

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Business Meeting

December 2, 2009

PRESENT	ABSENT
Pedro G. Rael, Chairman	
Donald E. Holliday, Vice-Chairman	
David R. Medina, Member	
Ron Gentry, Member	
Georgia Otero-Kirkham, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

- 1) The meeting was called to order by Chairman Pedro Rael at 5:00 P.M.
- 2) Chairman Pedro Rael led the Pledge of Allegiance.

3) Approval of Agenda

County Manager Eric Zamora requested that Action Item 7(a) Consideration of Agreement with Habitat for Humanity and 7(b) Consideration of "Administration Building" Architect Contract to be tabled.

Chairman Rael requested that Action Item 9(1), Consideration of Resolution 2009__, donation of Tome de Dominquez Community Center to Tome Land Grant be moved to follow Public Comments as consideration for several people attending the meeting for this item.

Commissioner Gentry expressed concerns since this is an action item something this important should be heard at a regular public hearing with all interested parties.

Chairman Rael's response was the people interested in this item were present, it's before the commission now and it's properly noted on the agenda as an action item. We have the material, we have the resolution and he feels the commission should consider this. I'm asking the commission if this request should be honored or it should be left where it's at.

Commissioner Medina stated he didn't have a problem with the request, but asked counsel what the legal limits on this issue were.

County Attorney Adren Nance stated the commission can discuss the purchase or the disposition of real property in Executive Session if they choose to do so. The commission is not required to but they can do so since it is on the agenda and totally up to the commission.

Commissioner Kirkham recommend that items (8) Executive Session and (9) Action Items- Consideration of Resolution 2009- , donation of Tome de Dominquez Community Center to Tome Land Grant be placed after item (5) Public Comments and item (6) Non Action Items.

County Manager Eric Zamora said Representative Andrew Barreras was present to speak on this item and had a prior commitment at 6:00 P.M. and proposed that these items be placed after item (5) Public Comments.

Chairman Rael asked if any of the commissioners had comments or objections on this new proposal and asked for a motion to move items (8) and (9) to right after Public Comments.

Commissioner Kirkham motioned for approval of the agenda as amended. Seconded by Commissioner Holliday. Motion carried unanimously.

4) Approval of Minutes

November 18, 2009 Regular Business Meeting.

Commissioner Medina moved for approval of the minutes. Seconded by Commissioner Holliday. Motion carried unanimously.

5) PUBLIC COMMENTS – At the Discretion of the Chair. (For Information Only- limited to two minutes per person on subjects not on this published agenda).

Bob Gostischa Meadow Lake resident expressed concerns on the defeat on the Gross Receipt Tax which leaves him with mixed feelings. Even though he was in favor of the outcome, he's sorry that the needed funding will not be there for the correctional facility. Let's do it right the next time around and get it passed for the greater good of all concerned

Clarke Metcalf's concern was if the public was going to be allowed to speak on the issue of the Tome Land Grant issue after Executive Session and also concerned on the subject of public input.

Sue Moran expressed concerns on the proposed hospital.

Mary Wood stated she was speaking for the concerned citizens of Valencia County. The local newspaper reflected that the consideration of the resolution for the Tome Community Center to be donated to the Tome Land Grant would be an agenda highlight and now as to no surprise there would be no agenda highlight because the highlight issue is now to be heard in a secret meeting under the title of "Executive Session." She finds it most difficult to understand how at least three of the commissioners operate these meetings and suggest that they review their oath of office and make an attempt to comply with it.

Mike Wood said after he saw what was going on; he couldn't reserve his remarks and keep them to himself. He would like to speak without inflicting any damage to any one particular person. Over six months he started writing letters to one of the commissioners asking consideration be given to the Tome Community Center to make it advertised as a center for all the people by placing a phone number on there so that the taxpayers can all use it. Then he attends this meeting and reads in the paper and it's all very disturbing to him because the person he had talked to and sent letters to, that person even assured him that she would help him to get that, but she didn't think she could do it because she went to school with most of the people in Tome and it would be hard to get them to change their minds to make it for all the public. So Mr. Wood suggested that they make it a public club. So apparently someone has taken his suggestion and that's what they're striving to do now.

Jim Lane stated he doesn't understand what's going on, as there's an issue that is going to be discussed at tonight's meeting and is being told that the public can't comment on it even during Public Comments, which seems to be out of due process.

8) EXECUTIVE SESSION- Pursuant to Section 10-15-1 NMSA 1978, the following matters may be discussed in closed session: a.) limited personnel matters; Deputy Warden Detention Center b). Pending or threatened litigation and c.) Other specific limited topics that are allowed or authorized under the stated statute.

Commissioner Kirkham motioned to go into Executive Session to discuss the donation of the Tome de Dominquez Community Center to the Tome Land Grant. Seconded by Commissioner Holliday. Roll call. Commissioner Medina voted yes. Commissioner Holliday voted yes. Commissioner Gentry voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Motion carried unanimously.

Commissioner Holliday motioned to go back into Regular Session. Seconded by Commissioner Medina. Motion carried unanimously.

County Attorney Adren Nance stated the matter discussed in Executive Session was limited to the disposition of the county's community center and no final action was taken.

Chairman Rael verified that the merits were not discussed; only the procedure was up for discussion and how the commission was going to do that. Chairman Rael asked counsel if that was correct. Counsel Adren Nance stated "that is correct. "

Commissioner Holliday moved to approve the summary as stated by counsel. Seconded by Commissioner Kirkham. Roll call. Commissioner Medina voted yes. Commissioner Holliday voted yes. Commissioner Gentry voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Motion carried unanimously.

Chairman Rael stated what the commission decided to do in Executive Session and asked the commission to verify that they not discuss the merits of the transfer of the Tome Community Center to the town of Tome Land Grant Merced in Executive Session. The commission decided to come out and discuss this issue in open session and then open it up to Public Comment to allow the public to give the commission their input on whether they agree or disagree.

9) ACTION ITEM(S) ON EXECUTIVE SESSION DISCUSSION (Informational Only)

1) Consideration of Resolution 2009-55, Donation of Tome de Dominquez Community Center to Tome Land Grant.

State Representative Andrew Barreras stated he is in favor of the transfer. When this was brought up with the land grant committee which he serves as a member in Santa Fe, Representative Tomas Garcia brought up the fact that now that Tome was voted in as the legal entity, just like the Town of Belen or the Village of Los Lunas they do stand on their own and are being recognized by all state organizations. He feels this is a good thing, it's still a community center, people are still going to be able to use it and it's still for the general public and he is in strong favor of this.

Commissioner Kirkham stated when Kandy Cordova was in office she started the instrument of bringing in the money for the construction of the center and Representative Barreras came in and finally completed the first phase and then brought in the money for the second phase. Representative Barreras has been on this since the ground floor.

Commissioner Medina asked did the schools give this property to the county or did they lease, were there any conditions?

Commissioner Kirkham said the schools gave it to the county and she and Commissioner Gentry were present at the time it was signed over to the county.

Commissioner Gentry asked Representative Barreras if it's his feeling that the Legislature in the appropriation process, would put this community center into a land grant status. Representative Barreras response was I don't think so; this just came about at one of the land grant meetings when Representative Tomas Garcia pointed out that it could be. I don't think anyone thought about it up to that point.

Commissioner Gentry said he had some concerns about the future not just the present. We all have a feeling that it's great to get something and own it, control it and set the rules but will the Legislature have the ability to provide funds; to keep it up, to repair it, to provide equipment and things to keep it going.

