

# UNANNOTATED

## CHAPTER 28 Human Rights

### ARTICLE 1 Human Rights

#### 28-1-1. Short title.

Chapter 28, Article 1 NMSA 1978 may be cited as the "Human Rights Act".

**History:** 1953 Comp., § 4-33-1, enacted by Laws 1969, ch. 196, § 1; 2000, ch. 4, § 1.

#### 28-1-2. Definitions.

As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers, or the state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights bureau of the labor relations division of the workforce solutions department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

H. "public accommodation" means any governmental entity or any establishment that provides or offers its services, facilities, accommodations or goods to the public, but

does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

I. "public contractor" means a person who receives public funds as a result of contracting with a governmental entity;

J. "political subdivision" means any:

- (1) county;
- (2) incorporated city, town or village;
- (3) drainage, conservancy, irrigation, water and sanitation or other district;
- (4) mutual domestic association;
- (5) public water cooperative association; or
- (6) community ditch association;

K. "housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

L. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

M. "secretary" means the secretary of workforce solutions;

N. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

O. "physical or mental disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to have a mental or physical disability if the person has a record of a physical or mental disability or is regarded as having a physical or mental disability;

P. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

Q. "applicant for employment" means a person applying for a position as an employee;

R. "sex" means a person's categorization as male, female or intersex based on biology, physiology and physical characteristics;

S. "sexual orientation" means a person's physical, romantic or emotional attraction to persons of the same or a different gender or the absence of any such attraction;

T. "gender identity" means a person's self-perception, based on the person's appearance, behavior or physical characteristics, that the person exhibits more masculinity or femininity or the absence of masculinity or femininity whether or not it matches the person's gender or sex assigned at birth;

U. "gender" means an individual or societal expectation or perception of a person as masculine or feminine based on appearance, behavior or physical characteristics;

V. "reasonable accommodation" means modification or adaptation of the work environment, work schedule, work rules or job responsibilities, and reached through good faith efforts to explore less restrictive or less expensive alternatives to enable an employee to perform the essential functions of the job and that does not impose an undue hardship on the employer;

W. "undue hardship" means an accommodation requiring significant difficulty or expense when considered in light of the following factors:

- (1) the nature and cost of the accommodation;
- (2) the financial resources of the employer involved in the provision of the reasonable accommodation;
- (3) the number of persons the employer employs;
- (4) the effect of the accommodation on expenses and resources;
- (5) the impact of the accommodation otherwise upon the employer's business;
- (6) the overall financial resources of the employer;
- (7) the overall size of the business of an employer with respect to the number, type and location of its facilities;
- (8) the type of operation of the employer, including the composition, structure and functions of the workforce of the employer; or
- (9) the geographic separateness or administrative or fiscal relationship to the employer of the employer's facilities;

X. "cultural or religious headdresses" includes hijabs, head wraps or other headdresses used as part of an individual's personal cultural or religious beliefs;

Y. "protective hairstyles" includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, bantu knots, afros, weaves, wigs or head wraps;

Z. "race" includes traits historically associated with race, including hair texture, length of hair, protective hairstyles or cultural or religious headdresses;

AA. "state" means the state of New Mexico or any of its agencies, departments, boards, instrumentalities or institutions;

BB. "governmental entity" means the state or any public body;

CC. "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education;

DD. "services" means any function, program, activity or benefit; and

EE. "military status" means a person's active membership in the armed forces or state defense force or being a veteran of the armed forces or state defense force and includes a spouse or child of an active member or veteran of the armed forces or state defense force.

**History:** 1953 Comp., § 4-33-2, enacted by Laws 1969, ch. 196, § 2; 1973, ch. 155, § 1; 1978 Comp., 28-1-2; 1983, ch. 241, § 1; 1987, ch. 76, § 1; 1987, ch. 342, § 16; 1993, ch. 268, § 1; 2003, ch. 383, § 1; 2007, ch. 200, § 17; 2020, ch. 49, § 1; 2021, ch. 19, § 3; 2021, ch. 37, § 3; 2023, ch. 29, § 1; 2024, ch. 21, § 4.

### **28-1-3. Human rights commission.**

A. There is created the "human rights commission" consisting of eleven members appointed by the governor with the advice and consent of the senate. Not more than six of the members shall be of the same political party. Not more than one member may be appointed from any one county. The governor shall designate a member to serve as chairman. The commission shall designate one of its members as vice chairman to preside in the absence or incapacity of the chairman.

B. The term of office of each member of the commission is for four years; however, of the commissioners first appointed, one shall be appointed for a term ending December 31, 1969, one for a term ending December 31, 1970, one for a term ending December 31, 1971 and two for terms ending December 31, 1972; provided, the two additional members added pursuant to this 1975 amendment shall be initially appointed for staggered terms of two and three years respectively so that one term ends on December 31, 1977 and one ends on December 31, 1978. The four additional commissioners added pursuant to this 1991 amendment shall be appointed for

staggered terms; two shall be appointed for terms ending December 31, 1992; and two shall be appointed for terms ending December 31, 1993.

C. Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term. Six members of the commission constitute a quorum to conduct business. Vacancies on the commission shall not impair the right of the remaining members to exercise the powers of the commission.

D. Each member of the commission shall be reimbursed, as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], during the performance of official duties and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 4-33-3, enacted by Laws 1969, ch. 196, § 3; 1975, ch. 124, § 1; 1987, ch. 342, § 17; 1991, ch. 104, § 1.

#### **28-1-4. Powers and duties.**

A. The commission may:

(1) hear complaints and issue orders, including cease and desist orders concerning alleged unlawful discriminatory practice;

(2) hold hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, order depositions and require the production for examination of any books, records, correspondence, documents and other evidence relating to any matter under investigation or in question before the commission. Contumacy or refusal to obey a subpoena issued pursuant to this section constitutes contempt punishable by the district court of the judicial district in which the witness may be found. No individual shall be excused from attending and testifying or from producing evidence in obedience to a subpoena issued pursuant to this section on the grounds that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or a forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture concerning any matter for which he is compelled to testify or give evidence after having claimed his right against self-incrimination. Nevertheless, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed while testifying.

B. The division may:

(1) receive and investigate complaints of alleged unlawful discriminatory practice;

(2) seek to eliminate discrimination through conciliation and persuasion by voluntary conferences with interested parties;

(3) recommend application by the director to a district court in the county where the violating party resides for specific performance of any conciliation agreement or for enforcement of any order issued by the commission;

(4) endeavor to eliminate prejudice and to further good will. The division in cooperation with the state department of public education and local boards of education shall encourage an educational program for all residents of the state, calculated to eliminate prejudice, its harmful effects and its incompatibility with principles of fair play, equality and justice;

(5) encourage voluntary advisory groups to study problems of discrimination in all fields, to foster, through community efforts, good will and cooperation in this state and to make recommendations to the secretary for the development of policies and procedures which the secretary may recommend to appropriate state agencies;

(6) seek and enlist the cooperation and contributions and grants of individuals and foundations, private, charitable, religious, labor, civic and benevolent organizations and the federal government for the purposes of this section;

(7) issue publications and release the results of investigation and research which in the secretary's judgment will tend to promote good will and prevent or eliminate discrimination; and

(8) submit annually a written report of all its activities and recommendations to the secretary, the governor and the legislature.

**History:** 1978 Comp., § 28-1-4, enacted by Laws 1987, ch. 342, § 18.

### **28-1-5. Procedures for adopting regulations.**

A. The secretary may adopt, promulgate, amend and repeal rules and regulations to carry out the provisions of the Human Rights Act.

B. No rule or regulation of general application may be adopted, amended or repealed without a public hearing before the secretary or his designee.

C. The public hearing shall be in Santa Fe, and notice of the subject, time and place of the meeting, the manner in which interested persons may present their views and the method by which copies of the proposed rule, regulation or amendment may be obtained shall be:

(1) published in each county at least thirty days prior to the hearing date in a newspaper of general circulation; and

(2) mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of the hearing.

D. The secretary shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

E. The secretary may designate a hearing officer to take evidence at the hearing.

F. Any person appearing or represented at the hearing shall be given written notice of the secretary's action on the proposed rule, regulation, amendment or repeal.

G. No rule, regulation, amendment or repeal shall become effective until thirty days after its filing.

**History:** 1953 Comp., § 4-33-5, enacted by Laws 1969, ch. 196, § 5; 1987, ch. 342, § 19.

### **28-1-6. Validity of regulation; judicial review.**

A. Any person who is or may be affected by a regulation adopted by the secretary may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation.

B. The procedure for perfecting an appeal to the court of appeals under this section consists of the timely filing of a notice of appeal with a copy of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the secretary for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the secretary.

C. Upon appeal, the court of appeals shall set aside the regulation only if found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by a preponderance of evidence in the record; or
- (3) otherwise not in accordance with law.

**History:** 1953 Comp., § 4-33-6, enacted by Laws 1969, ch. 196, § 6; 1987, ch. 342, § 20.

### **28-1-7. Unlawful discriminatory practice.**

It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, if the employer has fifty or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

B. a labor organization to exclude a person or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability, serious medical condition or military status;

C. any employer, labor organization or joint apprenticeship committee to refuse to admit or employ any person in any program established to provide an apprenticeship or other training or retraining because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, if the employer has fifty or more employees, spousal affiliation;

D. any person, employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, to use any form of application for employment or membership or to make any inquiry regarding prospective membership or employment that expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or military status, or, if the employer has fifty or more employees, spousal affiliation, unless based on a bona fide occupational qualification;

E. an employment agency to refuse to list and properly classify for employment or refer a person for employment in a known available job, for which the person is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability or serious medical condition, unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for employment if the request indicates, either directly or indirectly, that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability, serious medical condition, unless based on a bona fide occupational qualification, or military status;



F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability or military status; provided that the physical or mental disability is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

G. any person to:

(1) refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any housing accommodation or real property to any person or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation or real property to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability or military status; provided that the physical or mental disability is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

(2) discriminate against any person in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability or military status; provided that the physical or mental disability is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation; or

(3) print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation or real property or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing accommodation or real property that expresses any preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental disability or military status; provided that the physical or mental disability is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit, including financial assistance for the acquisition of any consumer good as defined by Section 55-9-102 NMSA 1978, to:

(1) consider the race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental disability of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance; or

(2) use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance that expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental disability;

I. any person or employer to:

(1) aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so;

(2) engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act; or

(3) willfully obstruct or prevent any person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or any of its members, staff or representatives in the performance of their duties under the Human Rights Act;

J. any employer to refuse or fail to accommodate a person's physical or mental disability or serious medical condition, unless such accommodation is unreasonable or an undue hardship;

K. any employer to refuse or fail to make reasonable accommodation for an employee or job applicant with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth;

L. any employer to require an employee with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth to take paid or unpaid leave if another reasonable accommodation can be provided unless the employee voluntarily requests to be placed on leave or the employee is placed on leave pursuant to federal law; or

M. a governmental entity or a public contractor to refuse or otherwise limit or put conditions on services to a person because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious

medical condition or spousal affiliation; provided that nothing in this subsection shall be construed to require a governmental entity or a public contractor to provide services or programs beyond services or programs to the specific populations that the governmental entity or public contractor is tasked with serving.

**History:** 1953 Comp., § 4-33-7, enacted by Laws 1969, ch. 196, § 7; 1973, ch. 58, § 1; 1973, ch. 155, § 2; 1975, ch. 62, § 1; 1978 Comp., 28-1-7; 1983, ch. 241, § 2; 1987, ch. 76, § 2; 1995, ch. 125, § 1; 2001, ch. 347, § 1; 2003, ch. 383, § 2; 2004, ch. 115, § 1; 2019, ch. 96, § 1; 2020, ch. 49, § 2; 2023, ch. 29, § 2; 2024, ch. 21, § 5.

### **28-1-7.1. Prohibiting discrimination against seniors in certain volunteer service.**

The state or a political subdivision of the state shall not exclude a person older than sixty years of age from volunteer service as long as the person is physically, mentally and professionally capable of performing the services involved. For the purposes of this section, "professionally capable" means having the ability to demonstrate reasonable proficiency and having any relevant certification in accordance with the laws, rules or technical standards that may govern the particular profession.

**History:** Laws 2003, ch. 231, § 1.

### **28-1-7.2. Quotas prohibited.**

A person, employer, employment agency or organization shall not use the provisions of the Human Rights Act to adopt or implement a quota on the basis of sexual orientation or gender identity.

**History:** Laws 2003, ch. 383, § 3.

### **28-1-8. Repealed.**

### **28-1-9. Exemptions.**

Nothing contained in the Human Rights Act shall:

A. apply to any single-family dwelling sold, leased, subleased or rented by an owner without the making of any notice, statement or advertisement with respect to the sale, lease, sublease or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation or gender identity. This exemption is subject to these further reservations:

(1) to qualify for the exemption, the seller must not be an owner of or own or have reserved any interest in more than three single-family dwellings; and

(2) if the seller does not currently live in the dwelling or he was not the most recent occupant, the exemption granted in this section shall only apply to one sale in twenty-four months;

B. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making selections of buyers, lessees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained, unless membership in the religious or denominational organization is restricted on account of race, color, national origin or ancestry;

C. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from imposing discriminatory employment or renting practices that are based upon sexual orientation or gender identity; provided, that the provisions of the Human Rights Act with respect to sexual orientation and gender identity shall apply to any other:

(1) for-profit activities of a religious or denominational institution or religious organization subject to the provisions of Section 511(a) of the Internal Revenue Code of 1986, as amended; or

(2) nonprofit activities of a religious or denominational institution or religious organization subject to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

D. apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence;

E. apply to public restrooms, public showers, public dressing facilities or sleeping quarters in public institutions, where the preference or limitation is based on sex; and

F. prevent the mandatory retirement of an employee upon reaching the age of sixty-five years or older, if the employer is operating under a retirement plan that meets the requirements of Public Law 93-406, the Employee Retirement Income Security Act of 1974.

**History:** 1953 Comp., § 4-33-8, enacted by Laws 1969, ch. 196, § 8; 1973, ch. 58, § 2; 1975, ch. 78, § 1; 2003, ch. 383, § 4; 2004, ch. 115, § 2.

## **28-1-10. Grievance procedure.**

A. A person claiming to be aggrieved by an unlawful discriminatory practice and a member of the commission who has reason to believe that discrimination has occurred may file with the human rights division of the labor department a written complaint that shall state the name and address of the person alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints shall be filed with the division within three hundred days after the alleged act was committed.

B. The director shall advise the respondent that a complaint has been filed against the respondent and shall furnish the respondent with a copy of the complaint. The director shall promptly investigate the alleged act. If the director determines that the complaint lacks probable cause, the director shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, the director shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. An officer or employee of the labor department who makes public in any manner information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year.

D. A person who has filed a complaint with the human rights division may request and shall receive an order of nondetermination from the director without delay after the division's receipt of the complaint and in jointly filed cases, after the federal complaint has been closed. The order of nondetermination may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation and the complainant has not requested a waiver of right to hearing pursuant to the provisions of Subsection J of this section, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and who so elects, the director shall issue an order of nondetermination, which may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978. The complaint shall set forth the alleged discriminatory practice, the secretary's regulation or the section of the Human Rights Act alleged to

have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission or hearing officer and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen or less than ten days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

G. Within one year of the filing of a complaint by a person aggrieved, the commission or its director shall:

- (1) dismiss the complaint for lack of probable cause;
- (2) achieve satisfactory adjustment of the complaint as evidenced by order of the commission; or
- (3) file a formal complaint on behalf of the commission.

H. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

I. For purposes of this section, "urgent medical condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement that poses a serious threat to the life of the person with the medical condition.

J. The complainant may seek a trial de novo in the district court in lieu of a hearing before the commission, provided the complainant requests from the director, in writing, a waiver of complainant's right to hearing within sixty days of service of written notice of a probable cause determination by the director. The director shall approve the waiver request and shall serve notice of the waiver upon the complainant and respondent. The complainant may request a trial de novo pursuant to Section 28-1-13 NMSA 1978 within ninety days from the date of service of the waiver. Issuance of the notice shall be deemed a final order of the commission for the purpose of appeal pursuant to Section 28-1-13 NMSA 1978.

**History:** 1953 Comp., § 4-33-9, enacted by Laws 1969, ch. 196, § 9; 1981, ch. 220, § 1; 1983, ch. 241, § 3; 1987, ch. 342, § 21; 1991, ch. 45, § 1; 1993, ch. 268, § 2; 1993, ch. 305, § 1; 1995, ch. 125, § 2; 2005, ch. 311, § 1.

## **28-1-11. Hearing procedures.**

A. The respondent to a complaint made pursuant to Section 28-1-10 NMSA 1978 may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the commission subpoenas for any person or for the production of any evidence pertinent to the proceeding. The complainant shall be present at the hearing and may be represented by counsel. Each party shall have the right to amend his complaint or answer.

B. A panel of three members of the commission designated by the chairman shall sit, and a decision agreed upon by two members of the panel shall be the decision of the commission. However, no commissioner who has filed a complaint may sit on the panel hearing his complaint. Hearings also may be conducted by a hearing officer employed by the human rights division of the labor department or, if the hearing officer is unavailable, one member of the commission may be designated by the chairman to act as a hearing officer. A hearing officer shall have the same powers and duties as a commissioner as set forth in Paragraph (2) of Subsection A of Section 28-1-4 NMSA 1978.

C. The complainant or his representative shall present to the commission or the hearing officer the case supporting the complaint. No evidence concerning prior attempts at conciliation shall be received. The director shall not participate in the hearing, except as a witness.

D. The commission and the hearing officer shall not be bound by the formal rules of evidence governing courts of law or equity but shall permit reasonable direct examination and cross-examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise. Upon the request of any party, testimony shall be transcribed, provided that all costs of transcribing shall be paid by the party so requesting. Each commissioner and hearing officer may administer oaths.

E. Upon the conclusion of a hearing conducted by a hearing officer, the hearing officer shall prepare a written report setting forth proposed findings of fact and conclusions of law and recommending the action to be taken by the commission. The hearing officer shall submit the report to a review panel consisting of no more than three members of the commission designated by the chairman. No commissioner may sit on the panel reviewing the hearing officer's report issued in connection with a complaint filed by the commissioner. A decision by a majority of the members of the review panel shall be the decision of the commission. If the commission finds from the evidence presented at any hearing held pursuant to this section that the respondent has engaged in a discriminatory practice, it shall make written findings of fact, conclusions of law and its decision based upon the findings of fact and conclusions of law. The commission may adopt, modify or reject the proposed findings of fact and conclusions of law and the action recommended by the hearing officer. Within five days after any order is rendered by the commission following a hearing, the commission shall serve upon each party of record and his attorney, if any, a written copy of the order by certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day

following the mailing. As part of its order, the commission may require the respondent to pay actual damages to the complainant and to pay reasonable attorneys' fees, if the complainant was represented by private counsel, and to take such affirmative action as the commission considers necessary, including a requirement for reports of the manner of compliance.

