29, § 10.

ARTICLE 15
SKI SAFETY

24-15-1. Short title.

Chapter 24, Article 15 NMSA 1978 may be cited as the "Ski Safety Act".

History: 1953 Comp., § 12-16-1, enacted by Laws 1969, ch. 218, § 1; recompiled as 1953 Comp., § 12-28-1, by Laws 1972, ch. 51, § 9; 1979, ch. 279, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 52 to 110.

Private owner's liability to trespassing children for injury sustained by sledding, tobogganing, skiing, skating or otherwise sliding on his land, 19 A.L.R.3d 184.

24-15-2. Purpose of act.

In order to safeguard life, health, property and the welfare of this state, it is the policy of New Mexico to protect its citizens and visitors from unnecessary hazards in the operation of ski lifts and passenger aerial tramways and to require liability insurance to be carried by operators of ski lifts and tramways. The primary responsibility for the safety of operation, maintenance, repair and inspection of ski lifts and tramways rests with the operators of such devices. The primary responsibility for the safety of the individual skier while engaging in the sport of skiing rests with the skier himself. The state, through the Ski Safety Act [this article], recognizes these responsibilities and duties on the part of the ski area operator and the skier.

It is recognized that there are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate by the ski area operator. It is the purpose of the Ski Safety Act to define those areas of responsibility and affirmative acts for which ski area operators shall be liable for loss, damage or injury and those risks which the skier expressly assumes and for which there can be no recovery.

History: 1953 Comp., § 12-16-2, enacted by Laws 1969, ch. 218, § 2; recompiled as 1953 Comp., § 12-28-2, by Laws 1972, ch. 51, § 9; 1979, ch. 279, § 2.

24-15-3. Definitions.

As used in the Ski Safety Act [this article]:

A. "ski lift" means any device operated by a ski area operator used to transport passengers by single or double reversible tramway, chair lift or gondola lift, T-bar lift, J-bar lift, platter lift or similar device or a fiber rope tow;

B. "passenger" means any person who is lawfully using a ski lift or is waiting to embark or has recently disembarked from a ski lift and is in its immediate vicinity;

C. "ski area" means the property owned, permitted, leased or under the control of the ski area operator and administered as a single enterprise within the state;

D. "ski area operator" means any person, partnership, corporation or other commercial entity and its agents, officers, employees or representatives, who has operational responsibility for any ski area or ski lift;

E. "skiing area" means all slopes and trails not including any ski lift;

F. "skier" means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails and does not include the use of a ski lift;

G. "ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing; and

H. "ski retention device" means a device designed to help prevent runaway skis.

History: Laws 1969, ch. 218, § 3; 1953 Comp., § 12-16-3; recompiled as 1953 Comp., § 12-28-3 by Laws 1972, ch. 51, § 9; 1979, ch. 279, § 3.

24-15-4. Insurance.

Every operator shall file with the state corporation commission and keep on file therewith proof of financial responsibility in the form of a current insurance policy in form approved by the commission, issued by an insurance company authorized to do business in the state, conditioned to pay, within the limits of liability herein prescribed, all final judgments for personal injury or property damage proximately caused or resulting from negligence of the operator covered thereby, as such negligence is defined and limited by the Ski Safety Act [this article]. The minimum limits of liability insurance to be provided by operators shall be as follows:

KIND OF LIFTS OPERATED	LIMITS FOR BODILY INJURY AND DEATH NUMBER OF PERSONS KILLED ONE PERSON	LIMITS FOR BODILY INJURY AND DEATH NUMBER OF PERSONS INJURED OR KILLED IN ANY ONE ACCIDENT	PROPERTY DAMAGE
Not more than three surface lifts	$ 25,000	$ 75,000	$1,000
Not more than three ski lifts, including one or more chair lifts	50,000	150,000	2,500
More than three ski lifts or one or more tramways	100,000	300,000	5,000

No ski lift or tramway shall be operated in this state after the effective date of the Ski Safety Act unless a current insurance policy as required herein is in effect and properly filed with the state corporation commission. Each policy shall contain a provision that it cannot be canceled prior to its expiration date without thirty days' written notice of intent to cancel

served by registered mail on the insured and on the commission.

History: 1953 Comp., § 12-16-4, enacted by Laws 1969, ch. 218, § 4; recompiled as 1953 Comp., § 12-28-4, by Laws 1972, ch. 51, § 9.

Cross-references. - As to duties of operators, see 24-15-7 NMSA 1978.

"Effective date of the Ski Safety Act". - The phrase "effective date of the Ski Safety Act", referred in the last paragraph, means the effective date of Laws 1969, Chapter 218, which was March 22, 1969.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 12.

24-15-5. Penalty.

Any operator convicted of operating a ski lift or aerial passenger tramway without having filed an insurance policy as required by the Ski Safety Act [this article] is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars ($100) for each day of illegal operation. The attorney general or the district attorney of the county where the ski area is located has the power to bring proceedings in the district court of the county in which the ski area is located to enjoin the operation of any ski lift or tramway being operated without a current insurance policy, in the amounts prescribed herein, being on file and covering the operator concerned.

History: 1953 Comp., § 12-16-5, enacted by Laws 1969, ch. 218, § 5; recompiled as 1953 Comp., § 12-28-5, by Laws 1972, ch. 51, § 9.

24-15-6. Provisions in lieu of others.

Provisions of the Ski Safety Act [this article] are in lieu of all other regulations, registration or licensing requirements for ski areas, ski lifts and tramways. Ski lifts and tramways shall not be construed to be common carriers within the meaning of the laws of New Mexico.

History: 1953 Comp., § 12-16-6, enacted by Laws 1969, ch. 218, § 6; recompiled as 1953 Comp., § 12-28-6, by Laws 1972, ch. 51, § 9.

24-15-7. Duties of ski area operators with respect to skiing areas.

Every ski area operator shall have the following duties with respect to the operation of a skiing area:

A. to mark all snow-maintenance vehicles and to furnish such vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are in movement in the skiing area;

B. to mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snow-making operations and located on ski slopes and trails;

C. to mark conspicuously the top or entrance to each slope, trail or area with the appropriate symbol for its relative degree of difficulty; and those slopes, trails or areas which are closed, or portions of which present an unusual obstacle or hazard, shall be marked at the top or entrance with the appropriate symbols as are established or approved by the national ski areas association as of the effective date of the Ski Safety Act and as shall be modified by the association from time to time;

D. to maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated in accordance with the symbols and containing a key to the symbols;

E. to designate by trail board or otherwise which trails or slopes are open or closed;

F. to place, or cause to be placed, whenever snow-maintenance vehicles or snow-making operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of such trail or slope;

G. to provide ski patrol personnel trained in first aid, which training meets the requirements of the American Red Cross advanced first aid course, and also trained in winter rescue and toboggan handling to serve the anticipated number of injured skiers and to provide personnel trained for the evacuation of passengers from stalled aerial ski lifts. A first aid room or building shall be provided with adequate first aid supplies, and properly equipped rescue toboggans shall be made available at all reasonable times at the top of ski slopes and trails to transport injured skiers from the ski slopes and trails to the first aid room;

H. to post notice of the requirements of the Ski Safety Act [this article] concerning the use of ski retention devices; and

I. to warn of or correct particular hazards or dangers known to the operator where feasible to do so.

History: Laws 1969, ch. 218, § 7; 1953 Comp., § 12-16-7; recompiled as 1953 Comp., § 12-28-7 by Laws 1972, ch. 51, § 9; 1979, ch. 279, § 4.