Representative Barreras stated as a representative of Valencia County he tries to address any concerns that are brought to him. He just tries to serve the public the best way he can. He spoke to County Manager Eric Zamora and he stated the center is bringing in quite a bit of money to sustain itself.

Del Chavez of 3 Sedillo Lane said the Tome Community Center is on historic property. It is property that needs to be taken care of and if you don't take care of this area it is going to hurt Valencia County. Santa Fe is to New Mexico what Tome is to Valencia County, we need to preserve it. The people of Tome will take care of the community center. By choosing to turn it over to the Tome Land Grant, you are giving it to people who are caretakers, you are giving it to people who are going to take it to the next level not just for the people of Tome, but all of Valencia County. He asks that the commission vote to turn this over to the Tome Land Grant and they will make the county proud. There is funding in federal and state to help a historical community to come together.

Fabian Padilla president of the Historic Tome Adelino Neighborhood Association is in favor of the transfer. He wanted to make a correction to what was stated earlier, they are not a secret club. This community center has been rented by entities throughout the county. He knows because he's the person that opens, closes, turns off the alarm, makes sure everything is clean, takes the inventory on the tables and chairs to make sure nothing has been taken. For someone to say this is a private club and they are not allowing other people to use this community center is false and he takes issue with that. They have records of all the people that have rented the center. Tome was once the county seat; it is one of the oldest communities along the valley and was the last community to acquire a community center. They did this on their own; they went to the legislature and petitioned for the money through Kandy Cordova and Andrew Barreras. They received the money to

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build the buildings and had the land transferred. They did all the legwork and take pride in what they did. They are very active with the community center and make sure the grounds are kept up.

Commissioner Gentry asked Mr. Padilla to provide to the commission the use policy; he just wants to make sure the policy is going to be inclusive for the residents to use. Mr. Padilla stated the use policy is the county policy. If the center gets turned over naturally they will set up a new policy.

Chairman Rael said it appears to him as a political subdivision and the Town of Tome Land Grant Merced would be bound by the same rules and regulations which are very similar ones of the county, so he's satisfied that the policies would have to follow the same thing that the county has in place now. That's a question of legality and not what we want or don't want. The law is written in the books already and we're bound to follow them.

Bob Gostischa stated he was not in opposition and asked what the liability was, is this totally funded from funds that came from Santa Fe and county money was not used? He would like to make sure that the center will remain accessible to the public.

Commissioner Kirkham stated this request will go to Santa Fe for approval and they will let the commission know whether they can or cannot do this. Santa Fe has the last word. This is an asset of the county.

Chairman Rael said that as a political subdivision the Town of Tome Land Grant Merced is required to follow the same rules of law as any other political subdivision. As for the legal consequences that is not something that needs to be considered because the county is allowed to give to another political subdivision any land that it owns. The Town of Tome Land Grant Merced has no taxing authority.

State Representative Miguel Garcia of Los Rancho de Atrisco from the South Valley, Bernalillo County and co-chairman of the Legislature Land Grant Committee gave a brief overview on the history on land grants and the importance of the committee in regards to preserving the common land which are ancestral land holdings. This is an historical event as Valencia County will be the first county to do a transfer to a land grant. He stated his support for the people of the Tome Land Grant.

Commissioner Gentry asked Representative Garcia if the transfer is approved would the Tome Land Grant Merced have zoning authority.

Representative Garcia's response was only if they proceed with developing a master plan submitted to the Department of Finance and Administration that has a review process with the local county where the land grant sets.

Commissioner Gentry said that would give them zoning authority only on the properties that the land grant holds deed to. So if the Tome Land Grant Merced doesn't own property, doesn't have zoning authority they're not going to bother anybody. Representative Garcia said "that's correct."

Mike Wood commended the people of Tome. He has nothing against them, nothing. His choice to retire was right here, he loves the people. He's a white person, was raised in Winslow, Arizona mostly with Indians and Hispanic people and he's not a racist of any sort but his concern goes back to six months ago. He wants to emphasize to the people of Tome the only thing he asks is that they put a sign at the Tome Community Center with a phone number to reflect that it can be used by all the people. So they can call and get all the information on how to use the facility. He handed that directly to the commissioner that has that particular territory and was given the run around and now we're into this particular issue and it doesn't surprise him at all. So now what he would like to do the best he can is to separate some fact from fiction, if the commission would allow him to.

Chairman Rael reminded Mr. Wood the question before the commission is whether or not the transfer of the Tome Community Center should be made by the county to the Town of Tome Land Grant Merced. That's the question and please direct your comments to that specific question and also state your reasons why you oppose that transfer.

Mr. Wood said he is not for it or against it, but he is totally against discrimination and that's why he wanted to separate fact from fiction and explain to the commission why he would

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go along with it or against it. Is it permissible for him to expound upon? Chairman Rael said "Mr. Wood please proceed, the question is whether or not this transfer should or should not be allowed by this county commission." Mr. Wood's response was Mr. Chairman I can't give you a straight yes or no answer, I have to give an explanation.

Commissioner Holliday said "then sit down if you can't give an answer Mr. Wood."

Mr. Woods said I have to give an explanation, can I be allowed to give an explanation as the other's had done. Chairman Rael said please proceed Mr. Wood so that we can get this out of the way. Mr. Wood continued and said Mr. Holliday interrupted you, I think he was trying to talk to me. Chairman Rael said Mr. Wood you are starting to become out of order here. Just go ahead and if you have comments, please make your comments. You know what the issues are, you're an intelligent man, please address the issue at hand.

Mr. Woods went on to say Mr. Barreras indicated that he is for all the people and he would work with the Tome people to get this grant. He respects that and feels that It's a good thing but in saying he's for all people, when you separate fact from fiction, do you want to believe that, do you really want to believe that because 76% of the people voted for a hospital, where has it gone on that issue. Chairman Rael said Mr. Wood you are out of order that has nothing to do with the Tome Land Grant. Mr. Wood said Mr. Chairman, if you fill in that order I'll sit down, if that's what you want me to do. Chairman Rael said if you're going to address the issue, speak on the specific issue whether this transfer of land should be done by this county commission or it should not be done Mr. Wood. I certainly don't want to be out of order, I want to be a gentleman with you and expect the same. The bottom line of all this is that he is not against what you people want to do, the facility is beautiful and as long as you keep it open to all the people, put a sign up that has a phone number, people can call that number so they can use it and pay the rental fee. He has no other problems.

Manuel Garcia de Diego, Professor of history at the University of New Mexico spoke primarily as the member of the board of trustees of the Cañon de Carnue Land Grant. He gave similarities and some historical information between this land grant and the Town of Tome. At the present time they have entered into conversations with the Town of Tome Land Grant to establish a Joint Powers Agreement. He commended the Town of Tome for their accomplishments.

President of the Tome Land Grant Lawrence Sanchez gave a brief background on the history of the Tome Land Grant. Mr. Sanchez stated that the entire board is educated and have college degrees and management is the least of his worries. They are well qualified to manage the Tome Community Center. The center is not only a gathering place but an educational center for the Tome Land Grant Association. The Tome Adelino Association offers five scholarships every year to people from the area to attend college. He asked the commission for their vote for the transfer of the center.

Commissioner Kirkam stated her hope is that if the center is transferred that the preservation of the history of not only of Tome but the entire county be continued.

Jim Lane thanked the commission for deciding to follow open discussion and process as it's important for community members to hear this discussion. He is very impressed by the pride the community of Tome has and wants' to keep it as one of the original New Mexico communities. He was concerned about the advantages and disadvantages if the transfer was confirmed and asked for clarification. He is adamantly in approval of the transfer.