F. If the commission finds from the evidence that the respondent has not engaged in a discriminatory practice, it shall make written findings of fact and serve the complainant and respondent with a copy of the findings of fact and with an order dismissing the complaint.

**History:** 1953 Comp., § 4-33-10, enacted by Laws 1969, ch. 196, § 10; 1975, ch. 248, § 1; 1983, ch. 241, § 4; 1987, ch. 342, § 22; 1995, ch. 125, § 3.

## **28-1-12. Enforcement.**

If a respondent to a complaint filed pursuant to the Human Rights Act is not complying with an order of the commission, the attorney general or district attorney, at the request of the secretary, shall secure enforcement of the commission's order by a district court. The proceeding shall be initiated by the filing of a petition in the district court where the respondent is doing business or the alleged discriminatory practice occurred. A copy of the petition shall be served on the respondent personally or by registered mail, return receipt requested. The court may make and enter upon the proceedings an order to decree enforcement of the order of the commission.

**History:** 1953 Comp., § 4-33-11, enacted by Laws 1969, ch. 196, § 11; 1987, ch. 342, § 23.

## **28-1-13. Appeal.**

A. A person aggrieved by an order of the commission may obtain a trial de novo by filing a notice of appeal in the district court of the county where the discriminatory practice occurred or where the respondent does business. The notice of appeal must be filed within ninety days from the date of service of the commission's order. A copy of the notice of appeal shall be served personally or by certified mail, return receipt requested, on all parties who appeared before the commission at their last known addresses. A copy of the notice of appeal shall also be served at the division in Santa Fe. An order of the commission shall not be superseded or stayed during the appeal unless the district court so directs after notice to the commission and a hearing.

B. If testimony at the hearing was transcribed, the division shall, upon receipt of the notice of appeal, file so much of the transcript of the record as the parties requesting the transcript designate as necessary for the appeal with the district court.

C. Upon appeal, either party may request a jury. The jurisdiction of the district court is exclusive and its judgment is final, subject to further appeal to the court of appeals.



D. If the complainant prevails in an action or proceeding under this section, the court in its discretion may allow actual damages and reasonable attorney fees, and the state shall be liable the same as a private person.

**History:** 1953 Comp., § 4-33-12, enacted by Laws 1969, ch. 196, § 12; 1975, ch. 248, § 2; 1983, ch. 241, § 5; 1987, ch. 342, § 24; 2005, ch. 309, § 1; 2005, ch. 311, § 2.

#### **28-1-14. Posting of law and information.**

Every person who is subject to the Human Rights Act, except an individual selling houses, shall keep posted in a conspicuous place on his premises notices prepared by the division which shall set forth excerpts of the Human Rights Act and other relevant information as determined by the secretary.

**History:** 1953 Comp., § 4-33-13, enacted by Laws 1969, ch. 196, § 13; 1987, ch. 342, § 25.

#### **28-1-15. Repealed.**

**History:** Laws 1987, ch. 333, § 1; 1993, ch. 268, § 3; 2000, ch. 4, § 2; repealed Laws 2005, ch. 208, § 27.

## **ARTICLE 2**

### **Criminal Offender Employment Act**

#### **28-2-1. Short title.**

Chapter 28, Article 2 NMSA 1978 may be cited as the "Criminal Offender Employment Act".

**History:** 1953 Comp., § 41-24-1, enacted by Laws 1974, ch. 78, § 1; 2019, ch. 176, § 1.

#### **28-2-2. Purpose of act.**

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

**History:** 1953 Comp., § 41-24-2, enacted by Laws 1974, ch. 78, § 2.

#### **28-2-3. Employment eligibility determination.**

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

- (1) records of arrest not followed by a valid conviction;
- (2) convictions that have been sealed, dismissed, expunged or pardoned;
- (3) juvenile adjudications; or
- (4) convictions for a crime that is not job-related for the position in question and consistent with business necessity.

**History:** 1953 Comp., § 41-24-3, enacted by Laws 1974, ch. 78, § 3; 2010, ch. 76, § 1; 2021 (1st S.S.), ch. 3, § 1.

### **28-2-3.1. Employment eligibility determination; private employers.**

A. If a private employer uses a written or electronic employment application, the employer shall not make an inquiry regarding an applicant's history of arrest or conviction on the employment application but may take into consideration an applicant's conviction after review of the applicant's application and upon discussion of employment with the applicant. Nothing in this section shall prohibit an employer from notifying the public or an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer.

B. An applicant who claims to be aggrieved by a violation of Subsection A of this section may seek relief under the Human Rights Act pursuant to the process set out in Sections 28-1-10 through 28-1-13 NMSA 1978.

**History:** Laws 2019, ch. 176, § 2.

### **28-2-4. Power to refuse, renew, suspend or revoke public employment or license.**

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for one or both of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony and the criminal conviction directly relates to the particular employment, trade, business or profession; and

(2) where the applicant, employee or licensee has been convicted of homicide, kidnapping, human trafficking, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision that prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (2) of Subsection A of this section.

**History:** 1953 Comp., § 41-24-4, enacted by Laws 1974, ch. 78, § 4; 1985, ch. 234, § 1; 1997, ch. 238, § 5; 1997, ch. 251, § 1 2021 (1st S.S.), ch. 3, § 2.

### **28-2-5. Nonapplicability to law enforcement agencies.**

The Criminal Offender Employment Act is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

**History:** 1953 Comp., § 41-24-5, enacted by Laws 1974, ch. 78, § 5.

### **28-2-6. Applicability.**

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

**History:** 1953 Comp., § 41-24-6, enacted by Laws 1974, ch. 78, § 6.

## **ARTICLE 3**

### **Commission on the Status of Women**

### **28-3-1. Commission on the status of women; creation.**

A. The "commission on the status of women" is created. The commission consists of fifteen members, including one member of the human rights commission, representative of all fields of interest to women. Members shall be appointed by the governor. Members of the first commission shall be appointed for staggered terms, five ending on December 31, 1975 and five on December 31 of each of the following two years. Thereafter, appointments shall be for terms of three years or less made in such manner that the terms of five members expire on December 31 of each year. At least one member shall be appointed from, and reside in, each planning and development district. A majority of the members appointed shall be women and no more than eight members shall belong to any one political party.

B. A majority of the commission's members constitutes a quorum for the transaction of business. The governor shall designate a chairman and vice-chairman from among the membership.

**History:** 1953 Comp., § 4-33A-1, enacted by Laws 1974, ch. 90, § 1.

### **28-3-2. Commission on the status of women; duties.**

The commission shall:

A. stimulate and encourage throughout the state the study and review of the status of women in New Mexico and may act as a clearinghouse for all activities involving the status of women;

B. recommend methods of overcoming discrimination against women in public and private employment;

C. promote methods for enabling women to develop their skills, continue their education and be retrained;

D. cooperate with and assist public and private entities dealing with women;

E. conduct periodic conferences throughout the state to apprise women of their rights and opportunities and to learn from them of their needs and problems; and

F. secure recognition of women's accomplishments and contributions to New Mexico.

**History:** 1953 Comp., § 4-33A-2, enacted by Laws 1974, ch. 90, § 2.

### **28-3-3. Commission on the status of women; powers.**

The commission:

A. may receive on behalf of the state any gifts, donations or bequests from any source to be used in carrying out its duties; and

B. is designated as the state agency for handling all United States government programs related to the status of women except those designated by law as the responsibility of another state agency, and may enter into agreements and contracts with agencies of the United States government for this purpose.

**History:** 1953 Comp., § 4-33A-3, enacted by Laws 1974, ch. 90, § 3.

#### **28-3-4. Commission on the status of women; staff.**

The commission shall appoint a director, who is the administrative officer of the commission. The director shall employ other necessary employees under the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

**History:** 1953 Comp., § 4-33A-4, enacted by Laws 1974, ch. 90, § 4.

#### **28-3-5. Commission on the status of women; reports.**

The commission shall submit reports on its preceding year's work to the governor and the legislature by December 1 of each year. The reports shall contain recommendations, if any, for legislation or other appropriate action.

**History:** 1953 Comp., § 4-33A-5, enacted by Laws 1974, ch. 90, § 5.

#### **28-3-6. Commission on the status of women; compensation.**

Commission members shall be reimbursed as provided for nonsalaried public officers 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:** 1953 Comp., § 4-33A-6, enacted by Laws 1974, ch. 90, § 6.

#### **28-3-6.1. Office of the governor's council on women's health created.**

A. The "office of the governor's council on women's health" is created and is administratively attached to the commission on the status of women.

B. The office of the governor's council on women's health shall:

(1) serve as a clearinghouse for education and information on women's health;

- (2) recommend performance measures and outcomes specific to women's health;
- (3) report annually by September 1 to the governor on women's health policy issues;
- (4) assist in developing policy to improve women's health and well-being, including policies that explain and explore the links between women's health and economic security; and
- (5) assist state agencies, including the department of health, to improve access to health care for women.

C. The governor shall appoint the director of the office of the governor's council on women's health, who shall serve at the pleasure of the governor.

D. The governor shall appoint advisors to the office of the governor's council on women's health to represent the geographic diversity of the state as follows:

- (1) one representative from each of the following:
  - (a) the commission on the status of women;
  - (b) the department of health;
  - (c) the New Mexico health policy commission;
  - (d) the children, youth and families department;
  - (e) the human services department [health care authority department];
  - (f) the Indian affairs department;
  - (g) the veterans' services department; and
  - (h) the office on African American affairs;
- (2) one representative of providers of women's health services;
- (3) two representatives from rural counties; and
- (4) four representatives of advocacy, community or consumer groups.

E. Advisors to the office of the governor's council on women's health shall serve at the pleasure of the governor, shall meet at least four times per year and shall serve for two-year terms.

F. For purposes of conducting business, a majority of the advisors to the office of the governor's council on women's health shall constitute a quorum.

G. The advisors to the office of the governor's council on women's health may organize statewide meetings and focus groups to involve members of the public further in improving women's health and to identify emerging issues around women's health care delivery and services.

**History:** Laws 2009, ch. 83, § 1.

### **28-3-7. Short title.**

This act [28-3-7 to 28-3-11 NMSA 1978] may be cited as the "Displaced Homemakers Act".

**History:** 1953 Comp., § 4-33A-7, enacted by Laws 1977, ch. 292, § 1.

### **28-3-8. Findings and purpose of act.**

The legislature finds that there is an increasing number of persons in New Mexico who, in their middle years and having fulfilled the role of homemaker, find themselves displaced because of dissolution of marriage, death of a spouse or other loss of family income. As a consequence of this displacement such persons suffer a greatly reduced income, high rate of unemployment because of age, lack of work experience, discrimination and limited or no opportunity to collect funds of assistance such as social security, unemployment compensation, medicaid and other health insurance benefits or pension plans of the spouse. It is the purpose of this legislation to provide research and planning for programs to serve such displaced homemakers.

**History:** 1953 Comp., § 4-33A-8, enacted by Laws 1977, ch. 292, § 2.

### **28-3-9. Definitions.**

As used in the Displaced Homemakers Act [28-3-7 to 28-3-11 NMSA 1978] :

A. "displaced homemaker" means any individual who has worked in the home for a substantial number of years providing unpaid household services for family members and who:

- (1) has difficulty obtaining adequate employment; or
- (2) has been dependent on the income of another family member but is no longer supported by such income, has been dependent on federal assistance but is no longer eligible for such assistance or is supported as the parent of minor children by federal assistance or spousal support; and

B. "income of another family member" means any income in support of an entire family unit used for the purpose of providing that family with economic security, but does not include the payment of alimony or child support.

**History:** 1953 Comp., § 4-33A-9, enacted by Laws 1977, ch. 292, § 3.

### **28-3-10. Office for displaced homemakers; creation; research and planning for displaced homemaker programs.**

There is created in the commission on the status of women an "office for displaced homemakers." The office for displaced homemakers shall conduct research and planning for programs to meet the needs of displaced homemakers, which programs may include:

A. job counseling services specifically designed for a person entering the job market after a number of years as a homemaker;

B. job training and job placement services, including but not limited to:

(1) assistance in gaining admission to existing public and private job training programs and opportunities;

(2) development of training and placement programs for jobs in the private and public sectors, in conjunction with state and local government agencies, private employers and already existing training and placement programs; and

(3) identification of community needs and fundseeking for creation of new public service jobs which displaced homemakers might fill;

C. information and assistance with respect to health care, financial matters, education, nutrition and legal problems;

D. a clearinghouse of information to compile, coordinate and disseminate information about services and programs available to displaced homemakers;

E. training for service agency personnel who work with displaced homemakers; and

F. the development of methods and materials aimed at facilitating outreach and communication for displaced homemaker service agencies and programs.

**History:** 1953 Comp., § 4-33A-10, enacted by Laws 1977, ch. 292, § 4; 1978, ch. 126, § 1.

### **28-3-11. Report and recommendations.**



The director of the commission on the status of women, in conjunction with the office for displaced homemakers, shall submit to the legislature an annual report on the number of displaced homemakers served by existing public and private agencies and shall make recommendations for displaced homemaker programs which may include:

A. a plan for the establishment, funding and implementation of regional displaced homemaker service centers in New Mexico; and

B. recommendations for legislative action.

**History:** 1953 Comp., § 4-33A-11, enacted by Laws 1977, ch. 292, § 5; 1978, ch. 126, § 2.

## **ARTICLE 4**

### **Aging and Long-term Services**

#### **28-4-1. Commission on aging [Aging and long-term services department]; duties.**

The commission on aging [aging and long-term services department] shall establish and maintain a comprehensive statewide program designed to meet the social service needs of the state's aged population. Not by way of limitation, the commission [department] shall:

A. strengthen and coordinate services of state and local public bodies for the benefit of the aged;

B. promote the utilization of older persons in all phases of employment;

C. disseminate information to the aged relative to federal, state and local services for the aged;

D. encourage training programs, retraining programs and opportunities for older workers;

E. develop new methods of job placement for older workers;

F. promote public recognition of the advantages of hiring and retaining older workers; and

G. promote and develop programs of community resources and facilities designed to meet the social needs of older persons.

**History:** 1953 Comp., § 13-1-59, enacted by Laws 1969, ch. 55, § 2.

## **28-4-2. Definitions.**

The commission on aging shall mean the aging services bureau of the social services division of the human services department [health care authority department].

**History:** 1953 Comp., § 13-1-59.1, enacted by Laws 1977, ch. 252, § 17.

## **28-4-3. Commission on aging [Aging and long-term services department]; powers.**

The commission [department]:

A. may receive on behalf of the state any gifts, donations or bequests from any source, to be used in carrying out its duties; and

B. is designated as the state agency for handling all programs of the federal government related to the aging, except those designated by law as the responsibility of another state agency, and may enter into agreements and contracts with agencies of the federal government for this purpose.

**History:** 1953 Comp., § 13-1-60, enacted by Laws 1969, ch. 55, § 3.

## **28-4-4. Agency created.**

There is created as an entity of state government the "state agency on aging," ["aging and long-term services department"] which shall be administratively attached to the human services department [health care authority department]. The administrative head of the agency shall be the director, who shall be appointed by and serve at the pleasure of the governor.

**History:** Laws 1979, ch. 203, § 1.

## **28-4-5. Agency duties.**

The state agency on aging [aging and long-term services department] shall establish and maintain a comprehensive statewide program designed to meet the social service needs of the state's aged population, including but not limited to the following:

A. strengthen and coordinate services of state and local public bodies for the benefit of the aged;

B. promote the utilization of older persons in all phases of employment;

C. disseminate information to the aged relative to federal, state and local services for the aged;

D. encourage training programs, retraining programs and opportunities for older workers;

E. develop new methods of job placement for older workers;

F. promote public recognition of the advantages of hiring and retaining older workers; and

G. promote and develop programs of community resources and facilities designed to meet the social needs of older persons.

**History:** Laws 1979, ch. 203, § 2.

### **28-4-6. Agency powers.**

A. The state agency on aging [aging and long-term services department]:

(1) may receive on behalf of the state any gifts, donations or bequests from any source to be used in carrying out its duties; and

(2) is designated as the state agency [department] for handling all programs of the federal government related to the aged, except those designated by law as the responsibility of another state agency, and may enter into agreements and contracts with agencies of the federal government for this purpose.

B. The state agency on aging [aging and long-term services department] may adopt and promulgate such reasonable rules and regulations as are deemed necessary to carry out its duties. Unless otherwise provided by law, no rule or regulation affecting any person or agency outside the state agency on aging [aging and long-term services department] shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the state agency on aging [aging and long-term services department] or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule or regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or regulation or proposed amendment or repeal of an existing rule or regulation may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. The director of the state agency on aging [aging and long-term services department] shall also provide such notice to the director of each senior citizen center no later than forty days prior to the public hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. To ensure that the health and safety needs of the state's aged population are being met, the state agency on aging [aging and long-term services department] may conduct unannounced quality care evaluations of health and long-term care facilities that provide services to the aged, including the use of undercover patients or employees. Any employee or contractor of the state agency on aging [aging and long-term services department] who participates in such an evaluation shall be immune from liability in any civil action related to the evaluation, provided it is conducted in good faith. The purpose of this subsection is to confirm and clarify the authority of the state agency on aging [aging and long-term services department] to conduct quality care evaluations to protect the interests of the state's aged population.

**History:** Laws 1979, ch. 203, § 3; 1989, ch. 249, § 1; 1997, ch. 257, § 1.

#### **28-4-7. Agency staff.**

The director shall hire such staff as is necessary, all of whom shall be subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

**History:** Laws 1979, ch. 203, § 4.

#### **28-4-8. Reports.**

The state agency on aging [aging and long-term services department] shall submit reports on its work for the preceding year to the governor and the legislature at least forty-five days prior to each regular legislative session. The reports shall contain recommendations on present and future needs of the aged.

**History:** Laws 1979, ch. 203, § 5.

#### **28-4-9. Advisory committee.**

The governor shall appoint an eleven-member advisory committee to the state agency on aging [aging and long-term services department] in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. In establishing the committee, the governor shall take note of any federal requirements regarding membership and shall appoint members for staggered terms of four years. Members of the committee shall be reimbursed for services as provided for 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 1979, ch. 203, § 6; 1989, ch. 249, § 2.

## **ARTICLE 5**

### **Committee on Children and Youth (Repealed.)**

**28-5-1 to 28-5-3. Repealed.**

## **ARTICLE 6**

### **Age of Majority**

**28-6-1. Age of majority; eighteen years; exception.**

A. Except as provided in Subsection B or otherwise specifically provided by existing law, any person who has reached his eighteenth birthday shall be considered to have reached his majority as provided in Section 12-2-2 NMSA 1978 [repealed] and is an adult for all purposes the same as if he had reached his twenty-first birthday.