"Effective date of the Ski Safety Act". - The phrase "effective date of the Ski Safety Act", referred to in Subsection C, means the effective date of Laws 1969, Chapter 218, which was March 22, 1969.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 52 to 66, 81.

Ski resort's liability for skier's injuries resulting from condition of ski run or slope, 55 A.L.R.4th 632.

24-15-8. Duties of ski area operators with respect to ski lifts.

Every ski area operator shall have the duty to operate, repair and maintain all ski lifts in safe condition. The ski area operator, prior to December 1 of each year, shall certify to the state corporation commission the policy number and name of the company providing liability insurance for the ski area and the date of the ski lift inspections and the name of the person making such inspections.

History: Laws 1969, ch. 218, § 8; 1953 Comp., § 12-16-8; recompiled as 1953 Comp., § 12-28-8 by Laws 1972, ch. 51, § 9; 1979, ch. 279, § 5.

Cross-references. - As to state corporation commission, see N.M. Const., art XI, § 1.

24-15-9. Duties of passengers.

Every passenger shall have the duty to conduct himself carefully and not to:

A. board or embark upon or disembark from a ski lift except at an area designated for such purpose;

B. drop, throw or expel any object from a ski lift;

C. do any act which shall interfere with the running or operation of a ski lift;

D. use any ski lift unless the passenger has the ability to use it safely without any instruction on its use by the ski area operator or requests and receives instruction before boarding the ski lift;

E. willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;

F. embark on a ski lift without the authority of the ski area operator;

G. use any ski lift without engaging such safety or restraining devices as may be provided; or

H. wear skis without properly securing ski retention devices; or

I. use a ski lift while intoxicated or under the influence of any controlled substance.

History: 1978 Comp., § 24-15-9, enacted by Laws 1979, ch. 279, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 86, 98.

24-15-10. Duties of the skiers.

A. It is recognized that skiing as a recreational sport is inherently hazardous to skiers, and it is the duty of each skier to conduct himself carefully.

B. A person who takes part in the sport of skiing accepts as a matter of law the dangers inherent in that sport insofar as they are obvious and necessary. Each skier expressly assumes the risk of and legal responsibility for any injury to person or property which results from participation in the sport of skiing, in the skiing areas, including any injury caused by the following: variations in terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees or other forms of forest growth or debris; lift towers and components thereof, pole lines, and snow-making equipment which are plainly visible or are plainly marked in accordance with the provisions of Section 24-15-7 NMSA 1978; except for any injuries to persons or property resulting from any breach of duty imposed upon ski area operators under the provisions of Sections 24-15-7 and 24-15-8 NMSA 1978. Therefore, each skier shall have the sole individual responsibility for knowing the range of his own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone. The responsibility for collisions by any skier while actually skiing, with any person or object, shall be solely that of the individual or individuals involved in such collision, except where the ski area operator is involved in such collision or where such collision resulted from any breach of duty imposed upon the ski area operator under the provisions of Sections 24-15-7 and 24-15-8 NMSA 1978.

C. No person shall:

(1) place any object in the skiing area or on the uphill track of any ski lift which may cause a passenger or skier to fall;

(2) cross the track of any T-bar lift, J-bar lift, platter lift or similar device or a fiber rope tow, except at a designated location;

(3) when injured while skiing or using a ski lift or, while skiing, when involved in a collision with any skier or object in which an injury results, leave the ski area before giving his name and current address to the ski area operator, or representative or employee of the ski area operator and the location where the injury or collision occurred and the circumstances thereof; provided, however, in the event a skier fails to give the notice required by this paragraph, a court, in determining whether or not such failure

constitutes a violation of the Ski Safety Act [this article], may consider the reasonableness or feasibility of giving such notice; or

(4) use a ski lift while intoxicated or under the influence of any controlled substance.

D. No skier shall fail to wear retention straps or other devices to help prevent runaway skis.

E. Any skier upon being injured shall indicate, to the ski patrol personnel offering first aid treatment or emergency removal to a first aid room, his acceptance or rejection of such services as provided by the ski area operator. If such service is not refused or if the skier is unable to indicate his acceptance or rejection of such service, the acceptance of the service is presumed to have been accepted by the skier. Such acceptance shall not constitute a waiver of any action for negligent provision of the service by the ski patrol personnel.

History: 1978 Comp., § 24-15-10, enacted by Laws 1979, ch. 279, § 7.

Failure of a skier to give notice of her alleged injury to the ski lift operator was not a proper ground for summary judgment for the operator, where there was no evidence that any alleged failure of the skier to comply with the provisions of this section was causally related to the loss or damage claimed by the skier. Wood v. Angel Fire Ski Corp., 108 N.M. 453, 774 P.2d 447 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 86, 98.

Skier's liability for injuries to or death of another person, 24 A.L.R.3d 1447.

24-15-11. Liability of ski area operators.

Any ski area operator shall be liable for loss or damages caused by the failure to follow the duties set forth in Sections 24-15-7 and 24-15-8 NMSA 1978 where the violation of duty is causally related to the loss or damage suffered, and shall continue to be subject to liability in accordance with common-law principles of vicarious liability for the willful or negligent actions of its principals, agents or employees which cause injury to a passenger, skier or other person. The ski area operator shall not be liable to any passenger or skier acting in violation of his duties as set forth in Sections 24-15-9 and 24-15-10 NMSA 1978 where the violation of duty is causally related to the loss or damage suffered.

History: 1978 Comp., § 24-15-11, enacted by Laws 1979, ch. 279, § 8.

Failure to stop ski lift. - Genuine issue of material fact, precluding summary judgment, existed concerning whether, despite any alleged negligence attributable to a skier, the ski lift operator negligently failed to stop the ski lift once he became aware that the skier

had just disembarked from the ski lift, was unable to move, and was in a position of peril. Wood v. Angel Fire Ski Corp., 108 N.M. 453, 774 P.2d 447 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of operator of skiing, tobogganing or bobsledding facilities for injury to patron or participant, 94 A.L.R.2d 1431, 95 A.L.R.3d 203.

Ski resort's liability for skier's injuries resulting from condition of ski run or slope, 55 A.L.R.4th 632.

24-15-12. Liability of passengers.

Any passenger shall be liable for loss or damages resulting from violations of the duties set forth in Section 24-15-9 NMSA 1978, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

History: 1978 Comp., § 24-15-12, enacted by Laws 1979, ch. 279, § 9.

24-15-13. Liability of skiers.

Any skier shall be liable for loss or damages resulting from violations of the duties set forth in Section 24-15-10 NMSA 1978, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

History: 1978 Comp., § 24-15-13, enacted by Laws 1979, ch. 279, § 10.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Skier's liability for injuries to or death of another person, 24 A.L.R.3d 1447.

24-15-14. Limitation of actions; notice of claim.