Commissioner Kirkham said if the ownership of the community center is transferred, the Tome Land Grant Merced would be totally responsible for the upkeep, maintenance and whatever else is required.

Commissioner Gentry said it's very simple, if the county gives it to them fee simple, sign it over and the county has no financial responsibility. It wouldn't be the county's property and the county won't have any say on anything. This would be a positive cash economic deal for the county.

Chairman Rael stated if the county turns over the property fee simple, which means lock, stock and barrel, the county has no further liability exposure to them. Whatever happens out there is strictly their liability and they have to take care of it.

Rita Padilla Gutierrez secretary for the Town of Tome Land Grant Association introduced the board. She said the intent of the board is to preserve the history of the Town of Tome. The Tome Land Grant Association meets every three months and is advertised in the local News-Bulletin. There is a board of trustees that will review any problems that may come up. They're a whole different kind of land grant now. They may not be land based like they use to be since they lost the 47,000 acres of land but they've reconstituted with some land and getting back any common land she hopes it would bring the community back because there are endless possibilities in terms of what the association can do.

Commissioner Holliday asked how much land acreage is there or is it just the building.

Ms. Padilla Gutierrez response was four acres with the two buildings.

Commissioner Gentry asked if the association had bylaws, can they be looked at by the commission and the only real property that the Town of Tome Land Grant would own and oversee and have zoning rights to it would be the four acres.

Ms. Padilla Gutierrez said "yes and the acreage involved are four acres plus two ½ acre lots up in the Valley Improvement section of the land grant."

Commissioner Gentry stated since all of this has happened the grant has been a grant in name only since the assets had been sold. So basically their organization is an historical organization of that community which wants to preserve the history and if the commission approves the transfer that will be your assets and that will be your management and that's what your by-laws will oversee, they're not going to oversee all of Adelino, all of Adelino clear down to Casa Colorada. Ms. Padilla Gutierrez said "You're exactly correct."

Commissioner Medina said in the past there have been some issues with community centers in regards to the cost of insurance, cost of rent and so forth. Your organization is going to set a guideline that if you don't want to charge somebody, you don't have to charge.

Ms. Padilla Gutierrez said that would be a fair to say, going before the Board of Trustee's and if they felt given the circumstances, I suppose they could make that kind of decision.

Commissioner Medina stated that in the long run the center would benefit the whole community and the county itself.

Sue Moran said she had extra concerns with an experience she had going to the Tome Center. There was a notice in paper about a meeting being held at the Tome Center. Ms. Moran and a few other people went in to attend the meeting and they were told it was executive session and they were not allowed and they locked the doors behind them and pulled the shades down. The meeting wasn't even called to order. They need to have an understanding of the Open Meetings Act and she would also like to see a set fee schedule implemented for the rental of the building.

Charlie Sanchez Jr. former president of the Tome Adelino Historic Neighborhood Association stated during his tenure period as president, the association drafted up the original language that was presented to the state legislature for the capital outlay funds to construct the building. They worked very closely with State Representative Kandy Cordova and State Senator Michael Sanchez on this issue and it passed. He is in full support of the transfer of title to the Town of Tome Land Grant as it's a wonderful endeavor for the community, it brings a lot of pride to Valencia County and it brings in tourism dollars.

Bob Gostischa said he has not heard one single person speak against this and there's not one single reason why it should not be turned over to the Tome Land Grant Association.

Peter Lupsha, resident of Tome, stated he is a gringo and an outsider and through his observation of the Tome Neighborhood Association and the members of the Tome Land Grant for the last five years, he has witnessed that they are a bundle of energy in which they are working in the best interest of the neighborhood and the area. They are competent, able and will follow through on what they say. They are true people. It would be a grand and historic jester for the members of the commission to decide that the Tome Land Grant is a competent unbiased organization and allows gringos to do everything that

Hispanics do with no complaints and lots of help when their good neighbors. Mr. Lupsha hopes the commission passes this resolution.

Doroteo Baca resident of La Constancia expressed his support of the resolution.

Arturo Archuleta, Executive Director of the Mexicano Land Education and Conservation Trust is in full support of the transfer and offered information on land grants that would be helpful to the commission in making their decision on the transfer on the Tome Community Center.

Pam McKenzie resident of Tome strongly supports the transfer and supports what the land grant has been doing in terms of maintaining this shelter, taking care of something that is such a vital concern to the community. We should be truly grateful that they are willing to take it on and remove the burden from the county.

Chairman Rael said the commission has listened to all the comments and it was agreed that this would be voted on in two weeks at the next meeting but since there is no opposition would anyone on the commission be willing to reconsider this? I think all our questions are answered.

Commissioner Holliday said he doesn't know why this should be delayed for two weeks; he feels the commission should vote on it now. He's in favor on voting on it now. It still has to go to DFA (Department of Finance Administration); they still have the last say.

Commissioner Gentry said this hearing has been very enlightening, very encouraging and very productive. The only reason why he suggests that the commission discuss doing this in two weeks is so it leaves the commission a perception to make sure there's not a cloud on the vote, which he doubts the vote will change in two weeks. The commission needs to do this right. This is Commissioner Gentry's concern and not the issue.

Commissioner Medina stated the public knows where he stands on this issue and he's the one that asked the commission to listen to this issue tonight. Let's absorb it and let's acknowledge what's going on. He asks the commission to wait a couple of weeks to give the people the opportunity to voice their opinions to him and that's the way he's always done it. If it comes to a vote tonight, he's ready to vote and if not he asks the commission to wait a couple of weeks.

Chairman Rael said the only reason why he brought it up was because after all the public input, which was tremendous, he was satisfied that all the questions were answered; he was satisfied with all the testimonies, comments and concerns.

Commissioner Kirkham stated she wants this to be historical and honorable and as Mr. Gostischa said she doesn't think they heard anybody that was against it. She has no problem voting on this tonight if they need to vote but in the same case she doesn't have any problem waiting for two weeks. Her vote isn't going to change. Everyone knows how she feels about this, she's proud of her constituents that they have done this work and have come forward with a commitment to the county.

Chairman Rael stated because this matter is subject to state approval anyway, if it passes in two weeks, it still has to go to the state for approval. There's plenty of time to check if the commission has missed something, but he doesn't see that they did. Chairman Rael made a motion to approve the transfer of the property to begin the process. Seconded by Commissioner Kirkham.

Commissioner Gentry said it is to the benefit of the Tome Group to have this go through with no clouds and no questions. He believes this will cloud it in some manner. He asked for some bylaws that he can look at, that way he can tell people he looked at the bylaws and they looked good and he can verify the information he heard. He really believes they should wait in due diligence and not rush this through.

Commissioner Holliday said he heard everything here in two hours and it's a positive to him. He doesn't feel they need to wait for two weeks to get the same outcome.

Chairman Rael asked all in favor of transferring the Tome Community Center to the Tome Land Grant Merced, please say yes. Motion carried 4-1. Commissioner Gentry voted no.

Commissioner Gentry said he was unsure of the motion and thought this vote was to see if the commission voted tonight instead of two weeks.

Chairman Rael said this vote was to approve the transfer. Commissioner Gentry said if this is to approve the transfer of the property, he wants to make it clear that he's in favor of it. Motion carried 5-0.

County Clerk Sally Perea announced Resolution 2009-55. (SEE EXHIBIT A)

6) NON-ACTION ITEMS:

a) DISCUSSION OF Indigent Fund- Barbara Baker

Ms. Baker reported on her research in considering sorted uses for the Indigent Fund which was requested by the commission. After making several phone calls and being bounced around from one person to another, she came to the conclusion that it would be a benefit to the county to contract a temporary healthcare indigent expert. The indigent fund can be utilized for several things related to healthcare. This would include mammogram screening, which was a request from Commissioner Kirkham and Ms. Baker would like to see detention be a part of the indigent.