B. For the purposes of the Uniform Gifts to Minors Act [repealed], as it relates to any gift made prior to June 18, 1971, the donee shall not be entitled to delivery or payment over of the gift until he has reached his twenty-first birthday.

**History:** 1953 Comp., § 13-13-1, enacted by Laws 1971, ch. 213, § 1; 1973, ch. 138, § 12.

**28-6-2 to 28-6-8. Repealed.**

## **ARTICLE 7**

### **Blind and Disabled Persons**

**28-7-1. Short title.**

This act [28-7-1 to 28-7-7 NMSA 1978] may be cited as the "White Cane Law".

**History:** 1953 Comp., § 12-13-1, enacted by Laws 1967, ch. 232, § 1; recompiled as 1953 Comp., § 12-26-1, by Laws 1972, ch. 51, § 9.

**28-7-2. Policy.**

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

**History:** 1953 Comp., § 12-13-2, enacted by Laws 1967, ch. 232, § 2; recompiled as 1953 Comp., § 12-26-2, by Laws 1972, ch. 51, § 9; 2007, ch. 46, § 24.

**28-7-3. Equal right to use public facilities.**

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

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

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

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

**History:** 1953 Comp., § 12-13-3, enacted by Laws 1967, ch. 232, § 3; recompiled as 1953 Comp., § 12-26-3, by Laws 1972, ch. 51, § 9; 1987, ch. 39, § 1; 2007, ch. 46, § 25.

#### **28-7-4. Driver to take precautions approaching blind; liability for damage.**

The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color, with or without a red tip, or using a guide dog shall take all necessary precautions to avoid injury to such blind pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused to such pedestrian; provided that a totally blind or partially blind pedestrian not carrying such a cane or using a guide dog in any of the places, accommodations or conveyances listed herein, shall have all the rights and privileges conferred by law upon other persons, and the failure of a totally blind pedestrian to carry such a cane or to use a guide dog in any such places, accommodations or conveyances shall not be held to constitute nor be evidence of contributory negligence.

**History:** 1953 Comp., § 12-13-4, enacted by Laws 1967, ch. 232, § 4; recompiled as 1953 Comp., § 12-26-4, by Laws 1972, ch. 51, § 9.

### **28-7-5. Interference with rights of blind; penalty.**

A person, firm or corporation or the agent of a person, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in Section 28-7-3 NMSA 1978 or otherwise interferes with the rights of a blind or visually impaired person or a person who has a physical disability enumerated in the White Cane Law [28-7-1 to 28-7-7 NMSA 1978] is guilty of a misdemeanor.

**History:** 1953 Comp., § 12-13-5, enacted by Laws 1967, ch. 232, § 5; recompiled as 1953 Comp., § 12-26-5, by Laws 1972, ch. 51, § 9; 2007, ch. 46, § 26.

### **28-7-6. Annual proclamation of white cane safety day by governor.**

Each year, the governor shall take suitable public notice of October 15 as white cane safety day. The governor shall issue a proclamation in which the governor:

- A. comments upon the significance of the white cane;
- B. calls upon the citizens of the state to observe the provisions of the White Cane Law [28-7-1 to 28-7-7 NMSA 1978] and to take precautions necessary to the safety of persons with a disability;
- C. reminds the citizens of the state of the policies with respect to persons with a disability declared in the White Cane Law and urges the citizens to cooperate in giving effect to them; and
- D. emphasizes the need of the citizens to be aware of the presence of persons with a disability in the community and to keep streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort and other places to which the public is invited safe and functional and to offer assistance to persons with a disability upon appropriate occasions.

**History:** 1953 Comp., § 12-13-6, enacted by Laws 1967, ch. 232, § 6; recompiled as 1953 Comp., § 12-26-6, by Laws 1972, ch. 51, § 9; 2007, ch. 46, § 27.

### **28-7-7. Policy of state on employment of persons with a disability.**

It is the policy of this state that a person who is blind, visually impaired or who has another physical disability shall be employed in the state service, the service of the political subdivisions of the state, the public schools and all other employment supported in whole or in part by public funds on the same terms and conditions as

others, unless it is shown that the particular disability prevents the performance of the work involved.

**History:** 1953 Comp., § 12-13-7, enacted by Laws 1967, ch. 232, § 7; recompiled as 1953 Comp., § 12-26-7, by Laws 1972, ch. 51, § 9; 2007, ch. 46, § 28.

### **28-7-8 to 28-7-12. Repealed.**

### **28-7-13. Prohibiting influence against joining organizations for the visually handicapped.**

No officer or employee of the state or any political subdivision of the state who is concerned with the administration of any program for the visually handicapped shall exert the influence of his office or position against the right of a person to join organizations for the visually handicapped.

**History:** 1953 Comp., § 12-13-13, enacted by Laws 1967, ch. 113, § 1; recompiled as 1953 Comp., § 12-26-13, by Laws 1972, ch. 51, § 9.

### **28-7-14. Medical eye care.**

There is created the "medical eye care and sight conservation program" which shall be operated and administered by the commission for the blind. The medical eye care and sight conservation program shall serve persons who meet the program qualifications established by the commission and who are not eligible for vocational rehabilitation services.

**History:** 1953 Comp., § 12-26-14, enacted by Laws 1976, ch. 39, § 1; 1986, ch. 108, § 15.

### **28-7-15. Short title.**

Sections 1 through 9 [28-7-15 to 28-7-23 NMSA 1978] of this act may be cited as the "Commission for the Blind Act".

**History:** Laws 1986, ch. 108, § 1.

### **28-7-16. Commission for the blind created.**

A. There is created the "commission for the blind", consisting of three members, at least one of whom shall be blind, appointed by the governor with the advice and consent of the senate. Members of the first commission shall be appointed for staggered terms, one ending on December 31, 1988, one ending December 31, 1990 and one ending December 31, 1992. Thereafter, appointments shall be for staggered terms of six years.



B. A majority of the members of the commission constitutes a quorum for the transaction of business. The commission shall elect a chairman from its membership.

C. Members of the commission shall be compensated 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. 108, § 2.

### **28-7-17. Commission for the blind; powers and duties.**

The commission for the blind shall:

A. apply for and receive money from any state or federal agency to be used for purposes relating to blindness and receive on behalf of the state any gifts, donations or bequests from any source, to be used in carrying out the commission's duties;

B. maintain a complete register of blind persons domiciled in New Mexico, specifying the nature and cause of blindness, capacity and need for educational or industrial training and other pertinent information;

C. maintain bureaus of information and industrial assistance to help blind persons find employment, train them in work which may be pursued in their own homes and assist them in merchandising and marketing their goods;

D. establish, equip and maintain a center with qualified instructors for vocational, industrial and other training of eligible blind persons. The center shall also provide for orientation and assistance for the adjustment of blind persons;

E. research and study the causes of blindness and its prevention in cooperation with the state or any other entity which the commission deems appropriate;

F. cooperate with appropriate state agencies in the adoption and carrying out of preventive measures relating to blindness;

G. promulgate rules and regulations necessary to effectuate the provisions of the Commission for the Blind Act [28-7-15 to 28-7-23 NMSA 1978]; and

H. publish an annual report on the activities and services of the commission.

**History:** Laws 1986, ch. 108, § 3.

### **28-7-18. Staff.**

The commission shall appoint a director, who is the administrative officer of the commission. The director shall employ such assistants and employees as are

necessary for the efficient operation of the commission. The director and all employees are subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

**History:** Laws 1986, ch. 108, § 4.

### **28-7-19. Qualification as blind; examinations required.**

A. Qualification of a person as blind shall be determined by means of an eye examination by a licensed ophthalmologist. Blindness shall be the major handicap in cases of multiple handicaps. Persons who are not blind but who have been certified by a licensed ophthalmologist as suffering from a deteriorating condition which will result in blindness also qualify as blind.

B. The commission shall determine the procedure to be followed for the examination of any person to establish blindness and shall maintain a list of all ophthalmologists currently licensed in New Mexico. The person may choose any licensed ophthalmologist to make the examination and the cost shall be paid by the commission pursuant to its regulations.

**History:** Laws 1986, ch. 108, § 5.

### **28-7-20. Corrective medical services.**

In addition to arranging and paying for examinations to determine blindness, the commission may arrange and pay for medical and surgical treatment of blind persons whenever a listed ophthalmologist judges that the treatment will be beneficial.

**History:** Laws 1986, ch. 108, § 6.

### **28-7-21. Reports.**

Whenever a licensed ophthalmologist finds a person he has examined to be blind, he shall report this fact, along with details of the examination, to the commission within thirty days of the examination date.

**History:** Laws 1986, ch. 108, § 7.

### **28-7-22. Receipt of federal funds; designation.**

The commission is authorized to receive and administer any federal funds relating to vocational rehabilitation of blind persons.

**History:** Laws 1986, ch. 108, § 8.

### **28-7-23. Hearing; appeal.**

The commission shall provide an opportunity for a fair hearing to any person applying for or receiving services who is dissatisfied with any act or failure to act arising from the operation of or administration of any program of the commission. The commission shall adopt rules and regulations as necessary to govern the conduct of such hearings.

**History:** Laws 1986, ch. 108, § 9.

## **ARTICLE 8**

### **Identifying Devices and Cards for Disabled Persons**

#### **28-8-1. Definitions.**

As used in this act [28-8-1 to 28-8-7 NMSA 1978]:

A. "disabled condition" means the condition of being unconscious, semiconscious, incoherent or otherwise incapacitated to communicate;

B. "disabled person" means a person in a disabled condition;

C. "the emergency symbol" means the caduceus inscribed within a six-barred cross used by the American Medical Association to denote emergency information;

D. "identifying device" means an identifying bracelet, necklace, metal tag or similar device bearing the emergency symbol and the information needed in an emergency; and

E. "medical practitioner" means a person licensed or authorized to practice medicine or osteopathy.

**History:** 1953 Comp., § 12-31-1, enacted by Laws 1973, ch. 265, § 1.

#### **28-8-2. Identifying devices for persons having certain conditions.**

A. A person who suffers from epilepsy, diabetes, a cardiac condition or any other type of illness that causes temporary blackouts, semiconscious periods or complete unconsciousness, or who suffers from a condition requiring specific medication or medical treatment, is allergic to certain medications or items used in medical treatment, wears contact lenses or is unable to communicate coherently or effectively in the English language, is authorized and encouraged to wear an identifying device.

B. Any person may carry an identification card bearing his name, type of medical condition, physician's name and other medical information.

C. By wearing an identifying device a person gives his consent for any peace officer or medical practitioner who finds him in a disabled condition to make a reasonable search of his clothing or other effects for an identification card of the type described in Subsection B of this section.

**History:** 1953 Comp., § 12-31-2, enacted by Laws 1973, ch. 265, § 2.

### **28-8-3. Duty of peace officer.**

A. A peace officer shall make a diligent effort to determin [determine] whether any disabled person he finds is an epileptic or a diabetic or suffers from some other type of illness that would cause the condition. Whenever feasible, this effort shall be made before the person is charged with a crime or taken to a place of detention.

B. In seeking to determine whether a disabled person suffers from an illness, a peace officer shall make a reasonable search for an identifying device and an identification card of the type described in Subsection B of Section 2 [28-8-2 NMSA 1978] of this act and examine them for emergency information. The peace officer may not search for an identifying device or an identification card in a manner or to an extent that would appear to a reasonable person in the circumstances to cause an unreasonable risk of worsening the disabled person's condition.

C. A peace officer who finds a disabled person without an identifying device or identification card is not relieved of his duty to that person to make a diligent effort to ascertain the existence of any illness causing the disabled condition.

D. A claim for relief against a peace officer does not arise from his making a reasonable search of the disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card. However, nothing found on the disabled person during a search authorized under this act [28-8-1 to 28-8-7 NMSA 1978] shall be admitted into evidence in any court in a criminal proceeding where the disabled person is a defendant if the admission of the product of the search would not be entitled to admission except for the authority to search granted in Subsection C of this section.

E. A peace officer who determines or has reason to believe that a disabled person is suffering from an illness causing his condition shall promptly notify the person's physician, if practicable. If the officer is unable to ascertain the physician's identity or to communicate with him, the officer shall make a reasonable effort to cause the disabled person to be transported immediately to a medical practitioner or to a facility where medical treatment is available. If the officer believes it unduly dangerous to move the disabled person, he shall make a reasonable effort to obtain the assistance of a medical practitioner.

**History:** 1953 Comp., § 12-31-3, enacted by Laws 1973, ch. 265, § 3.

#### **28-8-4. Duty of medical practitioners.**

A. A medical practitioner, in discharging his duty to a disabled person whom he has undertaken to examine or treat, shall make a reasonable search for an identifying device or an identification card of the type described in Subsection B of Section 2 [28-8-2 NMSA 1978] of this act and examine them for emergency information.

B. A claim for relief against a medical practitioner does not arise from his making a reasonable search of a disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card.

**History:** 1953 Comp., § 12-31-4, enacted by Laws 1973, ch. 265, § 4.

#### **28-8-5. Duty of others.**

A. A person, other than a peace officer or medical practitioner, who finds a disabled person may make a reasonable effort to notify a peace officer. If a peace officer or medical practitioner is not present, a person who finds a disabled person may:

(1) make a reasonable search for an identifying device; and

(2) if the identifying device is found, may make a reasonable search for an identification card of the type described in Subsection B of Section 2 [28-8-2 NMSA 1978] of this act.

If a device or card is located, the person making the search shall attempt promptly to bring its contents to the attention of a peace officer or medical practitioner.

B. A claim for relief does not arise from a reasonable search to locate an identifying device or identification card as authorized by Subsection A of this section.

**History:** 1953 Comp., § 12-31-5, enacted by Laws 1973, ch. 265, § 5.

#### **28-8-6. Falsifying identification or misrepresenting condition.**

A person who, with intent to deceive, provides, wears, uses or possesses a false identifying device or an identification card of the type described in Subsection B of Section 2 [28-8-2 NMSA 1978] of this act is guilty of a misdemeanor and shall be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety days, or both.

**History:** 1953 Comp., § 12-31-6, enacted by Laws 1973, ch. 265, § 6.

#### **28-8-7. Other duties.**

The duties imposed by this act [28-8-1 to 28-8-7 NMSA 1978] are in addition to, and not in limitation of, other duties existing under the law of this state.

**History:** 1953 Comp., § 12-31-7, enacted by Laws 1973, ch. 265, § 7.

## **ARTICLE 9**

### **Employment of Blind Persons (Recompiled.)**

**28-9-1 to 28-9-6. Recompiled.**

## **ARTICLE 10**

### **Concerns and Employment of the Disabled**

**28-10-1. Governor's commission on disability.**

A. The "governor's commission on disability" is created, consisting of sixteen members, nine of whom shall be appointed by the governor. The seven remaining members shall be the director of the vocational rehabilitation division of the public education department, the secretary of workforce solutions or the secretary's designee, the director of the behavioral health services division of the human services department [health care authority department], the secretary of children, youth and families or the secretary's designee, the secretary of early childhood education and care or the secretary's designee, the secretary of aging and long-term services or the secretary's designee and the secretary of human services or the secretary's designee. Initially, three members shall be appointed for terms ending December 31, 1978, three members for terms ending December 31, 1980 and three members for terms ending December 31, 1982. Thereafter, appointments shall be for six years expiring on December 31 of even-numbered years. Appointed members shall be appointed from different geographic areas of the state and from the major disability services in the state. Appointed members shall include persons with disabilities, representatives of government and private enterprise, parents or guardians of persons with disabilities and professionals in, or those who are interested in, service for persons with disabilities. Not more than five of the members appointed by the governor shall be of the same political party.

B. A majority of the members of the commission constitutes a quorum for the transaction of business. The commission shall meet at least twice a year and shall annually elect a chair and a vice chair.

C. The commission shall be primarily concerned with those persons with disabilities who have a condition that, regardless of its physical or mental origin, constitutes a substantial occupational disadvantage.

**History:** 1953 Comp., § 59-15-1, enacted by Laws 1973, ch. 349, § 1; 1977, ch. 198, § 1; 1979, ch. 34, § 1; 2004, ch. 20, § 1; 2007, ch. 325, § 8; 2022, ch. 30, § 6.

## **28-10-2. Governor's commission on disability; powers and duties.**

The governor's commission on disability shall establish and maintain a comprehensive statewide program designed to encourage and promote attention to the concerns of the training and employment of individuals with disabilities in this state. To further this purpose, the commission shall:

A. cooperate with the president's committee on employment of individuals with disabilities and other federal efforts on behalf of disability concerns;

B. cooperate with all employers and training leaders, both public and private, in locating or developing employment opportunities for individuals with disabilities;

C. encourage and assist in the organization and operation of committees at the community level, the chairs of which shall automatically become members of the advisory council authorized under Section 28-10-4 NMSA 1978;

D. assist state, local and federal agencies to coordinate their activities to secure maximum utilization of funds and efforts that aid in the training and employment of individuals with disabilities;

E. enter into written agreements with public and private employers, unions and rehabilitation agencies for the purpose of achieving the maximum employment of individuals with disabilities;

F. inform individuals with disabilities who are seeking jobs of specific facilities available to assist them in locating suitable training and employment;

G. conduct educational programs via publications and other means to acquaint the public, the legislature and the governor with the abilities and the accomplishments of individuals with disabilities;

H. promote the elimination of architectural barriers in construction so as to make buildings used by the public readily accessible to and usable by persons with physical limitations;

I. make such rules as it determines advisable for the conduct of its own business;

J. designate standing committees related to state planning, community organization, public relations and information, legislative action, federal coordination, state coordination, youth, medical rehabilitation, employers and awards;

K. designate such special committees as necessary for undetermined periods to carry out special short-term programs;

L. establish and administer a residential accessibility modification program to assist low-income individuals with disabilities to make accessibility modifications to residential dwellings as needed to enable those individuals with disabilities to remain in their homes or to leave institutional settings and be reintegrated into the community;

M. give advice and testimony on disability concerns to the governor or the legislature or any committee established by them, upon request; and

N. provide training to state and local law enforcement officers regarding matters pertaining to accessible parking for persons with disabilities.

**History:** 1953 Comp., § 59-15-2, enacted by Laws 1973, ch. 349, § 2; 1977, ch. 198, § 2; 1979, ch. 34, § 2; 2001, ch. 226, § 2; 2004, ch. 20, § 2; 2010, ch. 74, § 1.

### **28-10-3. Additional powers.**

The governor's commission on disability:

A. may receive on behalf of the state any gifts, donations or bequests from any source to be used in carrying out its duties; and

B. is designated as the state agency for handling all programs of the federal government related to the concerns of individuals with disabilities except those designated by law as the responsibility of another state agency and may enter into contracts and agreements with agencies of the federal government for this purpose that do not conflict with existing programs of other state agencies.

**History:** 1953 Comp., § 59-15-3, enacted by Laws 1973, ch. 349, § 3; 1977, ch. 198, § 3; 1979, ch. 34, § 3; 2004, ch. 20, § 3.