A. Unless a ski area operator is in violation of the Ski Safety Act [this article], with respect to the skiing area and ski lifts, and the violation is a proximate cause of the injury complained of, no action shall lie against such ski area operator by any skier or passenger or any representative of a skier or passenger. This prohibition shall not prevent the bringing of an action against a ski area operator for damages arising from injuries caused by negligent operation, maintenance or repair of the ski lift.

B. No suit or action shall be maintained against any ski area operator for injuries incurred as a result of the use of a ski lift or ski area unless the same is commenced within three years of the time of the occurrence of the injuries complained of.

History: 1978 Comp., § 24-15-14, enacted by Laws 1979, ch. 279, § 11.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of operator of skiing, tobogganing or bobsledding facilities for injury to patron or participant, 94 A.L.R.2d 1431, 95 A.L.R.3d 203.

ARTICLE 15A
SEARCH AND RESCUE

24-15A-1. Short title.

This act [24-15-1 to 24-15A-6 NMSA 1978] may be cited as the "Search and Rescue Act".

History: 1978 Comp., § 24-15A-1, enacted by Laws 1978, ch. 107, § 1.

24-15A-2. Purpose of act.

It is the purpose of the Search and Rescue Act [24-15A-1 to 24-15A-6 NMSA 1978]:

A. to prepare, organize and coordinate efforts of federal, state and local governmental agencies and volunteer organizations for prompt and efficient search, location, rescue, recovery, care and treatment of persons lost, entrapped or in physical danger;

B. to further coordinate national and state search and rescue agreements; and

C. to develop and administer a statewide plan for search and rescue.

History: 1978 Comp., § 24-15A-2, enacted by Laws 1978, ch. 107, § 2.

24-15A-3. Definitions.

As used in the Search and Rescue Act [24-15A-1 to 24-15A-6 NMSA 1978]:

A. "search and rescue" or "SAR" means the employment, coordination and utilization of available resources and personnel in locating, relieving the distress and preserving the lives of and removing survivors from the site of a disaster, emergency or hazard to a place of safety in the case of lost, stranded, entrapped or injured persons;

B. "board" means the state search and rescue review board;

C. "AFRCC" means the air force rescue coordination center, which is the federal agency responsible for coordinating federal SAR activities within the inland region pursuant to the national search and rescue plan;

D. "state SAR control agency" means the department of public safety;

E. "state SAR mission initiator" means the New Mexico state police officer so appointed and SAR trained;

F. "state SAR resource officer" means the official located within the department of public safety responsible for coordinating SAR resources and administering the state SAR plan;

G. "field coordinator" means a person certified by the board with special training and expertise responsible for the efficient organization and conduction of a SAR mission;

H. "civil air patrol" means the civil air patrol division of the department of military affairs and an air force auxiliary responsible for coordinating air searches which are authorized by the AFRCC;

I. "mission" means each separate group effort in the employment, direction and guidance of personnel and facilities in searching for and rendering aid to persons lost or in distress;

J. "chief" means the chief of the New Mexico state police division of the department of public safety; and

K. "director" means the director of the technical and emergency support division of the department of public safety.

History: 1978 Comp., § 24-15A-3, enacted by Laws 1978, ch. 107, § 3; 1979, ch. 202, § 8; 1989, ch. 204, § 16.

Cross-references. - For the public safety department, see 9-19-1 NMSA 1978 et seq.

For the civil air patrol division, see 20-7-1 NMSA 1978 et seq.

24-15A-4. State search and rescue resource officer; position created.

A. The position of "state search and rescue resource officer" is created within the department of public safety.

B. The state search and rescue resource officer shall be a noncommissioned employee.

C. The state search and rescue resource officer shall be the chief administrator of the state search and rescue plan.

History: 1978 Comp., § 24-15A-3, enacted by Laws 1978, ch. 107, § 3; 1979, ch. 202, § 8; 1989, ch. 204, § 17.

24-15A-5. State search and rescue resource officer; powers and duties.

The state search and rescue resource officer shall, with the approval of the director:

A. compile, maintain and disseminate an inventory of resources available in the state;

B. compile, maintain and disseminate rosters of persons, agencies and organizations available for search and rescue purposes;

C. develop a training program for the certification of search and rescue instructors and, by regulation, adopt a system of certification of search and rescue persons;

D. act as contact agent for the state in search and rescue matters;

E. develop and periodically review requirements for insurance coverage for search and rescue volunteers;

F. coordinate the training of mission initiators and field coordinators; and

G. maintain records of missions at the state SAR control agency.

History: 1978 Comp., § 24-15A-5, enacted by Laws 1978, ch. 107, § 5; 1979, ch. 202, § 10; 1989, ch. 204, § 18.

24-15A-6. State search and rescue review board created; membership; duties and responsibilities; terms.

A. There is created a policy advisory committee to be known as the "state search and rescue review board", whose duty it is to evaluate the operation of the New Mexico search and rescue plan; evaluate problems of specific missions; and make findings of fact and recommendations to the chief, director and other appropriate authorities. The board shall consist of the state search and rescue resource officer, who shall be a nonvoting member and seven members appointed by the governor as follows:

(1) the secretary of public safety or his designee;

(2) the secretary of health and environment [secretary of health] or his designee;

(3) a representative of the civil air patrol division of the department of military affairs;

(4) a representative of the New Mexico emergency services council;

(5) a member certified as a search and rescue person;

(6) a member of the New Mexico sheriff's association;

(7) the chief of the New Mexico state police division of the department of public safety; and

(8) a member of the general public who shall act as chairman of the board and who shall vote only in case of a tie.

B. The board shall have the duty and responsibility to:

(1) meet at least quarterly or more frequently at the call of the chairman;

(2) evaluate the operation and effectiveness of the state SAR plan and make recommendations to the director;

(3) evaluate the operational effectiveness of specific missions, make findings of fact and recommendations to the chief and other appropriate authorities for the elimination of problems and the improvement of overall conduct of the mission;

(4) hold hearings and invite individuals to appear and testify before the board, and reimburse such witnesses for travel expenses incurred;

(5) prepare a report for the attorney general's office in cases of victim hospitalization or death; and

(6) with the approval of the chief, certify field coordinators and confirm certification of SAR persons.

C. The governor shall appoint the seven appointed members for staggered terms of three years each made in such a manner that the terms of not more than three members expire on January 1 of 1979, 1980 and 1981. Thereafter, appointments shall be made so that the terms of not more than three members expire on January 1 of each year. Vacancies shall be filled by appointment by the governor for the unexpired term. Any member of the board who misses more than two consecutive meetings shall automatically be removed as a member of the board.

History: 1978 Comp., § 24-15A-6, enacted by Laws 1978, ch. 107, § 6; 1979, ch. 202, § 11; 1983, ch. 296, § 28; 1989, ch. 204, § 19.

Cross-references. - For the public safety department, see 9-19-1 NMSA 1978 et seq.

For the civil air patrol division, see 20-7-1 NMSA 1978 et seq.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

ARTICLE 16
CLEAN INDOOR AIR

24-16-1. Short title.

This act [24-16-1 to 24-16-11 NMSA 1978] may be cited as the "Clean Indoor Air Act".