Chairman Rael stated the county is receiving about \$1.2 million a year at the present time; the balance is now \$1.8 million and asked for the amount that the county spends per year. Ms. Baker stated "about \$900,000 a year maybe a little more."

Chairman Rael asked is the idea here to reduce this fund so that the county has nothing; is that what we're trying to do?

Ms. Baker response was, if there's money left over that money goes into the reserves over at the Treasurer's Office and that's where the money is building up. She has not taken money out of the reserves for the past two or three years. There is \$1.7 million in the reserves.

Chairman Rael asked if the county needed to touch the reserves they could if needed, if the county had a high year with a lot of medical expenses.

Ms. Baker said "yes" with approval from the Financial DFA (Department of Finance Administration).

Chairman Rael asked counsel if whether or not the state in fact can touch this money or not?

County Attorney Adren Nance stated statute 27-5 7.1 says what it can be used for and he hasn't seen a legal reason why they would take it back. That doesn't mean they can't change the law.

Commissioner Medina said he was concerned with the state having the ability to change the law. Chairman Rael said he found it hard to believe that the legislature would do that. He also asked Ms. Baker to check if EMT's (Emergency Medical Technicians) could be hired on contract.

Ms. Baker stated virtually anyone that is incarcerated cannot go out and make a living, so these people are indigent. If the county hires an EMT (Emergency Medical Technician) or an EMS (Emergency Medical Service), they don't just provide services for indigent people, they also provide services for the entire public and that's where the problem lies. If they provide services to people who aren't indigent, they can't be paid out of the indigent fund. That's her understanding.

Commissioner Kirkham said she would like for Ms. Baker to check if an employee can be paid versus paying a contractor, from the indigent fund.

Commissioner Kirkham agrees that hiring someone short contracted to assist the county with answering the questions on uses of the indigent fund would be the route the county needs to take. Ms. Baker said there is money in the fund to hire someone out for administration services.

Commissioner Medina asked Ms. Baker to prepare a proposal or recommendation for the commission. She should recommend what she felt would work, what the cost would be and what the benefits would be, and then present it to the commission. (SEE EXHIBIT B)

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b) Reports from Boards, Commissions & Committees - County Commission
None.

7) ACTION ITEMS:

a) Consideration of Agreement with Habitat for Humanity-Kenneth Griego
Tabled.

b) Consideration of "Administration Building" Architect Contract-Eric Zamora
Tabled.

c) Consideration of 2008-2009 Legislative Appropriation Grant for Valencia Road County & Belen Quiet Zones and Safety Signals at the Intersection of Elaine - Lina Benavidez

County Manager Eric Zamora requested approval of the 2008-2009 Legislative Appropriation Grant for Valencia County & Belen Quiet Zones, Molina Road, in the amount of \$115,000 and safety signals at the intersection of Elaine Road in the amount of \$114,000.

Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (SEE EXHIBIT C).

d) Consideration of Program Work Plan Cooperative Wildlife Services - Eric Zamora

Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (SEE EXHIBIT D)

e) Consideration of Cooperative Service Agreement Reimbursable Between Valencia County and US Department of Agriculture Animal & Plant Health Inspection Service - Eric Zamora

Commissioner Kirkham motioned for approval. Seconded by Commissioner Medina. Motion carried unanimously. (SEE EXHIBIT E)

f) FINANCIAL MATTERS:

1) Consideration of Resolution 2009-56, Valencia County compensation Plan for a Non-Reoccurring addition to Payroll and Employee eligibility Requirements for the same - Eric Zamora

County Manager Eric Zamora requested approval of Consideration of Resolution 2009-__, Valencia County Compensation Plan for a non-reoccurring addition to payroll and employee eligibility requirements and this proposal is seeking a onetime incentive pay or compensation plan for eligible employees. The county was not able to fund raises for the employees this year and this would be a non reoccurring expense to provide some financial assistance to the county employee's. This would be supplemental to the standard payroll and would go out with the next payroll cycle. The standard taxes and other deductions would be taken out. The total amount for all the employee's would be about \$74,000 which would be funded from the county equalization tax which came in about \$65,000 higher than the county budgeted for.

Commissioner Medina motioned for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

County Clerk Sally Perea announced Resolution 2009-56. (SEE EXHIBIT F)

2) Consideration of Resolution 2009-57, Uncommitted Revenues-Actual County Equalization - Wilma Abril

Commissioner Kirkham motion for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

County Clerk Sally Perea announced Resolution 2009-57. (SEE EXHIBIT G)

3) Consideration of Approval Payroll/Warrants- Wilma Abril
Commissioner Medina motioned for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (SEE EXHIBIT H)

10) COUNTY MANAGER'S REPORT (Informational Only)

County Manager Eric Zamora informed the commission of the 2010 Midwinter Conference coming up on January 19-20 and asked if any commissioner was interested in attending to contact Marilyn Silva to make arrangements for overnight stay if necessary. Also an update on the solid waste which is in the final stages of the review for the request for proposals and hope to have that out to the public later this month for open request for

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proposal. Some disappointing news on November 25, 2009 was that the county lost the funding on the traffic signal project on Highway 304 and Highway 47 in which the county had obtained \$300,000 in legislative funding for this project. Currently Mr. Zamora is preparing a packet to show the state the county met all the deadlines that were given to the county in which all funds were to be committed by October 30, 2009.

County Clerk Sally Perea requested a special meeting for a liquor license transfer of ownership that needs to be heard in a public hearing and asked that this be set for December 12, 2009 at 8:30AM.

Commissioner Gentry had asked for research on an all mail election reporting by precincts. County Clerk Sally Perea reported she had contacted other counties that have had all mail elections and all of them said reporting by precinct is done in primary and general elections only.

11) NEXT COMMISSION MEETING

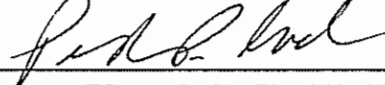
The next Special/Regular Business Meeting of the Valencia County Board of County Commission will be held on December 9, 2009 at 5:00 P.M. in the County Commission Room at the Valencia County Courthouse.

12) Adjournment


Commissioner Medina motioned for adjournment. Seconded by Commissioner Holliday. Motion carried unanimously. Time 8:55 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the December 2, 2009 Regular Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.


VALENCIA COUNTY BOARD OF COMMISSIONERS



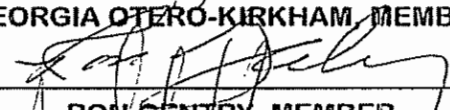
PEDRO G. RAEL, CHAIRMAN



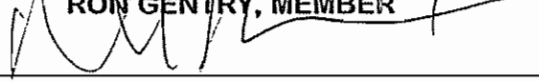
DONALD E. HOLLIDAY, VICE-CHAIRMAN



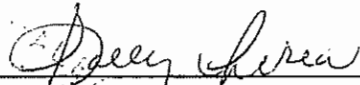
GEORGIA OTERO-KIRKHAM, MEMBER



RON GENTRY, MEMBER



DAVID MEDINA, MEMBER

ATTEST: 

SALLY PEREA, COUNTY CLERK

12.21.09
DATE

VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION № 2009-55
DONATION OF THE TOMÉ COMMUNITY CENTER TO THE TOWN OF TOMÉ LAND
GRANT-MERCED

WHEREAS, the Board of County Commissioners met in a regularly scheduled meeting on Wednesday, December 2, 2009 at 5:00 p.m. in the County Commission Chambers at 444 Luna Ave., Los Lunas, New Mexico 87031; and,