#### **28-10-3.1. Full-service gasoline stations; decal display; service to person with a disability.**

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

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



C. No gasoline station shall display the decal issued by the governor's commission on disability unless it provides full service to any driver with a disability at a self-service island.

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

**History:** Laws 1995, ch. 95, § 1; 2004, ch. 20, § 4; 2007, ch. 46, § 29.

### **28-10-3.2. Short title.**

Sections 1 and 2 [28-10-3.2 and 28-10-3.3 NMSA 1978] of this act may be cited as the "Parking Placard Abuse Act".

**History:** Laws 1999, ch. 297, § 1.

### **28-10-3.3. Program created.**

The "placard abuse prevention program" is created in the governor's commission on disability to ensure compliance with statutes affecting parking privileges for persons with severe mobility impairment and safe and effective use of designated disabled parking space. The commission shall design and implement a program to:

A. monitor the system of eligibility for and use of parking placards and special registration plates;

B. provide public awareness education and training to address barriers to the appropriate use of designated disabled parking space;

C. pursue efforts to reduce abuse and misuse of designated disabled parking space privileges, including revocation of parking placards and special registration plates; and

D. provide education, training and technical assistance to local law enforcement agencies and volunteers on enforcement of statutes affecting use of designated disabled parking space.

**History:** Laws 1999, ch. 297, § 2; 2004, ch. 20, § 5.

### **28-10-4. Advisory council.**

A. The governor's commission on disability shall appoint an appropriate advisory council on disability, which shall include representatives of state departments and agencies and individuals attentive to the concerns of individuals with disabilities.

B. The advisory council shall meet at the call of the chairman and shall make recommendations to the governor's commission on disability for the improvement and coordination of state activities relative to the concerns of individuals with disabilities.

**History:** 1953 Comp., § 59-15-4, enacted by Laws 1973, ch. 349, § 4; 1977, ch. 198, § 4; 1979, ch. 34, § 4; 2004, ch. 20, § 6.

### **28-10-5. Disability fund created.**

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

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

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

**History:** 1953 Comp., § 59-15-5, enacted by Laws 1973, ch. 349, § 5; 2001, ch. 226, § 3; 2004, ch. 20, § 7; 2007, ch. 46, § 30.

#### **28-10-5.1. Housing modification for persons with a disability permanent fund; investment; distribution.**

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

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

average of the year-end market values of the housing modification for persons with a disability permanent fund for the immediately preceding five calendar years.

**History:** Laws 2001, ch. 226, § 1; 2007, ch. 46, § 31.

### **28-10-6. Reports.**

The governor's commission on disability and the advisory council on disability shall submit reports on their work for the preceding year to the governor and the legislature at least forty-five days prior to each regular legislative session. The report shall contain recommendations on present and future needs of individuals with disabilities.

**History:** 1953 Comp., § 59-15-6, enacted by Laws 1973, ch. 349, § 6; 1977, ch. 198, § 5; 1979, ch. 34, § 5; 2004, ch. 20, § 8.

### **28-10-7. Compensation.**

Members of the governor's commission on disability shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance. Members of the advisory council on disability may receive reimbursement in the same manner from funds available to the commission, only for advisory council meetings.

**History:** 1953 Comp., § 59-15-7, enacted by Laws 1973, ch. 349, § 7; 1977, ch. 198, § 6; 1979, ch. 34, § 6; 2004, ch. 20, § 9.

### **28-10-8. Administrative attachment.**

The governor's commission on disability is administratively attached, as defined in the Executive Reorganization Act [9-1-1 9-1-10 NMSA 1978], to the department of finance and administration.

**History:** 1978 Comp., § 28-10-8, enacted by Laws 1982, ch. 13, § 1. ; 2004, ch. 20, § 10.

#### **28-10-8.1. Director; commission staff.**

The governor's commission on disability shall appoint a director who is the administrative officer of the commission. The director shall employ other necessary employees under the provisions of the Personnel Act [10-9-1 NMSA 1978].

**History:** 1978 Comp., § 28-10-8.1, enacted by Laws 1982, ch. 13, § 2; 2004, ch. 20, § 11.

#### **28-10-9. Short title.**

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

**History:** 1953 Comp., § 5-1-14, enacted by Laws 1969, ch. 129, § 1; 2007, ch. 46, § 32.

### **28-10-10. Definition.**

As used in the Disability Employment Act [28-10-9 through 28-10-12 NMSA 1978], "persons with a disability" includes persons with a mental or physical disability.

**History:** 1953 Comp., § 5-1-15, enacted by Laws 1969, ch. 129, § 2; 2007, ch. 46, § 33.

### **28-10-11. State policy.**

In order to further the efforts of New Mexico in alleviating the problems of persons with a disability, full consideration shall be given to the employment of such persons in state government in positions in which they meet the necessary performance requirements or in positions in which performance requirements can be modified to take advantage of their abilities without detriment to the state service.

**History:** 1953 Comp., § 5-1-16, enacted by Laws 1969, ch. 129, § 3; 2007, ch. 46, § 34.

### **28-10-12. Personnel board; rules.**

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

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

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

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

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

B. there are suitable periods of probation or trial employment for persons with a disability before the employment becomes permanent under the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978]; and

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

**History:** 1953 Comp., § 5-1-17, enacted by Laws 1969, ch. 129, § 4; 2007, ch. 46, § 35.

## **ARTICLE 10A**

### **Human Immunodeficiency Virus Tests as Condition of Employment**

#### **28-10A-1. Human immunodeficiency virus related test; limitation.**

A. No person may require an individual to disclose the results of a human immunodeficiency virus related test as a condition of hiring, promotion or continued employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

B. A person who asserts that a bona fide occupational qualification exists for disclosure of an individual's human immunodeficiency virus related test results shall have the burden of proving that:

(1) the human immunodeficiency virus related test is necessary to ascertain whether an individual is currently able to perform in a reasonable manner the duties of the particular job or whether an individual will present a significant risk of transmitting human immunodeficiency virus to other persons in the course of normal work activities; and

(2) there exists no reasonable accommodation short of requiring the test.

**History:** Laws 1989, ch. 228, § 1.

## **ARTICLE 11**

### **Service Animal**

#### **28-11-1. Repealed.**

##### **28-11-1.1. Short title.**

Chapter 28, Article 11 NMSA 1978 may be cited as the "Service Animal Act".

**History:** Laws 2005, ch. 224, § 1; 2013, ch. 57, § 1.

#### **28-11-2. Definitions.**

As used in the Service Animal Act:

A. "emotional support animal", "comfort animal" or "therapy animal" means an animal selected to accompany an individual with a disability that does not work or perform tasks for the benefit of an individual with a disability and does not accompany at all times an individual with a disability;

B. "qualified service animal" means any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability; but "qualified service animal" does not include a pet, an emotional support animal, a comfort animal or a therapy animal;

C. "qualified service dog" means a dog that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; and

D. "qualified service miniature horse" means a miniature horse that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

**History:** Laws 1989, ch. 242, § 1; 1999, ch. 262, § 1; 1999, ch. 288, § 1; 2005, ch. 224, § 2; 2013, ch. 57, § 2.

### **28-11-3. Admittance of qualified service animal.**

A. Notwithstanding any other provision of law:

(1) a person with a disability who is using a qualified service animal shall be admitted to any building open to the public and to all other public accommodations and shall be allowed access to all common carriers; provided that the qualified service animal is under the control of an owner, a trainer or a handler of the qualified service animal. A person shall not deny an individual with a qualified service animal entry to a building open to the public or to any public accommodation or deny access to a common carrier, regardless of any policy of denying to pets entry to that building, public accommodation or common carrier. A person shall not be required to pay any additional charges for the qualified service animal, but may be liable for any damage done by the qualified service animal; provided that persons without disabilities would be liable for similar damage; and

(2) in an emergency requiring transportation or relocation of the owner or trainer of the qualified service animal, to the extent practicable, accommodations shall be made for the qualified service animal to remain or be reunited with the owner, trainer or handler. When accommodations cannot be made for allowing the qualified service animal to remain with the owner, trainer or handler, the qualified service animal shall be placed pursuant to instructions provided by the owner, trainer or handler.

B. This section does not require a public accommodation or common carrier to permit an owner, trainer or handler using a qualified service animal to have access to a public accommodation or common carrier in circumstances in which the individual's use of the qualified service animal poses a direct threat of significant harm to the health or safety of others.

**History:** Laws 1989, ch. 242, § 2; 1999, ch. 262, § 2; 1999, ch. 288, § 2; 2005, ch. 224, § 3; 2013, ch. 57, § 3.

#### **28-11-4. Penalty.**

A. A person who violates a provision of the Service Animal Act is guilty of a misdemeanor and, upon conviction, shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedy otherwise available pursuant to common law or other law of this state.

**History:** Laws 1989, ch. 242, § 3; 2005, ch. 224, § 4; 2013, ch. 57, § 4.

#### **28-11-5. Findings and purpose; interference with qualified service animals prohibited; criminal and civil penalties.**

A. The legislature finds that unrestrained animals constitute a danger to qualified service animals and public safety. The purpose of this section is to protect persons with disabilities and qualified service animals from attack by unrestrained animals.

B. It is unlawful for any person, with no legitimate reason, to:

(1) intentionally interfere with the use of a qualified service animal by harassing or obstructing the owner, trainer or handler of the qualified service animal or the qualified service animal; or

(2) intentionally fail or refuse to control the person's unrestrained animal, which animal interferes with or obstructs the owner, trainer or handler of the qualified service animal.

C. The provisions of this section shall not apply to unrestrained animals on private property not open to the public.

D. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including, but not limited to, actual damages.

E. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

**History:** Laws 1999, ch. 113, § 1; 2005, ch. 224, § 5; 2013, ch. 57, § 5.

### **28-11-6. Prohibition of false presentation of animal as a qualified service animal.**

A. A person shall not knowingly present as a qualified service animal any animal that does not meet a definition of "qualified service animal" pursuant to Section 28-11-2 NMSA 1978. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

**History:** Laws 2013, ch. 57, § 6.

## **ARTICLE 11A**

### **Telecommunication Devices for the Deaf**

#### **28-11A-1. Legislative finding.**

The legislature finds that many state citizens who are unable to utilize telephone services in a regular manner due to hearing impairments are able to communicate through the use of telecommunication devices and that such devices should be installed in municipal police and county sheriff departments in areas where such units are in use by deaf persons and in the communications section of the state police in order to assure prompt response to emergency situations.

**History:** Laws 1981, ch. 260, § 1.

#### **28-11A-2. Definitions.**

As used in this act [28-11A-1 to 28-11A-3 NMSA 1978]:

A. "deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him from understanding telephonic voice communications; and

B. "telecommunication device for the deaf " means a teletypewriter or other instrument for telecommunication in which speaking or hearing is not required for communication.



**History:** Laws 1981, ch. 260, § 2.

### **28-11A-3. Vocational rehabilitation division; purchase of telecommunication devices for the deaf.**

A telecommunication device for the deaf shall be purchased by the vocational rehabilitation division of the department of education and installed in the office of the municipal police department of any municipality with a population in excess of ten thousand inhabitants if the division determines and verifies that at least five telecommunication devices for the deaf are in use by deaf persons in the municipality, and in the office of the county sheriff in counties not having a municipality with a population in excess of ten thousand inhabitants if the division determines and verifies that at least five such devices are in use by deaf persons in that county.

**History:** Laws 1981, ch. 260, § 3.

## **ARTICLE 11B**

### **Commission for Deaf and Hard-of-Hearing Persons**

#### **28-11B-1. Commission for deaf and hard-of-hearing persons created.**

A. There is created the "commission for deaf and hard-of-hearing persons", consisting of seven members, a majority of whom are deaf or hard-of-hearing persons, including three ex-officio members and four members appointed by the governor without regard for party affiliation, with the advice and consent of the senate. Terms of appointed members shall be for six years, expiring on December 31 of odd-numbered years, in accordance with the staggered terms of the appointed members holding office on the effective date of this 1999 amendment.

B. Ex-officio members are:

- (1) the president of the New Mexico association for the deaf or his designee;
  - (2) the superintendent of the New Mexico school for the deaf or his designee;
- and
- (3) the director of the vocational rehabilitation division of the state department of public education or his designee who shall be knowledgeable in the area of deafness.

C. Appointed members are:

- (1) a parent of a deaf or hard-of-hearing child;

- (2) a professional person who is deaf or hard of hearing;
  - (3) a deaf or hard-of-hearing person who resides in southern New Mexico;
- and
- (4) a deaf or hard-of-hearing person who resides in northern New Mexico.

D. A majority of the members of the commission for deaf and hard-of-hearing persons constitutes a quorum for transaction of business. The commission shall elect a chairman from its membership.

E. Members of the commission for deaf and hard-of-hearing persons shall be compensated 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.

F. Commission members who are serving upon the effective date of this 1999 act shall serve out the terms to which they were appointed.

**History:** Laws 1991, ch. 72, § 1; 1999, ch. 72, § 1.

## **28-11B-2. Commission for deaf and hard-of-hearing persons; powers and duties.**

The commission for deaf and hard-of-hearing persons shall:

- A. supervise the activities of the executive director of the commission;
- B. identify the needs of the deaf and hard-of-hearing population of New Mexico;
- C. provide educational assistance to state agencies and, specifically, ensure agency compliance with regulations pertaining to deafness promulgated pursuant to the federal Americans with Disabilities Act;
- D. coordinate with state agencies providing services for deaf and hard-of-hearing persons;
- E. advocate for equal access to services and opportunities for deaf and hard-of-hearing persons;
- F. provide continuing education services to deaf and hard-of-hearing persons;
- G. assist in the establishment of a statewide interpreter referral service;
- H. review and coordinate certification and evaluation processes for interpreters;

I. convene a minimum of four times each year in varying locations throughout the state; and

J. submit reports on its work for the preceding year to the governor and the legislature at least forty-five days prior to each regular legislative session.

**History:** Laws 1991, ch. 72, § 2.

### **28-11B-3. Commission; staff.**

A. The commission for deaf and hard-of-hearing persons shall appoint an executive director, who shall be the administrative officer of the commission. A preference will be given to applicants for the executive director position who are deaf or hard of hearing.

B. The executive director shall employ such assistants and employees as are necessary for the efficient operation of the commission for deaf and hard-of-hearing persons. There shall be a minimum of five full-time staff members. The executive director shall not be subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978]. All other staff members shall be subject to the Personnel Act.

**History:** Laws 1991, ch. 72, § 3.

### **28-11B-4. Commission; task forces.**

The commission for deaf and hard-of-hearing persons may appoint task forces as they are needed to study specific issues regarding deaf and hard-of-hearing persons. The task forces shall make written recommendations to the commission regarding improvement and coordination of activities relative to the concerns of deaf and hard-of-hearing persons.

**History:** Laws 1991, ch. 72, § 4.

## **ARTICLE 11C**

# **Deaf and Hard-of-Hearing Children's Educational Bill of Rights**

### **28-11C-1. Short title.**

This act [28-11C-1 to 28-11C-3 NMSA 1978] may be cited as the "Deaf and Hard-of-Hearing Children's Educational Bill of Rights".

**History:** Laws 2004, ch. 107, § 1 and Laws 2004, ch. 111, § 1.

### **28-11C-2. Findings and purpose.**

A. The legislature finds that:

(1) hearing loss affects the most basic human need, communication. Without quality communication a child is isolated from other human beings and from the exchange of knowledge essential for educational growth and, therefore, cannot develop the skills required to become a productive, capable adult and a fully participatory member of society;

(2) children with hearing loss have the same innate capabilities as any other children. They communicate in a wide variety of manual and spoken modes, languages and systems. Some use aural/oral modes of communication, while others use a combination of aural/oral and manual communication. Many use American sign language, which is a formal language, as well as the preferred everyday language of the deaf community. Obviously, all children need to develop English proficiency; and

(3) it is, therefore, critical that all New Mexicans work toward ensuring that:

(a) deaf and hard-of-hearing children, like all children, have quality, ongoing and fluid communication, both in and out of the classroom;

(b) deaf and hard-of-hearing children be placed in the least restrictive educational environment and receive services based on their unique communication, language and educational needs, consistent with 20 U.S.C. Section 1414(d)(3)(B)(iv) of the federal Individuals with Disabilities Education Act;

(c) deaf and hard-of-hearing children be given an education in which teachers and related service providers and assessors understand the unique nature of deafness, are specifically trained to work with hard-of-hearing and deaf pupils and can communicate spontaneously and fluidly with these children;

(d) deaf and hard-of-hearing children, like all children, have the benefit of an education in which there are a sufficient number of age-appropriate peers and adults with whom they can interact and communicate in a spontaneous and fluid way;

(e) deaf and hard-of-hearing children receive an education in which they are exposed to deaf and hard-of-hearing role models;

(f) deaf and hard-of-hearing children, like all children, have direct and appropriate access to all components of the educational process, including recess, lunch and extracurricular, social and athletic activities;

(g) deaf and hard-of-hearing children, like all children, be provided with programs in which transition planning, as required under the federal Individuals with Disabilities Education Act, focuses on their unique vocational needs; and

(h) families of children who are deaf or hard-of-hearing receive accurate, balanced and complete information regarding their child's educational and communication needs and the available programmatic, placement and resource options, as well as access to support services and advocacy resources from public and private agencies, departments and all other institutions and resources knowledgeable about hearing loss and the needs of children who are deaf or hard-of-hearing.

B. Given the central importance of communication to all human beings, the purpose of the Deaf and Hard-of-Hearing Children's Educational Bill of Rights is to encourage the development of a communication-driven and language-driven educational delivery system in New Mexico for children who are deaf or hard-of-hearing.

**History:** Laws 2004, ch. 107, § 2 and Laws 2004, ch. 111, § 2.

### **28-11C-3. Educational rights of deaf and hard-of-hearing children; additional duty of public education department.**

A. The state of New Mexico recognizes the unique communication needs of children who are deaf or hard-of-hearing and encourages the development of specific recommendations by all state agencies, institutions and political subdivisions concerned with the early intervention, early childhood and kindergarten through twelfth grade education of students who are deaf or hard-of-hearing, including the public education department, the New Mexico school for the deaf and the department of health, to ensure that:

(1) these children have what every other child takes for granted, including an educational environment in which their language and communication needs are fully addressed and developed and in which they have early, ongoing and quality access to planned and incidental communication opportunities; and

(2) the recommendations, consistent with the findings and purpose of the Deaf and Hard-of-Hearing Children's Educational Bill of Rights, be completed expeditiously.

B. Since 20 U.S.C. Section 1414(d)(3)(B)(iv) of the federal Individuals with Disabilities Education Act requires that the individual education plan team consider the unique communication needs of children who are deaf or hard-of-hearing, the public education department shall develop a model "communication consideration for students who are deaf or hard-of-hearing", to become part of the individual education plan process. The model shall be disseminated to all local school districts, with training to be provided as determined by the department.