History: Laws 1985, ch. 85, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction, and application of nonsmoking regulations, 65 A.L.R.4th 1205.

24-16-2. Declaration of policy and intent; public health.

The legislature finds and declares that the smoking of tobacco, or any other weed or plant, is a positive danger to health and a health hazard to those who are present in enclosed places and that smoking in such areas should be confined to designated smoking areas. The legislature further declares its intention to protect the public health from such hazards in public places and places of employment without imposing exorbitant costs on persons in management and control of the places subject to the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978]. It is not the intent of the legislature to preempt the field of regulation of smoking in public from the enactment of ordinances by local governing bodies which are not inconsistent with the Clean Indoor Air Act.

History: Laws 1985, ch. 85, § 2.

24-16-3. Definitions.

As used in the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978]:

A. "employer" means the state or any political subdivision of the state who employs the services of more than fifteen persons;

B. "place of employment" means any enclosed indoor area under the control of a public employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms and employee cafeterias;

C. "public meeting" means any meeting required by law to be an open meeting;

D. "public place" means any enclosed indoor area in a building owned or leased by the state or any of its political subdivisions;

E. "smoke" or "smoking" means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind; and

F. "smoking-permitted area" means that portion of a public place in which smoking may be permitted.

History: Laws 1985, ch. 85, § 3.

Public place. - State law regulating smoking does not impose controls on Indians who sell jewelry on the portal of the Palace of the Governors, because the portals are not a "public place" for the purposes of this article. 1987 Op. Att'y Gen. No. 87-21.

A jail is a "public place" within the meaning of Subsection D. 1989 Op. Att'y Gen. No. 89-03.

Municipal ordinance which was broader than the Clean Air Act, in that the ordinance applied to private businesses and work areas, was permissible because it contemplated rather than conflicted with the purpose of the act. 1989 Op. Att'y Gen. No. 89-03.

24-16-4. Smoking prohibited except in permitted areas.

It is unlawful for any person to smoke in a public place or at a public meeting except in smoking-permitted areas.

History: Laws 1985, ch. 85, § 4.

24-16-5. Smoking-permitted areas.

Smoking-permitted areas in public places are:

A. fully enclosed offices or rooms occupied exclusively by smokers, although the offices or rooms may be visited by nonsmokers;

B. rooms or halls being used by a person or group for a nongovernmental function where the seating arrangements are under the control of the sponsor of the function;

C. smoking-permitted areas designated by the proprietor or person in charge of a public place or public meeting pursuant to Section 6 [24-16-6 NMSA 1978] of the Clean Indoor Air Act; and

D. smoking-permitted areas designated in a place of employment by an employer pursuant to Section 7 [24-16-7 NMSA 1978] of the Clean Indoor Air Act.

History: Laws 1985, ch. 85, § 5.

24-16-6. Designation of smoking-permitted area.

The person in charge of a public place or public meeting shall designate as a smoking-permitted area, by appropriate signs, a contiguous area or areas which shall not exceed fifty percent of the public place.

History: Laws 1985, ch. 85, § 6.

24-16-7. Smoking in places of employment.

A. For places of employment, within one year after the effective date of the Clean Indoor Air Act, each employer shall adopt, implement and maintain a written smoking policy which shall contain, at a minimum, provisions relating to the following:

(1) the prohibition of smoking in elevators and nurses aid stations or similar facilities for treatment of employees;

(2) the provision and maintenance of a contiguous nonsmoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges; and

(3) in places of work in which smokers and nonsmokers work in the same office or room, providing smoke-free work areas to accommodate employees who request such areas.

B. It is the responsibility of employers to provide smoke-free work areas for nonsmokers where possible but employers are not required to make structural or other physical modifications in providing these areas. An employer who makes reasonable efforts to develop and promulgate a policy regarding smoking and nonsmoking in the work place shall be deemed to be in compliance with this subsection, provided that a policy which designates an entire work place as a smoking area shall not be deemed in compliance with this subsection.

C. An employer shall post "No Smoking" signs in any area designated as a nonsmoking area.

D. Notwithstanding the provisions of Subsection B of this section, every employer shall have the authority to designate any work area as a nonsmoking area.

E. An employer who fails to adopt a smoking policy, or who fails to post signs in any area designated as a nonsmoking area as required by Section 8 [24-16-8 NMSA 1978] of the Clean Indoor Air Act is in violation of this section.

History: Laws 1985, ch. 85, § 7.

"Effective date of the Clean Indoor Air Act". - The phrase "effective date of the Clean Indoor Air Act", referred to in the introductory paragraph in Subsection A, means the effective date of Laws 1985, Chapter 85, which was January 1, 1986.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Employer's liability to employee for failure to provide work environment free from tobacco smoke, 63 A.L.R.4th 1021.

24-16-8. Required signs.

To advise persons of the existence of nonsmoking areas or smoking-permitted areas, signs shall be posted as follows:

A. in public places where the person in charge prohibits smoking in the entire establishment, a sign using the words "No Smoking" or the international no-smoking symbol or both shall be conspicuously posted either on all public entrances or in a position where the sign is clearly visible on entry into the establishment;

B. in public places where certain areas are designated as smoking-permitted areas pursuant to the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978], the statement "No Smoking Except in Designated Areas" shall be conspicuously posted on all public entrances or in a position where it is clearly visible on entry into the establishment; and

C. in public places where smoking is permitted in the entire establishment, a sign using the words "Smoking Permitted" or the international smoking symbol or both shall be conspicuously posted either on all public entrances or in a position where it is clearly visible on entry into the establishment.

History: Laws 1985, ch. 85, § 8.

24-16-9. Person in charge; compliance.

The person in charge of a public place or public meeting shall make reasonable efforts to secure compliance with the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] by:

A. posting appropriate signs;

B. arranging seating and work areas to provide smoke-free areas;

C. asking smokers to refrain from smoking upon request of a client or an employee suffering discomfort from the smoke;

D. affirmatively directing smokers to smoking-permitted areas; and

E. using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no-smoking areas.

History: Laws 1985, ch. 85, § 9.

24-16-10. Evidence.

Violation of any of the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] shall not constitute evidence of negligence nor sustain an action for nuisance.

History: Laws 1985, ch. 85, § 10.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Employer's liability to employee for failure to provide work environment free from tobacco smoke, 63 A.L.R.4th 1021.

24-16-11. Penalties.

Any person who commits an unlawful act under any of the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] shall be fined in an amount not less than ten dollars ($10.00) or more than twenty-five dollars ($25.00) for each violation.

History: Laws 1985, ch. 85, § 11.

Severability clauses. - Laws 1985, ch. 85, § 12 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 17
CONTINUING CARE

24-17-1. Short title.

Sections 1 through 13 of this act may be cited as the "Continuing Care Act".

History: Laws 1985, ch. 102, § 1.

Cross-references. - As to the Long-Term Care Ombudsman Act, see 28-17-1 NMSA 1978.

Compiler's note. - "Sections 1 through 13 of this act", referred to in this section, means §§ 1 through 13 of Laws 1985, ch. 102, §§ 1 through 11 of which appear as 24-17-1 through 24-17-11 NMSA 1978. Sections 12 and 13 of Laws 1985, ch. 102 have not been codified. Also, 24-17-12 to 24-17-18 NMSA 1978, enacted by Laws 1991, ch. 263, § 1, were enacted as part of the Continuing Care Act.