WHEREAS, pursuant to NMSA 1978 Section 4-38-1 (1884) the powers of a county as a body politic and corporate shall be exercised by a board of county commissioners; and,

WHEREAS, the County of Valencia is the owner of a certain parcel of real property located at 2933 State Road 47, Tomé, New Mexico, 87060, upon which the County constructed a community center for the benefit of the Citizens of Valencia County with funds appropriated by the New Mexico Legislature (hereinafter "Community Center"); and,

WHEREAS, NMSA 1978, Section 4-38-13 (1953) provides that board of county commissioners shall have power at any session to make such orders concerning the property belonging to the county as they may deem expedient; and,

WHEREAS, Article IX, Section 14 of the New Mexico Constitution, more commonly known as the Anti-Donation Clause, generally prohibits the disposition of county property for less than market value however New Mexico Courts have consistently held that intergovernmental transfers are outside of the constitutional prohibition. *See Eg. State ex rel. Mechem v. Hannah*, 63 N.M. 110, 314 P.2d 714 (1957); and,

WHEREAS, NMSA 1978 Section 49-1-1 (2004) declares that "[a]ll land grants-mercedes in the state or land grants-mercedes described in Section 49-1-2 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978 as political subdivisions of the state"

WHEREAS, NMSA 1978, Section 4-43-2 (C) (2007) recognizes that "[t]he town of Tome land grant-merced, situated in Valencia county, confirmed by congress in 1858 and patented by the United States to the town of Tome, shall be governed by the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978."; and,

WHEREAS, The Board of County Commissioners has determined that the real property is not essential for the efficient operation of the County and that the citizens of Valencia County would be best served if the subject real property is owned and administered by the Town of Tomé Land Grant-Merced for the purpose of the operation of a community center; and,

EXHIBIT A

Page 1 of 3

WHEREAS, NMSA 1978 Section 4-38-19 (B) (1973) provides that, “[a] board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities.”

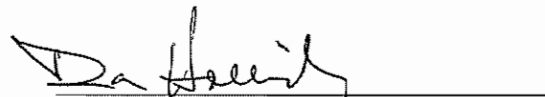
NOW THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Valencia County:

1. That the Board desires to transfer the ownership of the Tomé Community Center located at 2933 State Road 47, Tomé, New Mexico, as is more particularly described in Exhibit “A” attached hereto, to the Town of Tomé Land Grant-Merced for the purpose of operating and maintaining a Community Center for the benefit of the Citizens of Valencia County.
2. That the Board grants to the County Manger the authority to take all necessary action to effectuate the transfer of the County’s right, title and interest in the Tomé Community Center to the Town of Tomé Land Grant-Merced.
3. That the Board directs the County Manager to transfer the County’s right, title and interest in the Community Center, by executing a quitclaim deed, conditioned upon the covenant that if the Community Center ceases to be used for the benefit of the citizens of Valencia County or if it is abandoned the real property shall revert to the County of Valencia.
4. That pursuant to NMSA 1978, Section 13-6-2.1 (2003) this transfer of real property is subject to and contingent upon the approval of the Board of Finance of the State of New Mexico.


APPROVED, ADOPTED, AND PASSED on this 2nd day of December, 2009.

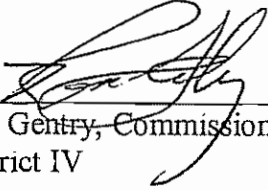
BOARD OF COUNTY COMMISSIONERS


Pedro G. Rael, Chair
District I


Donald Holliday, Vice-Chair
District V

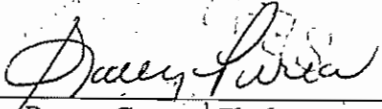

Georgia Otero-Kirkham, Commissioner
District II


David R. Medina, Commissioner
District III



Ron Gentry, Commissioner
District IV

Attest:



Sally Perea, County Clerk



Valencia County Indigent & Insurance

BARBARA A. BAKER, ADMINISTRATOR

Post Office Box 1119 • Los Lunas, New Mexico 87031
Phone: (505) 866-2020 • Fax: (505) 866-3366

November 25, 2009

RE: Indigent Fund Uses

Dear Commissioners,

I called Pat Mente of the New Mexico Health Policy Commission who referred me to Robert Ortiz who then referred me to Anna Bransford. Ms. Bransford left me a message stating she does the Sole Community Provider portion of the Indigent program and I should contact someone from DFA. I have a call into Ms. Bransford to see if she can give me a contact name and also have a call into Wilma Abril to see if she can give me a contact. I am asking for the definition of 27-5-4(P). "planning" means the development of a countywide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and that demonstrates coordination between the county and state and local health planning efforts. It was suggested that Valencia County Indigent pay for EMS/EMT services. We would have to follow State Statute Definitions and my opinion of 27-5-4 (A) is that if an EMS/EMT service charges everyone for their services and is in compliance with guidelines for an ambulance then an indigent person can apply. I will also ask this once I have a contact person. Another suggestion was to pay for Mobile Mammograms as it was noted recently some women were turned away as they did not have the money to pay and again I will ask the contact person if this is allowable.

State Statute Chapter 27-5-4 Definitions (D through P) describes what the Indigent Fund can be used for. I was talking to Liza Akley, Chair of the Indigent Health Care Affiliate, to discuss the uses. We discussed of how the interpretation of State Statutes can be interpreted different ways, as we are all aware of. She suggested if Valencia County wanted to make changes we should definitely work with our legal department.

EXHIBIT B

BOOK 068 PAGE 505

The Indigent Committee and I discussed including First Choice, which is a non profit clinic, and Presbyterian Medical Group, which is not for profit. The Indigent Committee voted to include both for the Indigent program on a 12 month basis in the amounts of \$200,000 each and in the agreement it would be written that Valencia County Indigent could cancel if they felt it would be necessary due to funding. The committee and I also discussed including the dental program at First Choice for an amount of \$50,000 for 12 months with the same agreement that Valencia County could cancel if they felt it was necessary. All Committee members agreed on this. If this was to be included in the Indigent Program a temporary part time person would be needed. In July of 2009 I inherited the Multi-line and Law Enforcement claims and this takes a good portion of my time.

I have attached for your review New Mexico State Statute, Chapter 27, Article 5, Indigent Hospital and County Health Care. Please advise me as to how you would like me to reduce the large Indigent balance. The Indigent Committee and I would like to include First Choice Clinic, Presbyterian Medical Group and First Choice Dental and would like to move forward with this under the direction of the County Attorney. We feel this is the best way to help the indigent residents of Valencia County. We could also increase the amount paid to the medical providers and ambulance providers as they provide medical treatment for Valencia County residents.

Sincerely.

A handwritten signature in cursive script, appearing to read "Barbara A. Baker".

Barbara A. Baker

**NEW MEXICO
STATUTES
1978**

ANNOTATED

**Chapter 27
Public Assistance**

Pamphlet 47



2004 SUPPLEMENT

This supplement includes laws enacted since the 2003 Replacement Pamphlet through the Second Session of the Forty-Sixth Legislature (2004) and annotations through 2004-NMSC-008 and 2004-NMCA-039.

B. The board shall define by regulation exempt and nonexempt income and resources. Medical expenses shall not be deducted from either income or resources in determining eligibility.

History: 1953 Comp., § 13-15-4, enacted by Laws 1973, ch. 311, § 4; 1975, ch. 187, § 1.