**History:** Laws 2004, ch. 107, § 3 and Laws 2004, ch. 111, § 3.

## **ARTICLE 12**

### **Indian Affairs (Repealed.)**

**28-12-1 to 28-12-3. Repealed.**

**28-12-4 to 28-12-9. Repealed.**

## **ARTICLE 13**

### **Veterans' Services (Repealed, Recompiled.)**

**28-13-1 to 28-13-14. Repealed.**

**28-13-15. Repealed.**

**28-13-16. Recompiled.**

**History:** Laws 1921, ch. 61, § 1; C.S. 1929, § 122-401; Laws 1941, ch. 103, § 1; 1941 Comp., § 66-1501; 1953 Comp., § 74-2-1; Laws 1987, ch. 217, § 1; 1978 Comp., § 28-13-16, recompiled as § 14-8-17 by Laws 2004, ch. 19, § 31.

## **ARTICLE 13A**

### **Veterans' Special Recreation and Museum Privileges**

#### **28-13A-1. Special recreation and museum privileges.**

A. On the federally designated legal holiday known as "Veterans' Day", any New Mexico resident, who provides satisfactory proof that the resident is currently serving or has served in the armed forces of the United States, and the resident's spouse and dependent children, shall be entitled to:

(1) free use of any state park or recreation area operated by the state parks division of the energy, minerals and natural resources department, including the waiving of all admittance, camping, permit or other user fees or charges; and

(2) free general admission to any state museum or historic site.

B. The governing boards of state museums and historic sites shall waive general museum and historic site admission fees for fifty percent or more disabled veterans residing in the state. Proof of disability satisfactory to the governing boards of the state museums and historic sites is required to obtain the privileges pursuant to this subsection.

**History:** Laws 1991, ch. 93, § 1; 2007, ch. 13, § 2; 2013, ch. 67, § 6.

## **ARTICLE 14**

### **Aid to Children of Deceased Military and State Police Personnel**

#### **28-14-1. Use of funds for children of deceased New Mexico military personnel and state policemen.**

A. The funds set aside under the provisions of Sections 28-14-1 through 28-14-4 NMSA 1978 shall be used for the sole purposes of providing for matricular fees, board and room rent and books and supplies for the use and benefit of the children, not under sixteen and not over twenty-six years of age, of:

(1) those persons who were residents of New Mexico at the time of entry into military service and who entered the military service of the United States during World War I or II, or during any action in which the military forces of the United States are engaged in armed conflict, and who were killed in action or died of other cause during the conflict or as a result of such military service;

(2) deceased members of the New Mexico national guard who were killed while on active duty in the service of the state after having been called to active duty by the governor; and

(3) deceased members of the New Mexico state police who were killed while on active duty in the service of the state.

B. The benefits enumerated in Subsection A of this section shall further be restricted to children who are attending or who may attend a state educational or training institution of a secondary or college grade. Children shall be selected under the provisions of Section 28-14-3 NMSA 1978 and shall be admitted to state institutions of secondary or college grade free of tuition.

**History:** 1941 Comp., § 66-1701, enacted by Laws 1949, ch. 170, § 1; 1953, ch. 31, § 1; 1953 Comp., § 74-4-1; Laws 1955, ch. 216, § 1; 1971, ch. 83, § 3; 1973, ch. 203, § 1; 1975, ch. 29, § 1; 1975, ch. 89, § 1.

#### **28-14-2. Amounts payable to institutions; eligibility.**

The amounts due to any educational or training institution pursuant to Chapter 28, Article 14 NMSA 1978 shall be payable to those institutions on vouchers signed by the secretary of veterans' services or the secretary's authorized representative. The veterans' services department shall determine the eligibility of children making application for the benefits provided in Chapter 28, Article 14 NMSA 1978 and shall

satisfy itself of the attendance of the children and of the accuracy of charges submitted to the department. No staff of the department shall receive any compensation for this service except as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1941 Comp., § 66-1702, enacted by Laws 1949, ch. 170, § 2; 1953 Comp., § 74-4-2; Laws 1975, ch. 29, § 2; 2004, ch. 19, § 26.

### **28-14-3. Selection by veterans' services department.**

Children who are to receive the educational benefits provided under Section 28-14-1 NMSA 1978 shall be selected by the veterans' services department on the basis of need and merit. Nominations shall be made by:

- A. the department, for children of deceased veterans;
- B. the adjutant general, for children of deceased national guard of New Mexico members; and
- C. the New Mexico state police board, for children of deceased New Mexico state police members.

**History:** 1941 Comp., § 66-1703, enacted by Laws 1949, ch. 170, § 3; 1953 Comp., § 74-4-3; Laws 1973, ch. 203, § 2; 1975, ch. 29, § 3; 1975, ch. 89, § 2; 2004, ch. 19, § 27.

### **28-14-4. Maximum payments.**

Not more than three hundred dollars (\$300) shall be paid, in addition to the free tuition, for any child for one year.

**History:** 1941 Comp., § 66-1704, enacted by Laws 1949, ch. 170, § 4; 1953 Comp., § 74-4-4; Laws 1975, ch. 29, § 4.

## **ARTICLE 15**

### **Reemployment of Persons in Armed Forces**

#### **28-15-1. Reemployment of persons in armed forces.**

Any person who, after having given advance written or verbal notice of an obligation or intention to perform service in the uniformed services to the person's employer, unless notice is precluded by military necessity or is otherwise impossible or unreasonable, since July 1, 1940, has left or leaves a position the person has held, other than a temporary position, in the employ of any employer to enter the armed forces of the United States, an organized reserve or the national guard of this state or any other state or territory of the United States and who serves on active duty and is



honorably discharged or released from active duty to complete the person's remaining service in a reserve component or is entitled to a certificate of service, or who terminates service without dishonor, has not had a cumulative period of absence in excess of five years by reason of service in the uniformed services and is still qualified to perform the duties of that position and makes application for reemployment within ninety days after the person is relieved from training and service, or from hospitalization and convalescence continuing after discharge for a period of not more than two years, shall be reemployed as follows:

A. if the person's position was in the employ of a private employer, the employer shall restore the person to that position or to a position of like seniority, status and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; or

B. if the person's position was in the employ of the state or any political subdivision thereof, the person shall be deemed to meet all the requirements of the Personnel Act [Chapter 10, Article 9 NMSA 1978] as well as all residency requirements or other provisions of law and shall be restored to that position or to a position of like seniority, status and pay.

**History:** Laws 1941, ch. 10, § 1; 1941 Comp., § 57-701; Laws 1945, ch. 24, § 1; 1953 Comp., § 74-5-1; Laws 1969, ch. 260, § 1; 1971, ch. 163, § 1; 2017, ch. 26, § 2.

### **28-15-2. [Status on reinstatement; restriction on discharge.]**

Any person who is restored to a position in accordance with the provisions hereof shall be considered as having been on furlough or leave of absence during his services in the armed forces of the United States, and shall be restored without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person entered the armed forces of the United States, and shall not be discharged from such position without cause within one year after such restoration.

**History:** Laws 1941, ch. 10, § 2; 1941 Comp., § 57-702; 1953 Comp., § 74-5-2.

### **28-15-3. [Enforcement in district court; procedure.]**

In case any person acting either in a public or private capacity fails or refuses to comply with the provisions hereof the district court of the district in which such person maintains a place of business (if such person is a private employer), or in which such person is a public official, shall have power, upon the filing of a motion, petition or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer or public officials to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reasons of such employer's or official's unlawful action. The court shall order

a speedy hearing in any such case, and shall advance it on the calendar. Upon application to the district attorney for the pertinent district by any person claiming to be entitled to the benefits of such provisions, such district attorney, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition or other appropriate pleading and the prosecution thereof to specifically require the compliance with such provisions: provided, that no fees or court costs shall be taxed against the person so applying for such benefits.

**History:** Laws 1941, ch. 10, § 3; 1941 Comp., § 57-703; 1953 Comp., § 74-5-3.

## **ARTICLE 16**

### **Developmental Disabilities Community Services**

**28-16-1 to 28-16-15.1. Repealed.**

**28-16-15.2. Developmental disabilities council; additional duties.**

The developmental disabilities council shall cooperate with the health care authority to:

A. provide data to support an amendment to the developmental disabilities medicaid waiver program to increase the number of eligible persons served;

B. develop a contingency plan to describe the role and control the growth of intermediate care facilities for persons with developmental or intellectual disabilities; and

C. develop flexibility in the system of prioritization for admission to allow persons to move within the service system to an appropriate level of service, including movement of residents of intermediate care facilities for persons with developmental or intellectual disabilities to the developmental disabilities medicaid waiver program.

**History:** Laws 1993, ch. 84, § 2; 2023, ch. 113, § 7; 2024, ch. 39, § 120.

**28-16-16 to 28-16-18. Repealed.**

## **ARTICLE 16A**

### **Developmental Disabilities**

**28-16A-1. Short title.**

Chapter 28, Article 16A NMSA 1978 may be cited as the "Developmental Disabilities Act".

**History:** Laws 1993, ch. 50, § 1; 2021, ch. 61, § 1.

## **28-16A-2. Legislative authorization.**

The Developmental Disabilities Act authorizes the authority to plan, provide and coordinate support and services to persons with developmental disabilities.

**History:** Laws 1993, ch. 50, § 2; 2021, ch. 61, § 2; 2024, ch. 39, § 121.

## **28-16A-3. Definitions.**

As used in the Developmental Disabilities Act:

A. "assessment" means a process for measuring and determining a person's strengths, needs and preferences to determine eligibility for support and services and to develop or modify an individual support and service plan;

B. "case management" means a process that:

(1) assists a person with a developmental disability to know and understand the person's choices and rights and to obtain support and services that the person is eligible to receive and that are reflected in the individual support and service plan; and

(2) monitors the provision of support and services received by a person with a developmental disability;

C. "council" means the developmental disabilities council;

D. "department" or "authority" means the health care authority;

E. "diagnostic evaluation" means an empirical process that determines if, and to what degree, a person has a developmental deficiency and the type of intervention and services that are needed for the person and that person's family;

F. "direct support professional" means a non-administrative employee or subcontractor of a direct support provider agency who spends the majority of the employee's or subcontractor's work hours providing supportive services to individuals with developmental disabilities living and working in the community;

G. "direct support provider agency" means an entity that:

(1) has entered into a medicaid provider participation agreement with the medical assistance division of the authority and a provider agreement with the developmental disabilities division of the authority;

(2) is reimbursed for services provided to persons through a developmental disabilities medicaid waiver program; and

(3) employs or subcontracts with direct support professionals to provide services to persons with developmental disabilities;

H. "inclusive" means using the same community resources that are used by and available to all citizens and developing relationships with nonpaid caregivers or recipients of support and services for persons with developmental disabilities;

I. "individual support and service plan" means a plan developed by an interdisciplinary team and agreed to by a person with a developmental disability, or by a parent of a minor or a legal guardian, as appropriate, that describes the combination and sequence of special, interdisciplinary or generic care, treatment or other support and services that are needed and desired by a person with a developmental disability;

J. "interdisciplinary team" means a group of persons drawn from or representing professions that are relevant to identifying the needs of a person with a developmental disability and designing a program to meet that person's needs. The team shall include the person with a developmental disability, the parent of a minor child or a legal guardian, as appropriate;

K. "self-determination" means having:

(1) the ability and opportunity to:

(a) communicate and make personal decisions;

(b) communicate choices and exercise control over the type and intensity of services, supports and other assistance that a person receives; and

(c) participate in, and contribute to, an individual's community;

(2) the authority to control resources to obtain needed services, supports and other assistance; and

(3) support, including financial support, to advocate for oneself and others, develop leadership skills through training in self-advocacy, participate in coalitions, educate policymakers and play a role in the development of public policies that affect persons with developmental disabilities; and

L. "service provider" means a nonprofit corporation, tribal government or tribal organization, unit of local government or other organization that has entered into a contract or provider agreement with the developmental disabilities division of the authority for the purpose of providing developmental disabilities support and services.

**History:** Laws 1993, ch. 50, § 3; 2021, ch. 61, § 3; 2023, ch. 160, § 1; 2024, ch. 39, § 122.

#### **28-16A-4. Developmental disabilities council; creation; membership; terms.**

A. The "developmental disabilities council" is created in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act. The council shall be an adjunct agency as provided in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. The council shall consist of no fewer than twenty-six members, at least sixty percent of whom shall be:

- (1) persons with developmental disabilities;
- (2) parents or legal guardians of children with developmental disabilities; or
- (3) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves.

C. Of the sixty percent of members described in Subsection B of this section, one-third shall be persons with developmental disabilities, one-third shall be members described in Paragraphs (2) and (3) of Subsection B of this section and one-third shall be a combination of members described in Subsection B of this section. At least one member described in Subsection B of this section shall be an immediate relative or guardian of a person who resides or previously resided in an institution or shall be a person with a developmental disability who resides or previously resided in an institution. No member of the council shall be an employee, or someone who manages employees, of a state agency that receives funds to provide developmental disabilities supports and services.

D. The council shall also include:

- (1) the secretary of health care authority, or the secretary's designee;
- (2) the secretary of children, youth and families, or the secretary's designee;
- (3) the secretary of early childhood education and care, or the secretary's designee;
- (4) the secretary of aging and long-term services, or the secretary's designee;
- (5) the secretary of public education, or the secretary's designee;

(6) the director of the vocational rehabilitation division of the public education department, or the director's designee;

(7) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act of 1990, or the director's designee;

(8) the director of an entity within a state institution of higher education designated as a university center for excellence in developmental disabilities education, research and service; and

(9) at all times, representatives of local and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in New Mexico.

E. The governor shall select the members of the council for appointment pursuant to Subsection B and Paragraphs (8) and (9) of Subsection D of this section after soliciting recommendations from organizations representing a broad range of persons with developmental disabilities and other persons interested in persons with developmental disabilities. The council may, at the initiative of the council or at the request of the governor, coordinate council and public input to the governor regarding all recommendations.

F. The membership of the council shall be geographically representative of the state and reflect the diversity of the state with respect to race and ethnicity.

G. Members, except for ex-officio members, shall be appointed by the governor for terms of three years.

H. The governor shall provide for rotation of the membership of the council. These provisions shall allow members to continue to serve on the council until those members' successors are appointed and qualified.

I. The council shall notify the governor regarding membership requirements of the council and shall notify the governor when vacancies on the council remain unfilled for a significant period of time.

J. Council members shall recuse themselves from any discussion of grants or contracts for which such members' departments, agencies or programs are grantees, contractors or applicants. The council shall ensure that no council member casts a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

**History:** Laws 1993, ch. 50, § 4; 2021, ch. 61, § 4; 2022, ch. 30, § 7; 2024, ch. 39, § 123.

## **28-16A-5. Powers and duties.**

A. The council shall:

- (1) provide statewide advocacy for persons with developmental disabilities;
- (2) develop and submit to the federal government the five-year plan for council activities and any amendments to the plan;
- (3) to the maximum extent feasible, review and comment on all state plans that relate to programs affecting persons with developmental disabilities;
- (4) submit to the secretary of the United States department of health and human services, through the office of the governor, periodic reports that the secretary may request;
- (5) advise the governor and the legislature about the needs of persons with developmental disabilities;
- (6) hold all council meetings with a video conference option;
- (7) carry out any other activities authorized or required by the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000; and
- (8) oversee the office of the state special education ombud.

B. The council is authorized to:

- (1) award grants and enter into contracts to carry out its duties;
- (2) seek funding from sources other than the state;
- (3) create and support regional county or local advisory councils;
- (4) provide training to persons with developmental disabilities, their families and providers of support and services through traineeships, sponsoring training opportunities and by other means determined appropriate by the council; and
- (5) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Special Education Ombud Act [28-16C-1 to 28-16C-11 NMSA 1978].

**History:** Laws 1993, ch. 50, § 5; 2021, ch. 53, § 12; 2021, ch. 61, § 5.

## **28-16A-6. Eligibility.**

A. For purposes of eligibility for support and services, "developmental disability" means a severe chronic disability of a person, which disability:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;

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

(3) is expected to continue indefinitely;

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

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; and

(g) economic self-sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of lifelong or extended duration and are individually planned and coordinated.

B. A child, from birth through two years of age, who is at risk for or who has a developmental delay as defined by rules of the early childhood education and care department is eligible for early intervention services.

C. A person who is eligible for developmental disability supports and services based on any previous definition of developmental disability used by the state and was receiving services on June 15, 1993 shall remain eligible for developmental disability supports and services. However, a child, from birth through age two, who is determined to be at risk for or who has a developmental delay shall be eligible for early intervention services only, unless the child meets the criteria set forth in Subsection A of this section.

**History:** Laws 1993, ch. 50, § 6; 2021, ch. 61, § 6; 2022, ch. 30, § 8.

## **28-16A-7. Comprehensive review and analysis.**



A. The council shall conduct a comprehensive review and analysis of the extent to which services, supports and other assistance are available to individuals with developmental disabilities and their families and the extent of unmet need for services, supports and all other assistance for those individuals and their families in the state. The results of the comprehensive review and analysis shall include:

(1) the number of individuals with developmental disabilities residing in New Mexico;

(2) the range and degree of severity of the disabilities of individuals with developmental disabilities in New Mexico; and

(3) such other information and analysis required under federal law.

B. The findings of the comprehensive review and analysis shall be utilized in the development of the council's five-year plan.

C. The council shall:

(1) repeat the comprehensive review and analysis at least every five years, with a summary of the findings; and

(2) distribute the comprehensive review and analysis and the summary of findings to relevant organizations, programs and agencies in the state.

**History:** Laws 1993, ch. 50, § 7; 2021, ch. 61, § 7.

### **28-16A-8. Reporting on community services for persons with developmental disabilities.**

The department of health, the human services department [health care authority department], the public education department, the vocational rehabilitation division of the public education department, the children, youth and families department, the early childhood education and care department, the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf shall provide to the council, on an annual basis, information and data with respect to the actual or estimated number of persons with developmental disabilities served by the agency, the type of services provided, any major changes in policies adopted in the previous year or anticipated in the coming year that have had or are expected to have a beneficial or deleterious effect on persons with developmental disabilities and any gaps in eligibility or services that pose a barrier to the provision of services needed by persons with developmental disabilities.

**History:** Laws 1993, ch. 50, § 8; 2021, ch. 61, § 8; 2022, ch. 30, § 9.

## **28-16A-9. Information and referral system; coordination and continuation.**

In order to coordinate information and referral services and eliminate the duplication of effort, the council shall provide information and referral services for persons with disabilities, their families, providers of support and services and local and state agencies, including:

- A. the human services department [health care authority department];
- B. the department of health;
- C. the public education department and its vocational rehabilitation division;
- D. the New Mexico school for the deaf;
- E. the New Mexico school for the blind and visually impaired;
- F. the Carrie Tingley crippled children's hospital;
- G. the children, youth and families department; and
- H. the early childhood education and care department.