24-17-2. Findings and purpose.

A. The legislature finds that continuing care communities are an important and growing alternative for the provision of long-term residential, social and health maintenance needs for the elderly; however, the legislature also finds that severe consequences to residents may result when a provider becomes insolvent or unable to provide responsible care.

B. The purpose of the Continuing Care Act is to provide for disclosure and the inclusion of certain information in continuing care contracts in order that residents may make informed decisions concerning continuing care and to provide protection for residents and communities.

History: Laws 1985, ch. 102, § 2.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-3. Definitions.

As used in the Continuing Care Act:

A. "affiliate" means a person having a five percent or greater interest in a provider;

B. "community" means a retirement home, retirement community, home for the aged or other place that undertakes to provide continuing care;

C. "continuing care" means furnishing, pursuant to a contract, independent living and health or health-related services. These services may be provided in the community, in the resident's independent living unit or in another setting, designated by the continuing care contract, to an individual not related by consanguinity or affinity to the provider furnishing the care. The services include, at a minimum, priority access to a nursing facility or hospital either on site or at a site designated by the contract;

D. "continuing care contract" means an agreement by a provider to furnish continuing care to a resident;

E. "person" means an individual, corporation, partnership, trust, association or other legal entity;

F. "priority access to a nursing facility or hospital" means that a nursing facility or hospital services the residents of independent living units or that there is a promise of such health care or health-related services being available in the future;

G. "provider" means the owner or manager of a community;

H. "resident" means, unless otherwise specified, an actual or prospective purchaser of, nominee of or subscriber to a continuing care contract; and

I. "unit" means the living quarters that a resident buys, leases or has assigned as part of the continuing care contract.

History: Laws 1985, ch. 102, § 3; 1991, ch. 263, § 8.

The 1991 amendment, effective June 14, 1991, rewrote Subsection C; deleted "for life or a specified time of more than one year" at the end of the first sentence and a second sentence reading "'Continuing care contract' includes a life interest or similar agreement, long-term leases and agreements that are terminable by either party" in Subsection D; deleted former Subsections E to G, which defined "entrance fee", "life interest" and "long-term lease"; redesignated former Subsection H as present Subsection E; added present Subsection F; and redesignated former Subsections I to K as present Subsections G to I.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-4. Disclosure.

A. Any person who provides or offers to provide continuing care in this state shall furnish a current annual disclosure statement and the consumer's guide to continuing care communities prepared by the state agency on aging and the attorney general's office to actual residents, and to a prospective resident at least seven days prior to entering into a continuing care contract with the prospective resident. Advertising, otherwise representing or contractual provisions indicating that a nursing facility or hospital services the residents of independent living units, or advertising that there is a close structural proximity of residential units to nursing or acute care units, shall imply an agreement to provide or offer to provide continuing care. For the purposes of this subsection, the obligation to furnish information to actual residents shall be deemed satisfied if a copy is given to the residents' association, if there is one, and a written message has been delivered to all residents that personal copies are available upon request.

B. The disclosure statement shall include:

(1) a brief narrative summary of the contents of the disclosure statement written in plain language;

(2) the name and business address of the provider;

(3) if the provider is a partnership, corporation or association, the names, addresses and duties of its officers, directors, trustees, partners or managers;

(4) the name and business address of any affiliate;

(5) a statement as to whether the provider or any of its officers, directors, trustees, partners, managers or affiliates, within ten years prior to the date of application:

(a) was convicted of a felony, a crime that if committed in New Mexico would be a felony or any crime having to do with the provision of continuing care;

(b) has been held liable or enjoined in a civil action by final judgment, if the civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property;

(c) had a prior discharge in bankruptcy or was found insolvent in any court action; or

(d) had any state or federal licenses or permits suspended or revoked or had any state, federal or industry self-regulatory agency commence an action against him and the result of such action;

(6) the name and address of any person whose name is required to be provided in the disclosure statement who owns any interest in or receives any remuneration from, either directly or indirectly, any other person providing or expected to provide to the community goods, leases or services with a real or anticipated value of five hundred dollars ($500) or more and the name and address of the person in which such interest is held. The disclosure shall describe such goods, leases or services and the actual or probable cost to the community or provider and shall describe why such goods, leases or services should not be purchased from an independent entity;

(7) the name and address of any person owning land or property leased to the community and a statement of what land or property is leased;

(8) a statement as to whether the provider is, or is associated with, a religious, charitable or other organization, and the extent to which the associate organization is responsible for the financial and contractual obligations of the provider or community;

(9) the location and description of real property being used or proposed to be used in connection with the community's contracts to furnish care;

(10) a statement as to whether the community maintains reserves to assure payment of debt obligations and the ability to provide services to residents and a description of such reserves;

(11) for those communities that charge an entrance fee that were not in operation on the effective date of the Continuing Care Act, an actuarial analysis of the community performed by an actuary experienced in analyzing continuing care communities;

(12) a financial statement and audit report as of the last fiscal year prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a certified public accountant, including a cash flow statement or sources and application of funds statement and a balance sheet as of the end of the provider's

last fiscal year and a description of long-term obligations and the holders of mortgages and notes;

(13) a sample copy of the contract used by the provider; and

(14) a list of documents and other information available upon request, including:

(a) a copy of the Continuing Care Act;

(b) if the provider is a corporation, a copy of the articles of incorporation; if the provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association or other membership agreement; and if the provider is a trust, a copy of the trust agreement or instruments;

(c) resumes of the provider and officers, directors, trustees, partners or managers;

(d) a copy of lease agreements between the community and any person owning land or property leased to the community;

(e) information concerning the location and description of other properties, both existing and proposed, of the provider in which the provider owns any interest and on which communities are or are intended to be located and the identity of previously owned or operated communities;

(f) a copy of the community's policies and procedures; and

(g) such other data, financial statements and pertinent information requested by the resident with respect to the provider or community, or its directors, trustees, members, managers, branches, subsidiaries or affiliates, which is reasonably necessary for the resident to determine the financial status of the provider and community and the management capabilities of the managers and owners, including the most recent audited financial statements of comparable communities owned, managed or developed by the provider or its principal.

C. Each year, within one hundred eighty days after the end of the community's fiscal year, the provider shall furnish to actual residents a current financial statement and audit report prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a certified public accountant, including a cash flow statement or sources and application of funds statement and a balance sheet as of the end of the provider's last fiscal year, a description of long-term obligations and any other changes in the disclosure statement required to be furnished pursuant to Subsection A of this section. For purposes of this subsection, the obligation to furnish the required information to residents shall be deemed satisfied if the information is given to the residents' association, if there is one, and a written message has been delivered to all residents stating that personal copies of the information are available upon request.

History: Laws 1985, ch. 102, § 4; 1991, ch. 263, § 9.

The 1991 amendment, effective June 14, 1991, in Subsection A, inserted the second sentence and deleted the former final sentence, which read "A community that is in operation on the effective date of the Continuing Care Act may have a grace period of not more than one hundred eighty days to prepare its disclosure statement"; and substituted "eighty days" for "twenty days" near the beginning of the first sentence in Subsection C.