Community property principles should determine definition of income under section, as property acquired during marriage by either husband or wife, or both, is presumed to be community property

pursuant to 40-3-12A NMSA 1978. *Herrera v. Health & Social Servs.*, 92 N.M. 331, 587 P.2d 1342 (Ct. App. 1978).

Law reviews. — For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

27-4-5. Eligibility requirements.

A person is eligible for medical care under the Special Medical Needs Act [27-4-1 to 27-4-5 NMSA 1978] if:

A. pursuant to Section 27-4-4 NMSA 1978, the total amount of his nonexempt income is less than the applicable standard of need; and

B. nonexempt specific and total resources are less than the level of maximum permissible resources established by the board; and

C. he meets all qualifications for persons with special needs, pursuant to Section 27-4-3 NMSA 1978; and

D. within two years immediately prior to the filing of an application for assistance, he has not made an assignment or transfer of real property unless he has received a reasonable return for the real property; or, if he has not received such reasonable return, he is willing to attempt to obtain such return and, if such attempt proves futile, he is willing to attempt to regain title to the property; and

E. he is not an inmate of any public nonmedical institution at the time of receiving assistance; and

F. he is a resident of New Mexico.

History: 1953 Comp., § 13-15-5, enacted by Laws 1973, ch. 311, § 5; 1975, ch. 187, § 2.

Undocumented alien living in state is resident and is entitled to the benefits of the Special Medical Needs Act, provided he meets the statutory eligibility requirements. *Perez v. Health & Social*

Servs., 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), cert. denied, 91 N.M. 491, 576 P.2d 297 (1978).

Law reviews. — For note, "Medical Benefits Awarded to an Illegal Alien: *Perez v. Health and Social Services*," see 9 N.M.L. Rev. 89 (1978-79).

ARTICLE 5

Indigent Hospital and County Health Care

Sec.

27-5-1. Short title.

27-5-2. Purpose of Indigent Hospital and County Health Care Act.

27-5-3. Public assistance provisions.

27-5-4. Definitions.

27-5-4.1. Applicability.

27-5-5. County indigent hospital and county health care board.

27-5-5.1. Indigent health care report; required.

27-5-6. Powers and duties of the board.

27-5-6.1. Sole community provider fund created.

27-5-7. County indigent hospital claims fund.

27-5-7.1. County indigent hospital claims fund; authorized uses of the fund.

27-5-8. Board certification to county commissioners.

27-5-9. Tax levies authorized.

27-5-10. Subrogation of claim.

Sec.

27-5-11. Hospitals and ambulance services; health care providers; required to file data; sole community provider hospital duties.

27-5-12. Payment of claims.

27-5-12.1. Appeal.

27-5-12.2. Duties of the county; sole community provider hospital payments.

27-5-13. Claim shall not expire because of lack of funds; priority of claims.

27-5-14. Board to recover costs; presumption of payment.

27-5-15. Limitation on lien.

27-5-16. Department; payments; cooperation.

27-5-17. Repealed.

27-5-18. Date of implementation.

27-5-1. Short title.

Chapter 27, Article 5 NMSA 1978 may be cited as the "Indigent Hospital and County Health Care Act".

History: 1953 Comp., § 13-2-12, enacted by Laws 1965, ch. 234, § 1; 1993, ch. 321, § 1.

The 1993 amendment, effective July 1, 1993, substituted "Chapter 27, Article 5 NMSA 1978" for "This act" and "and County Health Care" for "Claims".

Compiler's notes. — Section 13-2-21, 1953 Comp., authorizing suit against a county on hospital claim with judgment to be collected through a levy, was held unconstitutional in Board of Dirs. of Mem.

Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967). The court held that the provision was an unconstitutional attempt to circumvent N.M. Const., Art. VIII, § 2 since such a judgment would not create a "public debt" and thus did not fall within exception to constitutional limitation on property tax levies. See also 1968 Op. Att'y Gen. No. 68-107.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 79 Am. Jur. 2d Welfare Laws §§ 38 to 41.

27-5-2. Purpose of Indigent Hospital and County Health Care Act.

The purpose of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] is:

A. to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care or the provision of health care to indigent patients domiciled in that county for at least three months or for such period of time, not in excess of three months, as determined by resolution of the board of county commissioners, and to provide a means whereby each county can discharge this responsibility through a system of payments to ambulance providers, hospitals or health care providers for the care and treatment of, or the provision of health care services to, indigent patients;

B. to recognize that the counties of the state are also responsible for supporting indigent patients by providing local revenues to match federal funds for the state medicaid program, including the provision of matching funds for payments to sole community provider hospitals and the transfer of funds to the county-supported medicaid fund pursuant to the Statewide Health Care Act [27-10-1 to 27-10-4 NMSA 1978]; and

C. to recognize that the counties of the state can improve the provision of health care to indigent patients by providing local revenues for countywide or multicounty health planning.

History: 1953 Comp., § 13-2-13, enacted by Laws 1965, ch. 234, § 2; 1971, ch. 72, § 1; 1983, ch. 234, § 1; 1987, ch. 88, § 1; 1993, ch. 321, § 2; 1997, ch. 51, § 1.

The 1993 amendment, effective July 1, 1993, substituted "and County Health Care" for "Claims" in the section heading and near the beginning of the section; added the Subsection A designation in the existing provisions and added Subsection B, making a related grammatical change; and in Subsection A, substituted "or the provision of the health care to" for "of the" near the beginning and "hospitals or health care providers for actual cost incurred for" for "or hospitals for actual cost incurred as the result of ambulance transportation provided for or" near the end.

The 1997 amendment rewrote Subsection A and added Subsection C. Laws 1997, ch. 51 contains no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

"Hospital care". — The term "hospital care", as referred to in Subsection A, encompasses mental health treatment provided by a county hospital to indigent residents of the county. 1988 Op. Att'y Gen. No. 88-64.

Individuals committed under statutory involuntary commitment. — Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 79 Am. Jur. 2d Welfare Laws §§ 38 to 41.

27-5-3. Public assistance provisions.

A. A hospital shall not be paid from the fund under the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] for costs of an indigent patient for services that have been determined by the department to be eligible for medicaid

reimbursement. However, nothing in the Indigent Hospital and County Health Care Act shall be construed to prevent the board from transferring money from the fund to the sole community provider fund or the county-supported medicaid fund for support of the state medicaid program.

B. No action for collection of claims under the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] shall be allowed against an indigent patient who is medicaid eligible for medicaid covered services, nor shall action be allowed against the person who is legally responsible for the care of the indigent patient during the time that person is medicaid eligible.

History: 1953 Comp., § 13-2-14, enacted by Laws 1965, ch. 234, § 3; 1984, ch. 101, § 1; 1993, ch. 321, § 3; 2003, ch. 413, § 1.

The 1993 amendment, effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, rewrote the section heading and Subsection A, and substituted "and County Health Care" for "Claims" and "medicaid eligible for medicaid covered services" and "medicaid eligible" for "a welfare recipient" in Subsection B.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "county indigent hospital claims" following "from the" twice, deleted "any" following "Care Act for", deleted "human services" following "determined by the", and deleted "from that department" following "for Medicaid reimbursement"

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

27-5-4. Definitions.