**History:** Laws 1993, ch. 50, § 9; 2021, ch. 61, § 9; 2022, ch. 30, § 10.

## **28-16A-10. Developmental disabilities council; staff.**

The council shall employ an executive director, who is the administrative officer of the council. The executive director shall employ other necessary employees pursuant to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

**History:** Laws 1993, ch. 50, § 10; 2021, ch. 61, § 10.

## **28-16A-11. Developmental disabilities council; reports.**

The council shall submit reports on its preceding year's work to the governor and the interim legislative health and human services committee by November 1 of each year. The reports shall contain recommendations, if any, for legislation or other appropriate action.

**History:** Laws 1993, ch. 50, § 11; 2021, ch. 61, § 11.

## **28-16A-12. Developmental disabilities council; compensation.**

Council members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000. Reasonable accommodations shall be made available to permit full participation in council activities by its members, including personal assistance to members with developmental disabilities and respite care for members that are parents, immediate relatives or legal guardians of persons with developmental disabilities. Other than what is required in the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, council members shall receive no other compensation, perquisite or allowance for their service on the council.

**History:** Laws 1993, ch. 50, § 12; 2021, ch. 61, § 12.

### **28-16A-13. Authorization for providing support and services for persons with developmental disabilities.**

A. Subject to the availability of appropriations provided expressly for this purpose, the department may:

- (1) acquire, provide or coordinate support and services for persons with developmental disabilities;
- (2) enter into contracts and provider agreements with agencies and persons capable of providing support and services to persons with developmental disabilities; and
- (3) establish advisory councils and task forces as necessary to guide the development and review of support and services to persons with developmental disabilities.

B. Support and services shall be provided based on individual support and service plans developed by an interdisciplinary team. The team is responsible for collectively evaluating a child's or adult's needs and developing an individual support and service plan to meet the needs; provided that the early childhood education and care department shall be responsible for the team that is evaluating a child for family, infant, toddler program services.

C. The department or, for children eligible for family, infant, toddler program services, the early childhood education and care department shall:

- (1) solicit the involvement of consumers, providers, parents, professional organizations and other governmental organizations prior to the adoption or revision of rules concerning the provision of support, services, standards or funding systems. Participants shall be selected in a manner that reflects geographical, cultural, organizational and professional representation across the state;

(2) develop rules, including policies and procedures that, to the extent possible, will promote uniformity in reimbursement and quality assurance systems regardless of the source of funding; and

(3) convene and maintain a family, infant, toddler interagency coordinating council and a statewide adult support and services task force that shall, at a minimum, address quality assurance.

**History:** Laws 1993, ch. 50, § 13; 2021, ch. 61, § 13; 2022, ch. 30, § 11.

### **28-16A-14. Quality assurance system.**

A. The department shall develop and maintain a quality assurance system to improve and enhance the quality of support and services for persons with developmental disabilities. The management information system portion of the quality assurance system shall track and maintain information concerning the characteristics of the persons served, support and services received and the length of time support and services are provided.

B. The program evaluation portion of the quality assurance system shall consist of a comprehensive collection of data from providers and analysis of measures of effectiveness, efficiency and consumer satisfaction.

C. The department shall adopt regulations that ensure compliance with recognized professional standards for support and services.

**History:** Laws 1993, ch. 50, § 14.

### **28-16A-15. Admission, transfer, withdrawal and discharge of persons receiving support and services purchased or provided by the department.**

A. In cooperation with other state agencies, the department shall adopt requirements for admission, transfer, withdrawal and discharge of persons receiving support and services funded in whole or in part by state funds.

B. The department shall maintain a centralized registry of persons who are requesting or receiving support and services and a centralized referral system that promotes the delivery of support and services within the person's home community and reflects the person's informed selection and choice of a support or service provider. This centralized referral system shall determine eligibility based on a comprehensive assessment and shall prioritize individuals waiting to access publicly funded developmental disability support and services.

C. The centralized referral system shall maintain information regarding the needs of persons not receiving services and shall report the information annually to the legislature. The department shall have the authority to provide assessments and case management services to persons applying for and receiving publicly funded support and services necessary to implement the provisions of this section.

**History:** Laws 1993, ch. 50, § 15.

## **28-16A-16. Determination of rates for payment for support and services.**

A. The department shall develop, implement and maintain a provider reimbursement system based on the level of support and services required by a person with a developmental disability.

B. Beginning in 2024, contingent on available funding, the department shall conduct an independent biennial cost study for the purpose of recommending reimbursement rates for all service providers. The cost study shall include all reasonable costs of providing services. Recommended reimbursement rates, based on the cost study, shall include consideration of the following factors:

(1) the additional costs that would be incurred by the direct support provider agency if all direct support professionals were paid at least one hundred fifty percent of the state minimum wage;

(2) recent and projected changes in costs due to factors that include inflation, changes in the applicable minimum wage or newly effective requirements for employers during the period covered by the cost study; and

(3) direct support professional vacancies that affect direct support provider agency costs.

C. The department's budget request for each fiscal year shall include sufficient funding to:

(1) continue to provide supports and services for persons with developmental disabilities currently being served, based on the service provider reimbursement rates recommended by the most recent cost study; and

(2) serve additional persons, who as determined by the department, are eligible for but are not currently receiving services.

D. If sufficient funds have been appropriated to implement the reimbursement rates recommended by the most recent cost study, the department shall implement those rates, subject to approval by the federal centers for medicare and medicaid services. If the level of funding for developmental disabilities services and support is determined to

be insufficient to fully implement such rates, the department shall adjust reimbursement rates as favorably as possible based on the level of funding available, subject to approval by the federal centers for medicare and medicaid services.

E. Contractors shall be required to submit records of support and services delivered as determined by the department, subject to monitoring by the department.

**History:** Laws 1993, ch. 50, § 16; 2023, ch. 160, § 3.

### **28-16A-17. Independent status of service providers.**

Except as otherwise provided, each service provider shall be considered to be an independent contractor and not an entity of state government.

**History:** Laws 1993, ch. 50, § 17.

### **28-16A-18. Developmental disabilities early childhood evaluation system.**

The state shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities supports division of the department, the early childhood education and care department, the university of New Mexico's center for development and disability and the public education department.

**History:** Laws 1993, ch. 50, § 18; 2021, ch. 61, § 14; 2022, ch. 30, § 12.

### **28-16A-19. Information and referral task force creation.**

The "information and referral task force" is created in the council to develop a statewide, comprehensive "211" information and referral plan for use as a telephone dialing code for access to health and human services. The plan shall include a tariff structure based on existing agreements, a common taxonomy of terms, coordination between public and private systems and standardized statewide training and exploration of a centralized information repository. The task force shall include representation from the department of health; the human services department [health care authority department]; the children, youth and families department; the early childhood education and care department; the workforce solutions department; the aging and long-term services department; the internet long-term care link program; the governor's commission on disability; the New Mexico commission for the blind; the commission for

deaf and hard-of-hearing persons; a statewide organization that raises money for health and human service purposes; and other interested parties.

**History:** Laws 2003, ch. 323, § 1; 2021, ch. 61, § 15; 2022, ch. 30, § 13.

### **28-16A-20. Reporting; department of health; intermediate care facilities for individuals with intellectual disabilities; independent review.**

Within thirty days of the date on which reporting pursuant to each review is available, the department shall provide the council with each report issued pursuant to the independent reviews of intermediate care facilities for individuals with intellectual disabilities that are performed pursuant to the requirements of federal law.

**History:** Laws 2021, ch. 61, § 16.

### **28-16A-21. Data collection and reporting.**

A. By April 1, 2024 and annually thereafter, direct support provider agencies shall submit data, in a form approved by the department, from the previous calendar year regarding direct support professionals that includes:

- (1) the number of full- or part-time employees at any time during the year, the percentage of the year that the employees were employed and the total length of time that the employees had been employed as of the end of the year;
- (2) disaggregated demographic information, including age, gender, race and ethnicity, education level and work experience;
- (3) employee wages paid; and
- (4) employee benefits provided.

B. The department shall submit an annual report by September 1, 2024, and on September 1 of each subsequent year to the legislative health and human services committee, the legislative finance committee and the governor regarding the direct support professional workforce, including:

- (1) the total number of full- and part-time employees;
- (2) a demographic analysis of this workforce;
- (3) the highest, lowest and average hourly wage paid by direct support provider agencies;

- (4) the average length of employment and vacancy and turnover rates; and
- (5) the availability and type of benefits provided by direct support provider agencies.

**History:** Laws 2023, ch. 160, § 2.

## **ARTICLE 16B**

### **Office of Guardianship**

#### **28-16B-1. Short title.**

Chapter 28, Article 16B NMSA 1978 may be cited as the "Office of Guardianship Act".

**History:** Laws 2003, ch. 280, § 1; 2009, ch. 159, § 7.

#### **28-16B-1.1. Professional guardian and conservator licensing.**

As used in the Office of Guardianship Act:

A. "professional guardian" means an individual or entity appointed by a court that serves as a guardian for more than two individuals who are not related to the guardian by marriage, adoption or third degree of blood or affinity; and

B. "protected person" means a person eighteen years of age or older for whom a guardian or conservator has been appointed or other protective order has been made.

**History:** Laws 2021, ch. 128, § 1.

#### **28-16B-2. Office of guardianship; created; staff.**

A. The "office of guardianship" is created in the developmental disabilities planning council.

B. The executive director of the developmental disabilities planning council shall employ a head of the office who shall be an attorney licensed in New Mexico who is hired on the basis of ability, experience and knowledge of guardianship issues under the Uniform Probate Code [Chapter 45 NMSA 1978]. The position shall be classified pursuant to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. Subject to appropriations, the executive director may hire such other professional and clerical staff as necessary to carry out the purposes of the office.

**History:** Laws 2003, ch. 280, § 2; 2021, ch. 128, § 2.



### **28-16B-3. Office; powers and duties.**

A. The office of guardianship may:

- (1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Office of Guardianship Act; and
- (2) enter into agreements with other state or federal agencies to provide guardianship services and to provide or receive payment for such services.

B. The office of guardianship shall:

- (1) provide for adult guardianship services to income-eligible incapacitated persons, including temporary guardianship as provided in Section 45-5-310 NMSA 1978;
- (2) provide for the recruitment and training of persons interested and willing to serve as mental health treatment guardians;
- (3) provide training and information to interested persons on the duties and responsibilities of guardians, including alternatives to guardianship and mental health treatment guardianship;
- (4) establish procedures for the investigation and resolution of complaints against guardianship and legal services providers that have entered into service agreements with the office;
- (5) provide legal services, including petitioning attorney, guardian ad litem and court visitor services, to petition the district court for guardianship of persons believed to be incapacitated or to seek amendment or termination of existing guardianship orders if the needs or situation of protected persons have changed; provided that the selection of persons to receive guardianship and legal services shall be made by the office based on selection criteria established by rule;
- (6) prior to providing legal services to petition for guardianship, identify and provide information on least restrictive options, including alternatives to guardianship, to the alleged incapacitated person and to individuals applying for guardianship services;
- (7) publish an annual report regarding the guardianship and legal services provided by the office of guardianship, including the:
  - (a) number and ages of protected persons assigned to a professional guardian, the judicial district where the guardianship case is assigned and the reason for appointment of a guardian;

(b) number of guardianship petitions filed by the office and the status of the petitions;

(c) number of income-eligible alleged incapacitated persons or protected persons on the wait list;

(d) number of applicants requesting family guardians and the number requesting professional guardians;

(e) number of cases dismissed or terminated and the reasons for the dismissal or termination;

(f) number of complaints the office received against guardianship and legal services providers, and the status of the complaints;

(g) disciplinary or legal actions taken by the office against guardianship and legal services providers;

(h) number of complaints filed against the office and the status of the complaints; and

(i) number of cases in which a professional guardian was removed, and the reason for the removal;

(8) establish and manage a volunteer court visitor program to provide post-adjudication court visitor services for adult guardianship cases when requested by the district court; and

(9) serve as an interested person as defined in Subsection I of Section 45-5-101 NMSA 1978.

**History:** Laws 2003, ch. 280, § 3; 2009, ch. 159, § 8; 2021, ch. 128, § 3.

#### **28-16B-4. Service agreement monitoring and enforcement.**

A. The office of guardianship shall monitor professional guardians providing services to income-eligible protected persons and enforce agreements the office has executed with guardianship and legal services providers. In carrying out this duty, the office may:

(1) have access to case records, copies of court filings and reports, financial records and other records maintained by guardianship and legal services providers related to the services provided to income-eligible protected persons, unless specifically sequestered by the court;

(2) petition the court of jurisdiction for access to records that have been sequestered;

(3) conduct annual comprehensive service reviews to ensure service providers comply with service agreements and statutory duties;

(4) visit protected persons to evaluate the adequacy of guardianship services provided and determine if the guardianship should be amended or terminated; and

(5) pursue legal and other remedies against service providers for noncompliance with service agreements and statutory duties.

B. The office shall protect and maintain the confidentiality of all client-specific information and records obtained to the same extent as required for the service providers and to any extent otherwise required by state or federal law.

**History:** Laws 2003, ch. 280, § 4; 2009, ch. 159, § 9; 2021, ch. 128, § 4.

### **28-16B-5. Guardianship service agreements.**

A service agreement for guardianship services shall include:

A. a requirement that service providers be certified and in good standing with a national or state organization recognized by the supreme court that provides professional certification for guardians;

B. a requirement for adoption and compliance with a code of ethics for guardians;

C. the maximum caseload for guardians;

D. the fee schedule for services provided;

E. assurance that the civil rights of protected persons served by the service provider shall be met, including the right to be served in the most integrated setting appropriate to the needs of the protected person;

F. provisions for access by the office of guardianship to records, protected persons and service provider staff as needed to monitor and enforce contract compliance and for quality assurance purposes; and

G. minimum financial accounting and reporting requirements.

**History:** Laws 2003, ch. 280, § 5; 2009, ch. 159, § 10; 2021, ch. 128, § 5.

### **28-16B-6. Resolution of complaints.**

A. The office of guardianship shall establish by rule for the filing, investigation and resolution of complaints about guardianship services provided by contractors.

B. The office shall acknowledge receipt of the complaint, notify all parties involved and initiate an investigation within fifteen working days of the filing of the complaint.

C. A determination shall be made and a decision rendered on the complaint within sixty working days unless mutually agreed upon by all parties or unless a shorter time is required to protect the protected person.

D. The office may refer complaints to other agencies for investigation or prosecution, as appropriate.

E. Complaints against the office or a staff member of the office shall be investigated by the human services department [health care authority department].

**History:** Laws 2003, ch. 280, § 6; 2009, ch. 159, § 11.

### **28-16B-7. Office of guardianship fund; creation; appropriation.**

A. The "office of guardianship fund" is created in the state treasury. All gifts, donations, bequests and interest income of the developmental disabilities planning council's office of guardianship shall be deposited by the executive director of the developmental disabilities planning council into the fund. The developmental disabilities planning council shall administer the fund, and money in the fund is appropriated to the office of guardianship to further the purposes of the Office of Guardianship Act. Income from investment of the fund shall be credited to the fund. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the executive director of the developmental disabilities planning council or the executive director's authorized representative.

B. Money in the office of guardianship fund shall not revert or be transferred to any other state fund at the end of any fiscal year and shall not be expended for any purpose except as provided in this section.

**History:** Laws 2013, ch. 107, § 1.

## **ARTICLE 16C**

### **Special Education Ombud**

#### **28-16C-1. Short title.**

Sections 1 through 11 [28-16C-1 to 28-16C-11 NMSA 1978] of this act may be cited as the "Special Education Ombud Act".

**History:** Laws 2021, ch. 53, § 1.

## **28-16C-2. Definitions.**

As used in the Special Education Ombud Act:

- A. "council" means the developmental disabilities planning council;
- B. "office" means the office of the state special education ombud;
- C. "parent" includes a legal guardian or custodian who has custody and control of a student or an individual who has legal authority to make educational decisions on behalf of the student;
- D. "state ombud" means the state special education ombud; and
- E. "student" means a public school student receiving or seeking special education services.

**History:** Laws 2021, ch. 53, § 2.

## **28-16C-3. Creation of the office of the state special education ombud; general duties of the office.**

- A. The "office of the state special education ombud" is created within the council.
- B. The council shall appoint the "state special education ombud", who shall head the office and supervise the ombuds and other staff of the office. The state ombud may contract for services to assist the office in conducting its duties and may use the services of volunteers.
- C. The state ombud shall:
  - (1) identify, investigate and resolve concerns pertaining to special education services that are filed with the office by parents;
  - (2) assist students and parents in protecting the educational rights of students, which may include assisting students and parents in individualized education plan meetings or other proceedings pursuant to the federal Individuals with Disabilities Education Act;
  - (3) inform students and parents about special education resources in their community;

(4) ensure that students and parents have regular and timely access to the services provided through the office and that students and parents receive timely responses from representatives of the office;

(5) identify any patterns of concerns that emerge regarding special education services and educational rights and recommend strategies for improvement to the public education department;

(6) collaborate with the public education department to ensure that all dispute resolution processes are available to students and parents, including the special education parent liaison, mediation, facilitated individualized education program meetings, state complaint and investigations and due process hearings;

(7) collaborate with the parent training information centers and protection and advocacy agencies within the state to identify and report systemic special education issues to the public education department;

(8) ensure that office staff, contractors and volunteers are trained in:

(a) federal, state and local laws, rules and policies with respect to special education in the state;

(b) investigative techniques;

(c) dispute resolution; and

(d) such other matters as the office deems appropriate;

(9) develop procedures for the certification of ombuds. An employee or contractor shall not investigate a concern filed with the office unless that person is certified by the office;

(10) analyze, comment on and monitor the development and implementation of federal and state laws, rules and other governmental policies and actions that pertain to the educational rights of students with respect to the adequacy of special education services in the state;

(11) recommend changes to laws, rules, policies and actions pertaining to the special educational rights of students as the office determines to be appropriate;

(12) facilitate public comment on proposed laws, rules, policies and actions;  
and

(13) provide information to public and private agencies, legislators and other persons regarding the problems and concerns of special education services and make recommendations related to those problems and concerns.

**History:** Laws 2021, ch. 53, § 3.

#### **28-16C-4. Annual report; contents.**

No later than December 1 of each year, the office shall prepare a report that includes:

- A. actions taken by the office in the year for which the report is prepared;
- B. special education concerns identified by or on behalf of students and parents, resolution of the concerns and the effectiveness of the resolution processes;
- C. recommendations for improving the quality of special education services provided to students and protecting the educational rights of students; and
- D. policy, regulatory and legislative recommendations to solve identified concerns related to special education, to improve processes of resolutions of concerns, to improve the quality of services provided to students, to protect the educational rights of students and to remove barriers to education and educational services.