"Effective date of the Continuing Care Act". - The phrase "effective date of the Continuing Care Act", referred to in Subsection B(11), means the effective date of Laws 1985, Chapter 102, which was June 14, 1985.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-5. Contract information.

A. A continuing care contract shall be written in clear and understandable language.

B. A continuing care contract shall, at a minimum:

(1) describe the community's admission policies, including age, health status and minimum financial requirements, if any;

(2) describe the health and financial conditions required for a person to continue to be a resident;

(3) describe the circumstances under which the resident will be permitted to remain in the community in the event of possible financial difficulties of the resident;

(4) list the total consideration paid, including donations, entrance fees, subscription fees, periodic fees and other fees paid or payable; provided, however, that a provider cannot require a resident to transfer all his assets to the provider or community as a condition for providing continuing care and the provider shall reserve his rights to charge periodic fees;

(5) describe in detail all items of service to be received by the resident such as food, shelter, medical care, nursing care and other health services and whether services will be provided for a designated time period or for life;

(6) provide as an addendum to the contract a description of items of service, if any, which are available to the resident but are not covered in the entrance or monthly fee;

(7) specify taxes and utilities, if any, that the resident must pay;

(8) specify that deposits or entrance fees paid by or for a resident shall be held in trust in a cash escrow account in a New Mexico trust company or in the trust department of a federally insured New Mexico bank until the resident has occupied his unit, and that after the resident has notified the trustee that he has occupied his unit, the money, including interest unless otherwise specified, shall be released to the provider;

(9) state the terms under which a continuing care contract may be canceled by the resident or the community and the basis for establishing the amount of refund of the entrance fee;

(10) state the terms under which a continuing care contract is canceled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;

(11) state when fees will be subject to periodic increases and what the policy for increases will be; provided, however, that the provider shall give advance notice of not less than thirty days to the residents before the change becomes effective and increases shall be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment;

(12) state the entrance fee and periodic fees that will be charged if the resident marries while living in the community, the terms concerning the entry of a spouse to the community and the consequences if the spouse does not meet the requirements for entry;

(13) indicate funeral and burial services that are not furnished by the provider;

(14) state the rules and regulations of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;

(15) list the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;

(16) describe the rights of the residents to form a residents' association and the participation, if any, of the association in the community's decision-making process;

(17) describe the living quarters purchased by or assigned to the resident;

(18) provide under what conditions, if any, the resident may assign the use of a unit to another;

(19) include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;

(20) state the conditions upon which the community may sublet or relet a resident's unit;

(21) state, in the event of voluntary absence from the community for an extended period of time by the resident, what fee adjustments, if any, will be made;

(22) include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the community or by transfer to a health facility; provided that the contract shall state that such changes in accommodations shall only be made to protect the health or safety of the resident or the general and economic welfare of all other residents of the community;

(23) if the community includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;

(24) describe, if the resident is offered a priority for nursing facility admission at a facility that is not owned by the community, with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;

(25) include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility. The contract shall also state who will participate in the decision for permanent residency in the nursing facility and shall provide that the resident shall have an advocate involved in that decision; provided that if the resident has no family member, attorney, guardian or other responsible person to act as his advocate, the provider shall request the local office of the human services department to serve as advocate;

(26) specify the types of insurance, if any, the resident must maintain, including medicare, other health insurance and property insurance;

(27) specify the circumstances, if any, under which the resident will be required to apply for medicaid, public assistance or any other public benefit programs;

(28) state, in bold type of not less than twelve-point type on the front of the contract, that a contract for continuing care may present a significant financial risk and that a person considering a continuing care contract should consult with an attorney and with a financial advisor concerning the advisability of pursuing continuing care. Provided, however, failure to consult with an attorney or financial advisor shall not be raised as a defense to bar recovery for a resident in any claims arising under the provisions of the Continuing Care Act;

(29) state, in bold type of not less than twelve-point type on the front of the contract, that nothing in the contract or the Continuing Care Act should be construed to constitute approval, recommendation or endorsement of any continuing care community by the state of New Mexico;

(30) state in immediate proximity to the space reserved in the contract for the signature of the resident in bold type of not less than twelve-point type the following:

"You, the buyer, may cancel this transaction at any time prior to midnight of the seventh day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."; and

(31) contain a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract and easily detachable, and which shall contain in twelve-point bold face type the following information and statements in the same language as that used in the contract.

"NOTICE OF CANCELLATION

Date:

You may cancel this transaction without any penalty or obligation within seven days from the above date. If you cancel, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the provider of your cancellation notice, and any security interest or lien arising out of the transaction will be canceled.

To cancel this transaction, deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to: ____

(Name of Provider)

at

_____

(Address of Provider's Place of Business)

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

_____

(Buyer's Signature)

History: Laws 1985, ch. 102, § 5.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-6. Escrow requirements.

Any deposits or entrance fees paid by or for a resident shall be held in trust in a cash escrow account in a New Mexico trust company or in a trust department of a federally insured New Mexico bank until the resident has occupied his unit. After the resident has notified the trustee that he has occupied his unit, the money, including interest unless otherwise specified, shall be released to the provider.

History: Laws 1985, ch. 102, § 6.

24-17-7. Disclosure statements filed with the state agency on aging for public inspection.

A provider shall file a copy of the disclosure statement and any amendments to that statement with the state agency on aging for public inspection during regular working hours.

History: Laws 1985, ch. 102, § 7.

Cross-references. - As to state agency on aging, see 28-4-4 NMSA 1978.

24-17-8. Consumer's guide to continuing care communities.

The office of the attorney general and the state agency on aging shall publish and distribute a consumer's guide to continuing care communities and shall publish an annual directory of communities in New Mexico.

History: Laws 1985, ch. 102, § 8.

Cross-references. - As to state agency on aging, see 28-4-4 NMSA 1978.

24-17-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 263, § 11 repeals 24-17-9 NMSA 1978, as enacted by Laws 1985, ch. 102, § 9, relating to civil liability, effective June 14, 1991. For provisions of former section, see 1986 Replacement Pamphlet.

24-17-10. Restraint of prohibited acts; remedies.

A. Whenever the attorney general has reasonable belief that any person is violating or is about to violate any provision of the Continuing Care Act and that proceedings would be in the public interest, he may bring an action in the name of the state to restrain or prevent violations of that act. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court for Santa Fe county. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in such action.

B. In any action filed pursuant to this section of the Continuing Care Act, including an action with respect to unimproved real property, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution.

C. Any person who is the subject of an action brought under this section shall have the right to demand a jury trial.

History: Laws 1985, ch. 102, § 10; 1991, ch. 263, § 10.

The 1991 amendment, effective June 14, 1991, deleted "has violated" following "violating" and substituted "to restrain or prevent" for "alleging" in the first sentence in Subsection A; inserted "this section of" in Subsection B; deleted former Subsection C, which read "In any action brought under this section, if the court finds that a person is willfully violating or has willfully violated the Continuing Care Act, the attorney general, upon petition to the court, may recover on behalf of the state, a civil penalty of not exceeding five thousand dollars ($5,000) per violation"; and redesignated former Subsection D as present Subsection C.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-11. Applicability.