As used in the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978]:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means a county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance, admitted to a hospital for care or treated by a health care provider;

D. "hospital" means a general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

- (1) for-profit hospitals;
- (2) state-owned hospitals; or
- (3) licensed out-of-state hospitals where treatment provided is necessary for the

proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be based on medicaid fee-for-service reimbursement rates for hospitals, licensed medical doctors and osteopathic physicians;

F. "fund" means a county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means a county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means:

(1) a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines; or

(2) an acute care general hospital licensed by the department of health that is qualified, pursuant to rules adopted by the state agency primarily responsible for the medicaid program, to receive distributions from the sole community provider fund;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements set by the department of health;

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health;

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health;

N. "health care provider" means:

- (1) a nursing home;
- (2) an in-state home health agency;
- (3) an in-state licensed hospice;
- (4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

- (6) a drug rehabilitation center;
- (7) an alcohol rehabilitation center;
- (8) a mental health center; or

(9) a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse when providing emergency services, as determined by the board, in a hospital to an indigent patient;

O. "health care services" means treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

P. "planning" means the development of a countywide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and that demonstrates coordination between the county and state and local health planning efforts; and

Q. "commission" means the New Mexico health policy commission.

History: 1953 Comp., § 13-2-15, enacted by Laws 1965, ch. 234, § 4; 1975, ch. 44, § 1; 1977, ch. 253, § 43; 1978, ch. 123, § 1; 1979, ch. 146, § 1; 1983, ch. 234, § 2; 1987, ch. 50, § 1; 1987, ch. 88, § 2; 1990, ch. 37, § 1; 1991, ch. 171, § 1; 1991, ch. 212, § 19; 1993, ch. 321, § 4; 1997, ch. 51, § 2; 1999, ch. 37, § 1; 1999, ch. 270, § 4; 2001, ch. 30, § 1; 2001, ch. 272, § 1; 2001, ch. 280, § 1; 2003, ch. 413, § 2.

1991 amendments. — Laws 1991, ch. 171, § 1, effective June 14, 1991, in Subsection D, adding a Paragraph (6), relating to drug and alcohol rehabilitation centers, and redesignating Paragraphs (6) and (7) as Paragraphs (7) and (8); adding Subsections H and I, relating to drug and alcohol rehabilitation centers; and redesignating Subsections H and I as Subsections J and K, was approved on April 4, 1991. However, Laws 1991, ch. 212, § 19, effective July 1, 1991, in Subsection C, adding the third sentence and making a minor stylistic change and, in Subsection D, adding the exception at the end of the introductory paragraph, deleting a sentence at the end of Paragraph (7) which read "All hospitals, as defined in this subsection, must comply with the provisions of the Indigent Hospital Claims Act and be licensed by the health and environment department", adding Paragraph (8) and making a related stylistic change, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 212, § 19. See 12-1-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "and County Health Care" for "Claims" in the introductory language; substituted "and county health care" for "claims" in Subsection B; in Subsection C, substituted "a hospital or a health care provider" for "or a hospital" in the first sentence and "or treated by a health care provider or all three" for "or both" in the last sentence, and made a stylistic change in the second sentence; in Subsection D, rewrote the introductory language and deleted former Paragraphs (3) and (5) through (8), the provisions of which may now be found in Subsection N, renumbering former Paragraph (4) as Paragraph (3) and making a related grammatical change; substituted "health care provider" for "nursing home" near the end of Subsection E; rewrote Subsections G and H, and added Subsections J through N.

The 1997 amendment made minor stylistic changes throughout the section; in Subsection C, inserted "or health care services" following "ambulance transportation" in the first sentence; in Subsection E, substituted "or costs of providing health care services" for "including the costs of prenatal care" in the first sentence; and added Subsections O and P. Laws 1997, ch. 51 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

1999 amendments. — Laws 1999, ch. 270, § 4, effective July 1, 1999, substituting "public regulation commission" for "state corporation commission" twice in Subsection A; substituting "set by the department

of health" for "pursuant to the Drug Abuse Act" in Subsection K; deleting "pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act" at the end of Subsection L; and deleting "pursuant to the Community Mental Health Act" at the end of Subsection M, was approved on April 8, 1999.

However, this section was also amended by Laws 1999, ch. 37, § 1, effective June 18, 1999, which would have amended the section to read as follows:

As used in the Indigent Hospital and County Health Care Act:

"A. 'ambulance provider' or 'ambulance service' means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

"B. 'board' means a county indigent hospital and county health care board;

"C. 'indigent patient' means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term 'indigent patient' includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

"D. 'hospital' means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

"(1) for-profit hospitals;

"(2) state-owned hospitals; or

"(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

"E. 'cost' means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

"F. 'fund' means a county indigent hospital claims fund;

"G. 'medicaid eligible' means a person who is eligible for medical assistance from the department;

"H. 'county' means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

"I. 'department' means the human services department;

"J. 'sole community provider hospital' means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

"K. 'drug rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements pursuant to the Drug Abuse Act;

"L. 'alcohol rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

"M. 'mental health center' means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health pursuant to the Community Mental Health Services Act;

"N. 'health care provider' means:

"(1) a nursing home;

"(2) an in-state home health agency;

"(3) an in-state licensed hospice;

"(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

"(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

"(6) a drug rehabilitation center;

"(7) an alcohol rehabilitation center;

"(8) a mental health center; or

"(9) services provided in a hospital or outpatient setting by a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse that are necessary for such conditions that

endanger the life of or threaten permanent disability to an indigent patient;

"O. 'health care services' means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

"P. 'planning' means the development of a county-wide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and which demonstrates coordination between the county and state and local health planning efforts; and

"Q. 'commission' means the New Mexico health policy commission."

The section is set out as amended by Laws 1999, ch. 270, § 4. See 12-1-18 NMSA 1978.

2001 amendments. — Three acts amended this section in 2001. Laws 2001, ch. 280, § 1, effective June 15, 2001, adding Paragraphs J(2), N(9), and adding Subsection Q, was approved April 4, 2001.

However, this section was also amended by Laws 2001, Ch. 30, § 1, effective June 15, 2001, which would have amended the section to read as follows:

As used in the Indigent Hospital and County Health Care Act:

"A. 'Ambulance provider' or 'ambulance service' means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

"B. 'board' means a county indigent hospital and county health care board;

"C. 'indigent patient' means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital

for care or treated by a health care provider or all three;

"D. 'hospital' means a general or limited hospital licensed by the department of health, whether non-profit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

"(1) for-profit hospitals;

"(2) state-owned hospitals; or

"(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

"E. 'cost' means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

"F. 'fund means a county indigent hospital claims fund;

"G. 'medicaid eligible' means a person who is eligible for medical assistance from the department;

"H. 'county' means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

"I. 'department' means the human services department;

"J. 'sole community provider hospital' means:

"(1) a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act; or

"(2) an acute care general hospital licensed by the department of health that is qualified, pursuant to rules adopted by the state agency primarily responsible for the medicaid program, to receive distributions from the sole community provider fund;

"K. 'drug rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements set by the department of health;

"L. 'alcohol rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health;

"M. 'mental health center' means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health;

"N. 'health care provider' means:

"(1) a nursing home;

"(2) an in-state home health agency;

"(3) an in-state licensed hospice;

"(4) a community-based health program operated by a political subdivision of the state or other non-profit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

"(5) a community-based health program operated by a political subdivision of the state or other non-

profit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

"(6) a drug rehabilitation center;

"(7) an alcohol rehabilitation center;

"(8) a mental health center; or

"(9) a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse when providing services in a hospital or outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient;

"O. 'health care services' means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

"P. 'planning' means the development of a county-wide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and that demonstrates coordination between the county and state and local health planning efforts; and

"Q. 'commission' means the New Mexico health policy commission.