**History:** Laws 2021, ch. 53, § 4.

#### **28-16C-5. Investigation and resolution of special education concerns.**

The office shall identify, investigate and seek to resolve concerns related to special education communicated by or on behalf of students and parents. If the office does not address a concern, the office shall notify the concerned person of the decision not to address the concern and the reasons for the decision.

**History:** Laws 2021, ch. 53, § 5.

#### **28-16C-6. Access to student educational records.**

Upon request and with consent from the student or the student's parent, the office shall have access to the student's educational records from the public education department, a school district or a public school as necessary to carry out the office's responsibilities.

**History:** Laws 2021, ch. 53, § 6.

#### **28-16C-7. Confidentiality of information.**

- A. All files and records maintained by the office that pertain to students are confidential and not subject to the provisions of the Inspection of Public Records Act

[Chapter 14, Article 2 NMSA 1978]. The state ombud shall not disclose the identity of a concerned person or student about whom the office maintains files or records unless:

- (1) the concerned person, student or parent consents in writing to the disclosure;
- (2) the concerned person, student or parent gives oral consent that is documented immediately in writing by a representative of the office. If the student is unable to give oral consent, the student may give consent in any way that the student is able to, and the consent shall also be documented immediately in writing by a representative of the office; or
- (3) disclosure is ordered by a court.

B. The annual report required pursuant to Section 4 [28-16C-4 NMSA 1978] of the Special Education Ombud Act may be based on confidential information and may be published or furnished to the public, but the report shall not identify individual students directly or indirectly nor violate the privileged or confidential nature of the relationship and communications between the student and the office.

**History:** Laws 2021, ch. 53, § 7.

### **28-16C-8. Conflict of interest.**

The council shall ensure that:

- A. a person or an immediate family member of that person involved in the designation of an ombud does not have a conflict of interest;
- B. an employee or a contractor of the office or an immediate family member of the employee or contractor does not have a conflict of interest; and
- C. an ombud:
  - (1) does not have an ownership or investment interest, represented by equity, debt or other financial relationship, in a public school providing special education services;
  - (2) is not employed by, or participating in the management of, a public school providing special education services; and
  - (3) does not receive, or have the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with a public school providing special education services.

**History:** Laws 2021, ch. 53, § 8.



## **28-16C-9. Posting and distribution of ombud information.**

Every public school providing special education services shall post in a conspicuous location in the public school a notice regarding the office that contains a brief description of the services provided by the office and the name, address and phone number of the office and shall post it online on the public school's website, if applicable. The public school providing special education services shall distribute information regarding the state ombud at the beginning of every school year, in addition to providing the information as part of the annual individual education plan process prior to scheduling the first individual education plan meeting of each school year. The form of the notice shall be approved by the office.

**History:** Laws 2021, ch. 53, § 9.

## **28-16C-10. Availability of legal counsel to the office.**

The council shall ensure that adequate legal counsel is available and is able, without conflict of interest, to:

- A. provide advice and consultation to the office needed to protect the educational rights of students; and
- B. assist the office and contractors in the performance of the official duties of the state ombud and representatives.

**History:** Laws 2021, ch. 53, § 10.

## **28-16C-11. Interference with the office and retaliation prohibited; potential actions for noncompliance.**

- A. A person shall not willfully interfere with the lawful actions of the office.
- B. A person shall not institute discriminatory, disciplinary or retaliatory action against any student or parent for filing a concern with, providing information to or otherwise cooperating with the office.
- C. If public school personnel or a contractor or volunteer of a school district or charter school fails to comply with the provisions of the Special Education Ombud Act:
  - (1) the council shall report the noncompliance to the public education department;
  - (2) the office shall collaborate with the public education department to access processes and resources to address special education services concerns; and

(3) the office shall collaborate with the public education department to identify further appropriate actions to be taken in response to the report, which may include a corrective action plan or any other administrative action that the public education department is authorized to take to ensure that students receive the free and appropriate public education required by the Individuals with Disabilities Education Act and state law. The office shall provide a letter to the concerned person explaining the actions the public education department will take.

**History:** Laws 2021, ch. 53, § 11.

## **ARTICLE 17**

### **Long-Term Care Ombudsman**

#### **28-17-1. Short title.**

Chapter 28, Article 17 NMSA 1978 may be cited as the "Long-Term Care Ombudsman Act".

**History:** Laws 1989, ch. 208, § 1; 2017, ch. 81, § 1.

#### **28-17-2. Purpose.**

The legislature recognizes that the state agency on aging [aging and long-term services department] pursuant to a grant from the federal government has established an office of the state long-term care ombudsman. The legislature declares that it is the public policy of this state to encourage community contact and involvement with patients, residents and clients of long-term care facilities. The legislature finds that in order to comply with the federal Older Americans Act and to effectively assist patients, residents and clients of long-term care facilities in the assertion of their civil and human rights, the structure, powers and duties of the office of the state long-term care ombudsman shall be specifically defined.

**History:** Laws 1989, ch. 208, § 2.

#### **28-17-3. Definitions.**

As used in the Long-Term Care Ombudsman Act:

A. "adult protective services" means the agency's adult protective services division that receives and investigates reports of adult abuse, neglect or exploitation;

B. "agency" means the aging and long-term services department;

C. "care" means assistance with the activities of daily living, including eating, dressing, oral hygiene, bathing, mobility, toileting, grooming, taking medications, transferring from a bed or chair and walking;

D. "director" means the secretary of aging and long-term services;

E. "informed consent" means an agreement by a resident or a resident's surrogate decision-maker to allow a disclosure of information, made with full knowledge of the risks involved and the available alternatives, that is made in writing or through the use of auxiliary aids and services or communicated by a resident or a resident's surrogate decision-maker orally, visually or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office;

F. "licensing and certification" means the licensing and certification bureau of the department of health;

G. "long-term care facility" means any residential facility that provides care to one or more persons unrelated to the owner or operator of the facility, including:

- (1) a skilled nursing facility;
- (2) an intermediate care nursing facility, including an intermediate care facility for the intellectually disabled;
- (3) a nursing facility;
- (4) an adult residential shelter care home;
- (5) a boarding home;
- (6) any other adult care home or adult residential care facility;
- (7) a continuing care community;
- (8) any swing bed in an acute care facility or extended care facility; and
- (9) any adult daycare facility;

H. "office" means the office of the state long-term care ombudsman;

I. "Older Americans Act" means the federal Older Americans Act of 1965;

J. "ombudsman" means an employee or volunteer of the office who is trained and certified to act as a representative of the office;

K. "ombudsman coordinator" means the coordinator of a regional or local ombudsman program designated by the office;

L. "program" means the New Mexico long-term care ombudsman program;

M. "resident" means any patient, client or person residing in and receiving care in a long-term care facility;

N. "state ombudsman" means the individual who heads the office and supervises the ombudsmen; and

O. "surrogate decision-maker" means any of the following:

(1) an individual chosen by a resident to act on the resident's behalf to support the resident in decision-making; accessing medical, social or other personal information of the resident; managing financial matters; or receiving notifications;

(2) an individual authorized by state or federal law, including an agent pursuant to a power of attorney, a representative payee or other fiduciary of the resident, to act on behalf of a resident to support the resident in decision-making; accessing medical, social or other personal information of the resident; managing financial matters; or receiving notifications;

(3) a resident's legal representative; or

(4) the court-appointed guardian or conservator of a resident.

**History:** Laws 1989, ch. 208, § 3; 1997, ch. 257, § 2; 2017, ch. 81, § 2.

#### **28-17-4. Establishment of the office of the state long-term care ombudsman; general duties of the office.**

A. Pursuant to the Older Americans Act, the agency shall establish and operate an "office of the state long-term care ombudsman" either directly or by contract or other arrangement with any public agency or nonprofit private organization; except that no contract or arrangement may be made with any entity that is responsible for licensing or certifying long-term care services or an association or association affiliate of long-term care facilities or of any other residential facilities.

B. The director shall designate the state ombudsman.

C. The ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the office:

(1) identify, investigate and resolve complaints that are made by, or on behalf of, residents and that relate to action, inaction or decisions that may adversely affect the

health, safety, welfare or rights of the residents, including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees, of:

- (a) providers, or representatives of providers, of long-term care services;
  - (b) public agencies; or
  - (c) health and social service agencies;
- (2) provide services to assist the residents in protecting the health, safety, welfare and rights of the residents;
  - (3) inform the residents about means of obtaining services;
  - (4) ensure that the residents have regular and timely access to the services provided through the office and that the residents and complainants receive timely responses from representatives of the office;
  - (5) represent the interests of the residents before governmental agencies and seek administrative, legal and other remedies on behalf of residents to protect the health, safety, welfare and rights of the residents;
  - (6) provide administrative and technical assistance to designated regional and local ombudsman programs and assist the programs in participating in the program;
  - (7) analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions that pertain to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state and recommend any changes in such laws, regulations, policies and actions as the office determines to be appropriate; and facilitate public comment on the laws, regulations, policies and actions;
  - (8) provide for training representatives of the office, promote the development of citizen organizations to participate in the program and provide technical support for the development of resident and family councils to protect the well-being and rights of residents;
  - (9) prepare an annual report:
    - (a) describing the activities carried out by the office in the year for which the report is prepared;
    - (b) containing and analyzing the data collected;

(c) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(d) containing recommendations for improving quality of the care and life of the residents, and protecting the health, safety, welfare and rights of the residents;

(e) analyzing the success of the program, including success in providing services to residents of board and care facilities and other similar adult care facilities;

(f) identifying barriers that prevent the optimal operation of the program; and

(g) providing policy, regulatory and legislative recommendations to solve identified problems, to resolve complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare and rights of residents and to remove the barriers;

(10) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness;

(11) provide such information as the office determines to be necessary to public and private agencies, legislators and other persons regarding the problems and concerns of older individuals residing in long-term care facilities; and recommendations related to the problems and concerns; and

(12) carry out such other activities as the state ombudsman determines to be appropriate.

**History:** Laws 1989, ch. 208, § 4; 1997, ch. 257, § 3.

### **28-17-5. Rule-making authority of director.**

The director shall adopt and promulgate such reasonable rules and regulations as are deemed necessary to carry out the provisions of the Long-Term Care Ombudsman Act. Unless otherwise provided by statute, no regulation affecting any person or agency outside the office shall be adopted, amended or repealed without a public hearing on the proposed action before the director or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless the public notice of hearing indicates otherwise. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1989, ch. 208, § 5.

## **28-17-6. Regional and local long-term care ombudsman programs.**

A. In carrying out the duties of the office, the state ombudsman may designate an entity as a regional or local ombudsman entity, and may designate an employee or volunteer to represent the entity. An individual so designated shall, in accordance with the policies and procedures established by the office and the agency:

- (1) provide services to protect the health, safety, welfare and rights of residents;
- (2) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (3) identify, investigate and resolve complaints made by or on behalf of residents that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents;
- (4) represent the interests of residents before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;
- (5) review and, if necessary, comment on any existing and proposed laws, regulations and other government policies and actions, that pertain to the rights and well-being of residents;
- (6) facilitate the ability of the public to comment on the laws, regulations, policies and actions;
- (7) support the development of resident and family councils; and
- (8) carry out other activities that the ombudsman determines to be appropriate.

B. To be eligible to be designated as regional or local ombudsman entities, and individuals eligible to be designated as representatives of such entities, the entities shall:

- (1) have demonstrated capability to carry out the responsibilities of the office;
- (2) be free of conflicts of interest;
- (3) in the case of the entities, be public or nonprofit private entities; and

- (4) meet such additional requirements as the state ombudsman may specify.

**History:** Laws 1989, ch. 208, § 6; 1997, ch. 257, § 4.

### **28-17-7. Training and certification.**

A. The state ombudsman shall ensure that office staff, including volunteers and other representatives of the office, are trained in:

- (1) federal, state and local laws, regulations and policies with respect to long-term care facilities in the state;
- (2) investigative techniques; and
- (3) such other matters as the agency deems appropriate.

B. The state ombudsman shall develop procedures for the certification of ombudsmen.

C. No officer, employee or other representative of the office shall investigate any complaint filed with the office unless such person is certified by the office.

**History:** Laws 1989, ch. 208, § 7.

### **28-17-8. Investigation and resolution of complaints.**

The office shall investigate and seek to resolve complaints and concerns communicated by or on behalf of patients, residents or clients of any long-term care facility. The office may initiate investigations based on its observations of the conditions in a long-term care facility. If the office does not investigate a complaint, the complainant shall be notified of the decision not to investigate and the reasons for the decision.

**History:** Laws 1989, ch. 208, § 8.

### **28-17-9. Referrals.**

A. When abuse, neglect or exploitation of a resident of a long-term care facility is witnessed or suspected, the state ombudsman or an ombudsman shall personally discuss the matter with the resident, or, if the resident is unable to communicate informed consent, the resident's surrogate decision-maker, if applicable, and:

- (1) if the resident communicates informed consent to referral and disclosure of identifying information to the long-term care facility, law enforcement or one or more of the entities listed in Subsection B of this section, the state ombudsman or an ombudsman shall assist the resident in reporting the allegation, or the state



ombudsman or an ombudsman shall make the report directly. The method of reporting is at the sole discretion of the resident, though the state ombudsman or an ombudsman may counsel the resident regarding the method of reporting. If the resident is capable of informed consent and chooses not to refer the matter and not to disclose identifying information, the state ombudsman or an ombudsman shall not make a referral or disclose this information;

(2) if the state ombudsman or an ombudsman determines that the resident is not able to communicate informed consent, the state ombudsman or the ombudsman shall consult with the resident's surrogate decision-maker, if any. If the surrogate decision-maker chooses to make a referral and disclose relevant identifying information with respect to the resident, the state ombudsman or an ombudsman shall assist the surrogate decision-maker in reporting the allegation or the state ombudsman or an ombudsman shall make the report directly. The method of reporting is at the sole discretion of the resident's surrogate decision-maker, though the state ombudsman or an ombudsman may counsel the surrogate decision-maker regarding the method of reporting. If the surrogate decision-maker chooses not to refer the matter and not to disclose identifying information, the state ombudsman or an ombudsman shall not make a referral or disclose this information unless the state ombudsman or the ombudsman has reasonable cause to believe that the surrogate decision-maker has taken an action, failed to act or made a decision that may adversely affect the health, safety, welfare or rights of the resident, in which case, the state ombudsman or the ombudsman shall follow the procedure established in Paragraph (3) of this subsection as if the resident did not have a surrogate decision-maker; or

(3) if the state ombudsman or an ombudsman determines that the resident is not able to communicate informed consent and does not have a surrogate decision-maker, an ombudsman, with the consent of the state ombudsman, may make a referral and disclose relevant identifying information about the resident if the state ombudsman or the ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral and has no evidence indicating that the resident would not want a referral to be made. In the event that these conditions are met and the abuse, neglect or exploitation has been personally witnessed by the state ombudsman or an ombudsman, the state ombudsman or the ombudsman shall make the report and the disclosure directly to the long-term care facility, law enforcement or the entities set forth in Subsection B of this section.

B. The following state agencies or boards shall endeavor to give priority to any complaint referred to them by the office:

- (1) the facilities management division of the general services department;
- (2) licensing and certification;
- (3) adult protective services;

- (4) the New Mexico medical board;
- (5) the board of nursing;
- (6) the board of nursing home administrators;
- (7) the board of pharmacy;
- (8) the office of the attorney general; and
- (9) the medical assistance division of the human services department [health care authority department].

C. Any state agency or board that responds to a complaint against a long-term care facility or licensed individual that was referred to the agency by the office shall forward to the office copies of related inspection reports and plans of correction and notice of any citations or sanctions levied against the long-term care facility or the licensed individual.

**History:** Laws 1989, ch. 208, § 9; 1997, ch. 257, § 5; 2017, ch. 81, § 3.

#### **28-17-10. Facility posting of ombudsman information.**

Every long-term care facility shall post in a conspicuous location a notice of the name, address and phone number of the office. The name and phone number of the nearest designated program and that of the ombudsman assigned to that long-term care facility shall be posted, where applicable. A brief description of the services provided by the office and the designated program shall be included in the notice. The form of the notice shall be approved by the office.

**History:** Laws 1989, ch. 208, § 10.

#### **28-17-11. Access to agency records.**

Upon request, the office shall have access to records of any state or local government agency, including copies of all licensing and certification records relating to long-term care facilities as necessary to carry out its responsibilities under the Long-Term Care Ombudsman Act and which records are available to the patient, resident or client, except for records and information unavailable pursuant to Section 7-1-8 NMSA 1978.

**History:** Laws 1989, ch. 208, § 11; 1997, ch. 257, § 6.

#### **28-17-12. Access to long-term care facilities.**

Representatives of the office shall have immediate access to any patient, resident or client for the purpose of effectively carrying out the provisions of the Long-Term Care Ombudsman Act.

**History:** Laws 1989, ch. 208, § 12.

### **28-17-13. Access to records of patients, residents or clients.**

A. In order for the office to carry out its responsibilities, including conducting investigations, under the Long-Term Care Ombudsman Act, the office shall have full and immediate access to readily available medical, personal, financial and other nonmedical records, which include administrative records, policies, procedures or documents that concern, involve or pertain to a resident's diet, comfort, health, safety or welfare, but do not include internal quality assurance and risk management reports, of a patient, resident or client of a long-term care facility that are retained by the facility or the facility's parent corporation or owner. If the records are not readily available, they are to be provided to the office within twenty-four hours of the request. If the patient, resident or client:

(1) has the ability to consent in writing, access may only be obtained by the written consent of the patient, resident or client;

(2) is unable to consent in writing, oral consent may be given;

(3) has a legally appointed surrogate decision-maker authorized to approve review of records, the office shall obtain the permission of the surrogate decision-maker for review of the records, unless any of the following apply:

(a) the existence of the surrogate decision-maker is unknown to the office or the facility;

(b) the surrogate decision-maker cannot be reached within five working days;

(c) access to the records is necessary to investigate or evaluate a complaint;

or

(d) the surrogate decision-maker refuses to give the permission and a representative of the office has reasonable cause to believe that the surrogate decision-maker is not following the wishes of the resident; and

(4) is unable to express written or oral consent and there is no surrogate decision-maker or the notification of the surrogate decision-maker is not applicable for reasons set forth in Paragraph (3) of this subsection or the patient, resident or client is deceased, inspection of records may be made by employees of the office, ombudsman coordinators and by ombudsmen approved by the ombudsman coordinator or the state ombudsman.

B. Copies of records may be reproduced by the office. If investigation of records is sought pursuant to this section, the ombudsman shall upon request produce a statement signed by the ombudsman coordinator or state ombudsman authorizing the ombudsman to review the records. Facilities providing copies of records pursuant to this section may charge the office for the actual copying cost for each page copied.

C. Upon request by the office, a long-term care facility shall provide to the office the name, address and telephone number of the guardian, conservator, attorney-in-fact, legal representative or next-of-kin of any patient, resident or client and a copy of any document granting legal decision-making power over a resident.