A. The provisions of the Continuing Care Act apply equally to for-profit and nonprofit provider organizations and shall be construed as the minimum requirements to be imposed upon any person offering or providing continuing care.

B. The provisions of the Continuing Care Act do not apply to closed-membership organizations that operate communities solely for the benefit of their members.

History: Laws 1985, ch. 102, § 11.

Saving clauses. - Laws 1985, ch. 102, § 12 provides that nothing in the Continuing Care Act shall be construed in any way to impair contracts in effect prior to the effective date of that act, June 14, 1985.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-12. Right to a written transfer policy.

A provider shall adopt and follow a written policy establishing the procedure and criteria applicable when deciding to transfer residents from one level of care to another.

History: Laws 1991, ch. 263, § 1.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-17-13. Right to organize and participate.

A. Residents have the right to organize a resident association and to engage in concerted activities for the purpose of keeping themselves informed of the operation of the facility or for the purpose of other mutual aid or protection. A provider shall take appropriate steps to encourage and facilitate the establishment of a resident association in each facility. At a minimum, these steps shall include the posting in conspicuous places of written notices of the right of residents to organize into a resident association and to use the facility for association meetings.

B. The administration of an operating facility shall meet at least quarterly with the resident association, if one exists, or with interested residents if there is no resident association. The following procedures shall apply:

(1) the provider shall notify all residents at least seven days in advance of each meeting;

(2) the provider shall post the meeting agenda in a conspicuous place and make copies of it available; and

(3) if the resident association requests, the provider shall ensure that a member or an authorized representative of the board of directors, a general partner or a principal owner attends the meeting.

History: Laws 1991, ch. 263, § 2.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

24-17-14. Right to protection against retaliatory conduct.

Retaliatory conduct by a provider or any person acting on the provider's behalf against a resident for lawful efforts to secure or enforce his legal rights as a resident is a violation of the Continuing Care Act.

History: Laws 1991, ch. 263, § 3.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-15. Right to civil action for damages.

A. Residents, as a class or otherwise, may bring an action in a court of competent jurisdiction to recover actual and punitive damages for injury resulting from a violation of the Continuing Care Act.

B. The court may award reasonable attorneys' fees and costs to the prevailing party in an action brought under this section.

C. The right of a resident to bring an action pursuant to this section is in addition to any other rights or remedies the resident may have by statute or common law.

History: Laws 1991, ch. 263, § 4.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-16. Identification and procedures for correction of violations.

A. If the state agency on aging determines that a person or an organization has engaged in or is about to engage in an act or practice constituting a violation of the Continuing Care Act or any rule adopted pursuant to that act, the state agency on aging shall issue a notice of violation in writing to that person or organization and send copies to the resident association of any facility affected by the notice.

B. The notice of violation shall state the following:

(1) a description of a violation at issue;

(2) the action that, in the judgment of the state agency on aging, the provider should take to conform to the law or the assurances that the state agency on aging requires to establish that no violation is about to occur;

(3) the compliance date by which the provider shall correct any violation or submit assurances;

(4) the requirements for filing a report of compliance; and

(5) the applicable sanctions for failure to correct the violation or failure to file the report of compliance according to the terms of the notice of violation.

C. At any time after receipt of a notice of violation, the person or organization to which the notice is addressed or the state agency on aging may request a conference. The state agency on aging shall schedule a conference within seven days of a request.

D. The purpose of the conference is to discuss the contents of the notice of violation and to assist the addressee to comply with the requirements of the Continuing Care Act. Subject to rules that the state agency on aging may promulgate, a representative of the resident association at any facility affected by the notice shall have a right to attend the conference.

E. A person receiving a notice of violation shall submit a signed report of compliance as provided by the notice. The state agency on aging shall send a copy to the resident association of any facility affected by the notice.

F. Upon receipt of the report of compliance the state agency on aging shall take steps to determine that compliance has been achieved.

History: Laws 1991, ch. 263, § 5.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-17. Rules and regulations authorized.

The state agency on aging shall promulgate all rules and regulations necessary or appropriate to administer the provisions of the Continuing Care Act.

History: Laws 1991, ch. 263, § 6.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

24-17-18. Report to attorney general; civil action; civil penalties.

Any time after the state agency on aging issues a notice of violation, the state agency on aging may send the attorney general a written report alleging a possible violation of the Continuing Care Act or any rule adopted pursuant to that act. Upon receipt of that report, the attorney general shall promptly conduct an investigation to determine whether grounds exist for formally finding a violation. If the attorney general makes that

finding, he shall file an appropriate action against the alleged violator in a court of competent jurisdiction. Upon finding violations of any provisions of the Continuing Care Act or any rule adopted pursuant to that act, the court may impose a civil penalty in the amount of five dollars ($5.00) per resident or up to five hundred dollars ($500), in the discretion of the court, for each day that the violation remains uncorrected after the compliance date stipulated in a notice of violation issued pursuant to the Continuing Care Act.

History: Laws 1991, ch. 263, § 7.

Effective dates. - Laws 1991, ch. 263 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

Continuing Care Act. - See 24-17-1 NMSA 1978 and notes thereto.

ARTICLE 18
CHILDREN'S AND JUVENILE FACILITY CRIMINAL RECORDS SCREENING

24-18-1 to 24-18-4. Recompiled.

ANNOTATIONS

Recompilations. - Former 24-18-1 to 24-18-4 NMSA 1978, as enacted by Laws 1985, Chapter 140, were recompiled as 32-9-1 to 32-9-4 NMSA 1978.

ARTICLE 19
CHILDREN'S TRUST FUND

24-19-1. Short title.

Sections 1 through 9 [24-19-1 to 24-19-9 NMSA 1978] of this act may be cited as the "Children's Trust Fund Act".

History: Laws 1986, ch. 15, § 1.

24-19-2. Purpose.

It is the purpose of the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978] to provide the means to develop innovative projects which address one or more of the following:

A. preventing abuse and neglect of children;

B. providing medical, psychological and other appropriate treatment for children who are victims of abuse or neglect; and

C. developing community-based services aimed at the prevention and treatment of child abuse and neglect.

History: Laws 1986, ch. 15, § 2.

24-19-3. Definitions.

As used in the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978]:

A. "board" means the children's trust fund board of trustees;

B. "children's projects" means projects which provide services to children on a one-time, short-term demonstration basis, including services to their families, consistent with the purposes of the Children's Trust Fund Act;

C. "department" means the human services department; and

D. "secretary" means the secretary of human services.

History: Laws 1986, ch. 15, § 3.

24-19-4. Children's trust fund created; expenditure limitations.

A. There is created in the state treasury the "children's trust fund". The children's trust fund may be used for any purpose enumerated in Section 24-19-2 NMSA 1978. All income received from investment of the fund shall be credited to the fund. No money appropriated to the fund or otherwise accruing to it shall be disbursed in any manner except as provided in the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978].

B. The children's trust fund shall be administered by the department for the purpose of funding children's projects from the income received from investment of the fund; provided that none of the income shall be used for capital expenditures. All income from investment of the fund is appropriated to the department for that purpose or for administrative costs as provided in Subsection C of this section. Grants, appropriations and transfers of money from the fund shall be made only from the income received from investment of the fund.

C. Up to ten percent of the income received from investment of the children's trust fund may be expended for costs of administration of the fund and administration of the children's projects undertaken with fund money. Administrative costs include per diem and mileage, staff salaries and expenses related to administration of the fund.

D. Disbursements from income credited to the children's trust fund and appropriated to the department shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of human services or his designated representative for the purpose of funding children's projects approved by the board.

E. Until June 30, 1994, one-half of the money transferred to the children's trust fund pursuant to Section 40-1-11 NMSA 1978 shall be deemed income received from investment of the fund.

History: Laws 1986, ch. 15, § 4; 1990, ch. 26, § 1.

The 1990 amendment, effective May 16, 1990, substituted "Section 24-19-2 NMSA 1978" for "Section 2 of the Children's Trust Fund Act" in the first sentence in Subsection A, substituted "children's trust fund" for "fund" and "children's projects" for "projects" in the first sentence in Subsection C, and substituted "June 30, 1994" for "June 30, 1992" in Subsection E.

24-19-5. Children's trust fund board of trustees created; members.

A. There is created the "children's trust fund board of trustees" consisting of nine members, not employees of the state, knowledgeable in the area of children's programs, who shall be appointed by the governor with the advice and consent of the senate. Of these members, at least two shall be individuals of recognized standing in the field of children's services. On the initial board, two members shall be appointed for terms ending on July 1, 1988; two members shall be appointed for terms ending on July 1, 1989; and three members shall be appointed for terms ending on July 1, 1990. Thereafter, appointments shall be made for terms of four years. Vacancies of appointed members shall be filled by the governor for the unexpired term.

B. The board shall select a person from its membership to serve as chairman.

History: Laws 1986, ch. 15, § 5; 1987, ch. 135, § 1.

24-19-6. Per diem and mileage; board.

Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1986, ch. 15, § 6.

24-19-7. Duties of the board.

At least four times a year, the board shall meet upon the call of its chairman to review proposals submitted to the department by public or private entities and take all action

necessary or proper for the administration of the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978]. The board shall approve or disapprove each proposal submitted and shall base its decision on the proposal's merit and feasibility, the best interest of the beneficiaries of the project proposal and the capacity of the project's success or failure for evaluation.

History: Laws 1986, ch. 15, § 7.

24-19-8. Human services department; additional powers and duties.

The department:

A. shall promulgate regulations approved by the board;

B. shall transmit proposals for children's projects to the board for evaluation and report on the proposals;

C. shall enter into contracts approved by the board, to carry out the proposed children's project, provided that:

(1) not more than fifty percent of the total funds appropriated for any one fiscal year shall be allocated for any single children's project;

(2) each children's project shall be funded for a specified period, not to exceed four years, and funds shall not be used for maintenance of ongoing or permanent efforts extending beyond the period specified, except that a project may be extended once for a period not to exceed the original, and the board shall approve regulations providing procedures and guidelines for the preparation and approval of proposals for children's projects and providing for any other matter the board deems necessary for the administration of the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978]; and

(3) no contract shall be entered into if the department finds it contrary to law;

D. shall furnish the board with the necessary technical and clerical assistance;

E. shall adopt standard contract provisions; and

F. shall report at least annually to the governor and the legislature on the progress of its work and the results of projects.

History: Laws 1986, ch. 15, § 8.

24-19-9. Acceptance of federal funds and private donations.

To carry out the provisions of the Children's Trust Fund Act [24-19-1 to 24-19-9 NMSA 1978], the department may accept any federal matching funds or grants for children's

projects. The department may accept donations and bequests from private sources for deposit in the children's trust fund.

History: Laws 1986, ch. 15, § 9.

ARTICLE 20
HEALTH RESEARCH

24-20-1. Dedicated health research fund created; use; appropriations.

A. There is created in the state treasury the "dedicated health research fund". The fund shall be used for research related to cancer and other health-related consequences associated with cigarette and tobacco products and for other health research projects. The fund shall consist of a portion of the proceeds of the tax imposed by Section 7-12-3 NMSA 1978 and directed to be distributed to the fund under Section 7-1-6.11 NMSA 1978, earnings from investment of the fund and such other money as the legislature may from time to time appropriate to the fund. The fund shall be invested by the state treasurer as other state funds are invested.

B. For the seventy-fifth fiscal year and succeeding fiscal years, one million dollars ($1,000,000) is appropriated each year from the dedicated health research fund to the cancer center at the university of New Mexico to be used as specified in Subsection A of this section.

C. For the purposes specified in Subsection A of this section, one-half of the annual earnings from the investment of the fund is appropriated to the medical center at the university of New Mexico and one-half is appropriated to the cancer center at the university of New Mexico.

D. A report shall be made annually to the board of educational finance, the health and environment department [department of health] and the legislative finance committee regarding the status of the fund and the use by the medical center and the cancer center of that portion of the fund appropriated annually to each.

E. The dedicated health research fund shall be administered by the medical center at the university of New Mexico pursuant to this section.

History: Laws 1986, ch. 13, § 5.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.

24-20-2. Head injury task force; membership; duties. (Effective until June 30, 1993.)

A. There is created the "head injury task force" which shall consist of:

(1) representatives of the health and environment department [department of health], the human services department, the medical assistance division of the human services department, the developmental disabilities planning council, the state department of public education, the vocational rehabilitation division of the state department of public education, the governor's committee on concerns of the handicapped and the university of New Mexico school of medicine designated by their respective agency heads; and

(2) persons with traumatic head injury, their family members and professionals working with and involved in the issue of traumatic head injury appointed by the secretary of health and environment [secretary of health].

B. The head injury task force shall:

(1) conduct a comprehensive survey of available services to those with traumatic head injury, identify gaps in services and determine service needs and costs;

(2) develop a state plan for implementing comprehensive case management for persons with traumatic head injury;

(3) advise and assist the primary care and emergency medical services bureau of the health and environment department [department of health] and the university of New Mexico school of medicine in expanding the data collected by the trauma registry at the university of New Mexico hospital burn and trauma center to include all prehospital and hospital admissions and discharge information;

(4) develop a consistent definition of traumatic head injury for use as a standard category in all applicable incidence- and service-reporting systems; and

(5) report annually to the legislature its findings and recommendations for changes in policies and the law related to traumatic head injury.

C. The head injury task force shall coordinate its work with and report to the governor's health policy advisory committee or any similar entity established to address health policy and planning.

D. Appointed members of the head injury task force shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. The health and environment department [department of health] shall:

(1) provide staff assistance and administrative support to the head injury task force to carry out its duties; and

(2) serve as the lead agency in organizing the task force, conducting the comprehensive study and developing a state plan.

F. The head injury task force shall elect annually a chairman and such other officers as are deemed necessary. Meetings shall be held at least quarterly but no more than six times per year.

ANNOTATIONS

Effective dates. - Laws 1990, ch. 103 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

Delayed repeals. - Laws 1990, ch. 103, § 2 repeals 24-20-2 NMSA 1978, as enacted by Laws 1990, ch. 103, § 1, effective June 30, 1993.

Bracketed material. - See note with same catchline under 24-1-2 NMSA 1978.