D. The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

E. In order to carry out its responsibilities as a health oversight agency, the office shall establish procedures to protect the confidentiality of records obtained pursuant to this section and in accordance with the federal Health Insurance Portability and Accountability Act of 1996 regulations.

**History:** Laws 1989, ch. 208, § 13; 1997, ch. 257, § 7; 2003, ch. 109, § 1; 2017, ch. 81, § 4.

## **28-17-14. Confidentiality of information.**

A. The files and records of the office may be disclosed only for purposes of fulfilling the duties of the office pursuant to Subsection C of Section 28-17-4 NMSA 1978 at the discretion of the state ombudsman or the state ombudsman's designee. All state ombudsman files and records pertaining to clients, patients and residents are confidential and not subject to the provisions of the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. The state ombudsman shall not disclose the identity of any complainant, resident, client or patient about whom the office maintains files or records unless:

(1) the complainant, resident, client or patient or the legal representative of that person consents in writing to the disclosure;

(2) the complainant, resident, client or patient gives oral consent that is documented immediately in writing by a representative of the office;

(3) disclosure is necessary for the provision of ombudsman services to the patient, resident or client and the patient, resident or client is unable to express written or oral consent; or

(4) disclosure is ordered by the court.

B. The director shall have access to the records and files of the office to verify the effectiveness and quality of the program where the identity of any complainant, witness, patient, resident or client is not disclosed.

**History:** Laws 1989, ch. 208, § 14; 1997, ch. 257, § 8; 2003, ch. 109, § 2.

### **28-17-15. Conflict of interest.**

The agency shall ensure that:

A. no individual or a member of the immediate family of an individual involved in the designation of the ombudsman or the designation of a regional or local ombudsman is subject to a conflict of interest;

B. no officer or employee of the office, ombudsman coordinator or representative, or a member of their immediate family, is subject to a conflict of interest; and

C. any ombudsman:

(1) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) does not have an ownership or investment interest, represented by equity, debt or other financial relationship, in a long-term care facility or a long-term care service;

(3) is not employed by, or participating in the management of, a long-term care facility; and

(4) does not receive, or have the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

**History:** Laws 1989, ch. 208, § 15; 1997, ch. 257, § 9.

### **28-17-16. Representatives of the office.**

Any regional or local ombudsman program designated by the office or any individual certified by the office, whether an employee or an unpaid volunteer, shall be treated as a representative of the office.

**History:** Laws 1989, ch. 208, § 16.

### **28-17-17. Immunity from liability.**

No representative of the office shall be liable under state law for the good faith performance of official duties pursuant to the Long-Term Care Ombudsman Act.

**History:** Laws 1989, ch. 208, § 17.

### **28-17-18. Availability of legal counsel.**

The agency shall ensure that:

A. adequate legal counsel is available and is able, without conflict of interest, to:

(1) provide advice and consultation needed to protect the health, safety, welfare and rights to residents; and

(2) assist the ombudsman and representatives of the office in the performance of the official duties of the ombudsman and representatives;

B. representation is provided to any representative of the office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsman or such a representative; and

C. the office pursues administrative, legal and other appropriate remedies on behalf of residents.

**History:** Laws 1989, ch. 208, § 18; 1997, ch. 257, § 10.

### **28-17-19. Interference with the office and retaliation prohibited; penalty; civil; appeal.**

A. No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility.

B. No person shall institute discriminatory, disciplinary or retaliatory action against any resident, employee or other person for filing a complaint, providing information to or otherwise cooperating with a representative of the office.

C. Any person who violates Subsection A of this section shall be subject to a civil penalty of up to five thousand dollars (\$5,000) per occurrence. Any person who violates Subsection B of this section shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) per occurrence. The agency may assess and collect the penalty after notice and an opportunity for hearing, before a hearing officer designated by the agency to hear the matter, upon a determination that a person willfully interfered with the office or discriminated, disciplined or retaliated against an individual who communicated or disclosed information to the office in good faith pursuant to Subsection A or B of this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. However, if the violation is against

a person covered by the Personnel Act [Chapter 10, Article 9 NMSA 1978], the office shall refer the matter to the agency employing the person for disciplinary action.

D. Any party may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1989, ch. 208, § 19; 1997, ch. 257, § 11; 1998, ch. 55, § 39; 1999, ch. 265, § 41.

## **ARTICLE 18**

### **Education of the Handicapped (Repealed)**

#### **28-18-1. Repealed.**

**History:** Laws 1990, ch. 4, § 1; 1993, ch. 34, § 1; 1993, ch. 178, § 1; 1995, ch. 69, § 4; 2011, ch. 166, § 2; repealed by Laws 2019, ch. 48, § 37.

#### **28-18-2. Repealed.**

**History:** Laws 1990, ch. 4, § 2; 1993, ch. 34, § 2; 1993, ch. 178, § 2; repealed by Laws 2019, ch. 48, § 37.

## **ARTICLE 19**

### **Martin Luther King, Jr. Commission**

#### **28-19-1. Martin Luther King, Jr. commission; created; defined; members; terms; compensation.**

A. The "Martin Luther King, Jr. commission" is created. The purpose of the commission is to develop, promote, coordinate and review statewide plans and activities for the annual commemoration and celebration of the birthday of Martin Luther King, Jr. in accordance with Section 12-5-2 NMSA 1978.

B. As used in Sections 1 through 4 of this act [28-19-1 to 28-19-4 NMSA 1978], "commission" means the Martin Luther King, Jr. commission.

C. The commission shall be comprised of thirteen members as follows:

- (1) four members appointed by the governor;
- (2) one member appointed by the president pro tempore of the senate;
- (3) one member appointed by the minority leader of the senate;

- (4) one member appointed by the speaker of the house of representatives;
- (5) one member appointed by the minority leader of the house of representatives;
- (6) the state treasurer or his designee;
- (7) the secretary of state or his designee;
- (8) a native American appointed by the New Mexico office of Indian affairs [Indian affairs department];
- (9) the director of the human rights division of the labor department or his designee; and
- (10) the chairman of the New Mexico state corporation commission [public regulation commission] or his designee.

D. Members of the commission shall be appointed initially for terms as follows: seven members shall be appointed for terms of two years and six members shall be appointed for terms of four years. The initial terms shall be selected by random drawing. After the expiration of the initial terms, all members shall be appointed for four-year terms. The initial commission shall be appointed within forty-five days of the effective date of this act. Vacancies resulting from the death or resignation of a member shall be filled by appointment by the commission chairman for the unexpired portion of the term of the member creating the vacancy. In filling any vacancy, the commission chairman may accept recommendations from the person who originally appointed the member creating the vacancy.

E. The members of the commission shall receive no compensation for their service.

F. The members of the commission shall select a chairman from among the members of the commission.

G. The commission shall appoint an executive director to coordinate all activities on the commission's behalf.

**History:** Laws 1991, ch. 252, § 1.

## **28-19-2. Martin Luther King, Jr. fund; created.**

A. There is created within the state treasury for the commission a fund that shall be designated as the "Martin Luther King, Jr. fund" that shall consist of appropriations, endowments and bequests.



B. Money from the fund shall be disbursed upon warrant of the secretary of finance and administration pursuant to vouchers submitted by the executive director of the commission for the purpose of carrying out the provisions of this act [28-19-1 to 28-19-4 NMSA 1978].

**History:** Laws 1991, ch. 252, § 2.

### **28-19-3. Duties of the commission.**

The duties and powers of the commission shall include, but not be limited to, the following:

A. to develop a plan for the commemoration and celebration of the official legal holiday honoring Martin Luther King, Jr.;

B. to develop and submit to the governor and the legislature recommendations for specific commemorative activities to be undertaken by the state for the Martin Luther King, Jr. holiday;

C. to coordinate state plans and activities with federal plans and activities for the commemoration and celebration of Martin Luther King, Jr.'s birthday;

D. to develop, with other agencies of the state, an interpretive program that explores the historical, social, political and cultural themes associated with the life and works of Martin Luther King, Jr.;

E. to develop and acquire interpretive materials and publications on the significance of Martin Luther King, Jr.'s work and develop a commemorative program for state employees, school children and the general public;

F. to create a process to facilitate the implementation of the master plan project and other recommendations made by the commission;

G. to prepare and provide to the general public advice, assistance and information on the Martin Luther King, Jr. holiday activities recommended by the commission;

H. to submit other studies, reports and recommendations to the governor and the legislature as are necessary with respect to activities for the continued commemoration and celebration of Martin Luther King, Jr.; and

I. to accept endowments and bequests for the Martin Luther King, Jr. fund.

**History:** Laws 1991, ch. 252, § 3.

### **28-19-4. Commission report.**

The commission shall make an initial report to the governor and the legislature of its findings, conclusions, proposals and recommendations for the observance of the Martin Luther King, Jr. holiday within ninety days of the effective date of this act. The commission shall submit an annual report of its activities to the legislature no later than December 1 of each year. The first annual report shall be submitted no later than December 1, 1989.

**History:** Laws 1991, ch. 252, § 4.

## **ARTICLE 20**

### **Nursing Mothers**

#### **28-20-1. [Right to breastfeed.]**

A mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.

**History:** Laws 1999, ch. 117, § 1.

#### **28-20-2. Use of a breast pump in the workplace.**

A. In order to foster the ability of a nursing mother who is an employee to use a breast pump in the workplace, an employer, including the state and its political subdivisions, shall provide:

(1) a space for using the breast pump that is:

- (a) clean and private;
- (b) near the employee's workspace; and
- (c) not a bathroom; and

(2) flexible break times.

B. An employer shall not be liable for:

- (1) storage or refrigeration of breast milk;
- (2) payment for a nursing mother's break time in addition to established employee breaks; or
- (3) payment of overtime while a nursing mother is using a breast pump.

**History:** Laws 2007, ch. 18, § 1.

# **ARTICLE 21**

## **African American Affairs**

### **28-21-1. Short title.**

This act [28-21-1 to 28-21-4 NMSA 1978] may be cited as the "African American Affairs Act".

**History:** Laws 1999, ch. 163, § 1.

### **28-21-2. Definitions.**

As used in the African American Affairs Act:

- A. "fund" means the office on African American affairs fund; and
- B. "office" means the office on African American affairs.

**History:** Laws 1999, ch. 163, § 2.

### **28-21-3. Office created; powers and duties.**

A. The "office on African American affairs" is created and attached administratively to the human services department [health care authority department].

B. The governor shall appoint a director, who shall work at the pleasure of the governor. The director shall employ other necessary employees, who shall be subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. The office, in cooperation with the Martin Luther King, Jr. commission, shall:

(1) study issues important to African Americans, including history and culture; education, scholarships and other financial assistance for education and career development; economic and social problems and issues such as jobs, housing, discrimination, family support, youth idleness and crime; and health care, maternal and child health, teen pregnancy, access and other health issues;

(2) secure recognition of African Americans' accomplishments and contributions to New Mexico and the United States;

(3) cooperate with and assist public and private entities dealing with issues important to African Americans;

(4) direct the operations of the office;

(5) where appropriate, conduct periodic conferences throughout the state to inform African Americans of the opportunities available to them through state and private sources, to encourage them to share their history and culture with other New Mexicans and participate in the social and political processes of their communities and to learn from conference participants their needs and problems; and

(6) otherwise act as an advocate for African American citizens of New Mexico.

D. Additionally, the office shall:

(1) act as a clearinghouse for information important to the African American community;

(2) function as the coordinating office for all services and activities of state agencies and programs pertaining to African Americans;

(3) encourage funding and implementation of training programs and other opportunities for African Americans;

(4) promote and develop programs about community resources designed to meet the needs of African Americans;

(5) prepare and submit a budget for the office; and

(6) publish an annual report on the activities and services of the office.

E. The office may:

(1) adopt and promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the duties of the office;

(2) accept gifts, grants, donations, bequests and devises from any source to be used to carry out its duties; and

(3) enter into contracts.

**History:** Laws 1999, ch. 163, § 3.

#### **28-21-4. Fund created; administration.**

The "office on African American affairs fund" is created in the state treasury. The fund shall consist of gifts, grants, donations and bequests. Money in the fund at the end of any fiscal year shall not revert. The fund shall be administered by the office, and disbursements from the fund shall be made on warrant drawn by the secretary of

finance and administration pursuant to vouchers signed by the director of the office or his authorized representative.

**History:** Laws 1999, ch. 163, § 4.

## **ARTICLE 22**

### **Religious Freedom Restoration**

#### **28-22-1. Short title.**

Sections 1 through 5 [28-22-1 to 28-22-5 NMSA 1978] of this act may be cited as the "New Mexico Religious Freedom Restoration Act".

**History:** Laws 2000 (2nd S.S.), ch. 17, § 1.

#### **28-22-2. Definitions.**

As used in the New Mexico Religious Freedom Restoration Act:

A. "free exercise of religion" means an act or a refusal to act that is substantially motivated by religious belief; and

B. "government agency" means the state or any of its political subdivisions, institutions, departments, agencies, commissions, committees, boards, councils, bureaus or authorities.

**History:** Laws 2000 (2nd S.S.), ch. 17, § 2.

#### **28-22-3. Religious freedom protected; exceptions.**

A government agency shall not restrict a person's free exercise of religion unless:

A. the restriction is in the form of a rule of general applicability and does not directly discriminate against religion or among religions; and

B. the application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

**History:** Laws 2000 (2nd S.S.), ch. 17, § 3.

#### **28-22-4. Private remedies.**

A. A person whose free exercise of religion has been restricted by a violation of the New Mexico Religious Freedom Restoration Act may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government agency, including:

(1) injunctive or declaratory relief against a government agency that violates or proposes to violate the provisions of the New Mexico Religious Freedom Restoration Act; and

(2) damages pursuant to the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], reasonable attorney fees and costs.

B. Immunity from liability of the government agency and its employees is waived for an action brought pursuant to this section.

**History:** Laws 2000 (2nd S.S.), ch. 17, § 4.

### **28-22-5. Construction of act.**

Nothing in the New Mexico Religious Freedom Restoration Act authorizes a government agency to burden a person's free exercise of religion. The protection of the free exercise of religion granted in that act is in addition to the protections granted by federal law and the state and federal constitutions. The New Mexico Religious Freedom Restoration Act does not affect the grant of benefits or tax exemptions to religious organizations nor does it impair any other exemptions granted by law.

**History:** Laws 2000 (2nd S.S.), ch. 17, § 5.

## **ARTICLE 23**

### **Fair Pay for Women**

#### **28-23-1. Short title.**

This act [28-23-1 to 28-23-6 NMSA 1978] may be cited as the "Fair Pay for Women Act".

**History:** Laws 2013, ch. 12, § 1.

#### **28-23-2. Definitions.**

As used in the Fair Pay for Women Act:

A. "commission" means the human rights commission;

B. "director" means the chief of the human rights bureau of the labor relations division of the workforce solutions department;

C. "employ" means suffer or permit to work;

D. "employee" means any individual employed by an employer;

E. "employer" means a person employing four or more employees and any person acting for an employer;

F. "unpaid wage" means the difference between the wages paid to the employee and the wages that would have been paid to the employee had the discrimination not occurred; and

G. "wage" means compensation for performance of services by an employee for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.

**History:** Laws 2013, ch. 12, § 2.

### **28-23-3. Prohibition on paying employees less for same work.**

A. No employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate that the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility and that are performed under similar working conditions, except where the payment is made pursuant to a:

- (1) seniority system;
- (2) merit system; or
- (3) system that measures earnings by quantity or quality of production.

B. An employer shall not reduce the wage of an employee to comply with this section.

C. No agreement between an employer and an employee for a specific wage in violation of the Fair Pay for Women Act shall prevent the employee from raising a claim based on a violation of the Fair Pay for Women Act.

**History:** Laws 2013, ch. 12, § 3.

### **28-23-4. Grievance procedure.**

A. A person claiming to be aggrieved by an unlawful discriminatory practice in violation of the Fair Pay for Women Act may:

(1) maintain an action to establish liability and recover damages and injunctive relief in any court of competent jurisdiction by any one or more employees on behalf of the employee or employees or on behalf of other employees similarly situated; or

(2) seek relief under the Human Rights Act [Chapter 28, Article 1 NMSA 1978] pursuant to the process set out in Sections 28-1-10 through 28-1-13 NMSA 1978.

B. The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

C. The court in any action brought under this section may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

D. An action arising under the Fair Pay for Women Act shall be brought no later than two years from the last date of the employee's employment.

E. A person claiming to be aggrieved by an unlawful discriminatory practice in violation of the Fair Pay for Women Act need not exhaust state administrative remedies.

F. The initiation of an administrative process under the Human Rights Act pursuant to the process set out in Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the statute of limitations for initiating a claim under the Fair Pay for Women Act.

**History:** Laws 2013, ch. 12, § 4.

### **28-23-5. Retaliation prohibited.**

It is a violation of the Fair Pay for Women Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against an employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Fair Pay for Women Act or assisting another person to do so, or for informing another person about employment rights or other rights provided by law.

**History:** Laws 2013, ch. 12, § 5.

### **28-23-6. Enforcement; penalties; remedies.**



A. An employer who violates a provision of the Fair Pay for Women Act shall be liable to the affected employee for damages and equitable relief, including employment, reinstatement and promotion. Damages shall be calculated on the basis of:

- (1) the affected employee's unpaid wages and the damages from retaliation;
- (2) all other actual damages; and
- (3) treble damages.

B. The court may, in its sound discretion, not award treble damages or award any amount thereof not to exceed the amount specified in this section if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that the employer's act or omission was not a violation of the Fair Pay for Women Act.

C. An employer who violates a provision of the Fair Pay for Women Act may also be liable to the employee for punitive damages.

D. Recovery of unpaid wages is limited to six years prior to the date of the last violation of the Fair Pay for Women Act.

**History:** Laws 2013, ch. 12, § 6.

## **ARTICLE 24**

### **Gender-Free Restrooms**

#### **28-24-1. Short title.**

This act [28-24-1 to 28-24-3 NMSA 1978] may be cited as the "Gender-Free Restrooms Act".

**History:** Laws 2019, ch. 109, § 1.

#### **28-24-2. Definitions.**

As used in the Gender-Free Restrooms Act:

A. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

B. "gender-neutral signage" means a sign that indicates a restroom without preference or distinction to a specific gender identity or sex;

C. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private; and

D. "single-user toilet facility" means a single- occupancy restroom with an outer door that can be locked by the occupant.

**History:** Laws 2019, ch. 109, § 2.

### **28-24-3. Public facility availability.**

A. A single-user toilet facility that exists or is constructed on or after July 1, 2019 in a public accommodation shall be:

- (1) made available to any person regardless of gender identity or sex;
- (2) designated for use by not more than one occupant at a time or for family or assisted use; and
- (3) identified with gender-neutral signage.

B. Nothing in this section shall be construed to require construction of a new, single-user toilet facility if one does not exist in a public accommodation.

**History:** Laws 2019, ch. 109, § 3.