This section was also amended by Laws 2001, ch. 272, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"As used in the Indigent Hospital and County Health Care Act:

"A. 'ambulance provider' or 'ambulance service' means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

"B. 'board' means a county indigent hospital and county health care board;

"C. 'indigent patient' means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient includes a minor who has received ambulance transportation or medical care or both

and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

"D. 'hospital' means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

"(1) for-profit hospitals;

"(2) state-owned hospitals; or

"(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

"E. 'cost' means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

"F. 'fund' means a county indigent hospital claims fund;

"G. 'medicaid eligible' means a person who is eligible for medical assistance from the department;

"H. 'county' means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

"I. 'department' means the human services department;

"J. 'sole community provider hospital' means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

"K. 'drug rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements set by the department of health;

"L. 'alcohol rehabilitation center' means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health;

"M. 'mental health center' means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health;

"N. 'health care provider' means:

"(1) a nursing home;

"(2) an in-state home health agency;

"(3) an in-state licensed hospice;

"(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

"(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

"(6) a drug rehabilitation center;

"(7) an alcohol rehabilitation center;

"(8) a mental health center; or

"(9) a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse when providing services in a hospital or outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient"

"O. 'health care services' means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

"P. 'planning' means the development of a county-wide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and which demonstrates coordination between the county and state and local health planning efforts; and

"Q. 'commission' means the New Mexico health policy commission."

Because Laws 2001, ch. 30 was approved on March 14, 2001, and Laws 2001, ch. 272 was approved earlier on April 4, 2001, this section is set out as amended by Laws 2001, ch. 280, § 1. See 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted "or" following "transported by ambulance", deleted "or all three" at the end; rewrote Subsection E; deleted "established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act" near the end of Paragraph J(1); and substituted "providing emergency services, as determined by the board, in a hospital to an indigent patient" for "providing services in a hospital or outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient" at the end of Paragraph N(9).

Definition of "indigent patient" was not unconstitutional under N.M. Const., art. 9, § 14. Humana of N.M., Inc. v. Board of County Comm'rs, 92 N.M. 34, 582 P.2d 806 (1978) (decided prior to 1978 amendment).

Validity of amendment by Laws 1999, ch. 37, § 1. — Although the amendment of this section by Laws 1999, ch. 37, § 1, was not codified pursuant to 12-1-8 NMSA 1978, the amendment is valid and in effect. 2000 Op. Att'y Gen. No. 00-05.

27-5-4.1. Applicability.

Nothing in this act shall apply to any county which has in effect, upon the effective date of this act, a county sales tax, unless the most recent county sales tax resolution provides for possible expanded use of the county indigent hospital claims fund.

History: 1953 Comp., § 13-2-15.1, enacted by Laws 1978, ch. 123, § 2.

Meaning of "this act". — The phrase "this act" refers to Laws 1978, ch. 123, which enacted this section and amended 27-5-4 and 27-5-13 NMSA 1978.

Effective date of this act. — The phrase "effective date of this act", referred to in this section, means February 16, 1978, the effective date of Laws 1978, ch. 123.

27-5-5. County indigent hospital and county health care board.

A. There is created within each county a "county indigent hospital and county health care board" which shall be composed of the members of the board of county commissioners of that county, and the chairman of the board of county commissioners shall be the chairman of the board.

B. Members of the board shall receive no compensation but shall be reimbursed for their actual per diem and mileage in an amount not to exceed the per diem and mileage paid to county commissioners.

C. Each member of the board shall furnish a surety bond, premium for which shall be paid from the fund, executed by a surety company licensed to do business in New Mexico, conditioned that he will faithfully perform his duties and account for the funds. The bond shall be in the penal sum of five thousand dollars (\$5,000) running to the benefit of the board for payments into the fund.

History: 1953 Comp., § 13-2-16, enacted by Laws 1965, ch. 234, § 5; 1993, ch. 321, § 5.

The 1993 amendment, effective July 1, 1993, substituted "and county health care" for "claims" in the section heading and Subsection A; and made stylistic changes in Subsections A and B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Health § 53.

Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 93 A.L.R. 900.

Statute imposing duty to maintain or aid indigent relative as supporting action by third person, 116 A.L.R. 1281.

27-5-5.1. Indigent health care report; required.

Every county in New Mexico shall file an annual report on all indigent health care funding by the county with the commission. The report shall contain the county's eligibility criteria for indigent patients, services provided to indigent patients, restrictions on services provided to indigent patients, conditions for reimbursement to providers of health care, revenue sources used to pay for indigent health care and other related information as determined by the commission. The report shall be submitted by October 1 of each year on a form provided by the commission. The commission shall make the report available to interested parties.

History: Laws 1993, ch. 321, § 17; 1999, ch. 37, § 2.

The 1999 amendment, effective June 18, 1999, in the first sentence inserted "all", substituted "funding" for "funded in whole or in part" and "commission" for "local government division of the department of finance and administration", substituted "commission" for "local government division" at the

end of the second sentence; in the third sentence substituted "October 1" for "July 31" and substituted "commission" for "local government division" and shall provide information from the previous fiscal year" at the end of the sentence; and in the last sentence substituted "commission" for "local government division" and "to" for "for analysis by"

27-5-6. Powers and duties of the board.

The board:

A. shall administer claims pursuant to the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978];

B. shall prepare and submit a budget to the board of county commissioners for the amount needed to defray claims made upon the fund and to pay costs of administration of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] and costs of development of a countywide or multicounty health plan. The combined costs of

administration and planning shall not exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year or based on projected revenues for the year being budgeted for a fund that has existed for less than one fiscal year. The percentage of the revenues in the fund that may be used for such combined administrative and planning costs is equal to the sum of the following:

(1) ten percent of the amount of the revenues in the fund not over five hundred thousand dollars (\$500,000);

(2) eight percent of the amount of the revenues in the fund over five hundred thousand dollars (\$500,000) but not over one million dollars (\$1,000,000); and

(3) four and one-half percent of the amount of the revenues in the fund over one million dollars (\$1,000,000);

C. shall make rules necessary to carry out the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978]; provided that the standards for eligibility and allowable costs for county indigent patients shall be no more restrictive than the standards for eligibility and allowable costs prior to December 31, 1992;

D. shall set criteria and cost limitations for medical care furnished by licensed out-of-state hospitals, ambulance services or health care providers;

E. shall cooperate with appropriate state agencies to use available funds efficiently and to make health care more available;

F. shall cooperate with the department in making an investigation to determine the validity of claims made upon the fund for an indigent patient;

G. may accept contributions or other county revenues, which shall be deposited in the fund;

H. may hire personnel to carry out the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978];

I. shall review all claims presented by a hospital, ambulance service or health care provider to determine compliance with the rules adopted by the board or with the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978]; determine whether the patient for whom the claim is made is an indigent patient; and determine the allowable medical, ambulance service or health care services costs; provided that the burden of proof of any claim shall be upon the hospital, ambulance service or health care provider;

J. shall state in writing the reason for rejecting or disapproving any claim and shall notify the submitting hospital, ambulance service or health care provider of the decision within sixty days after eligibility for claim payment has been determined;

K. shall pay all claims that are not matched with federal funds under the state medicaid program and that have been approved by the board from the fund and shall make payment within thirty days after approval of a claim by the board;

L. shall determine by county ordinance the types of health care providers that will be eligible to submit claims under the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978];

M. shall review, verify and approve all medicaid sole community provider hospital payment requests in accordance with rules adopted by the board prior to their submittal by the hospital to the department for payment but no later than January 1 of each year;

N. shall transfer to the state by the last day of March, June, September and December of each year an amount equal to one-fourth of the county's payment for support of sole community provider payments as calculated by the department for that county for the current fiscal year. This money shall be deposited in the sole community provider fund;

O. shall, in carrying out the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978], comply with the standards of the federal Health Insurance Portability and Accountability Act of 1996;

P. may provide for the transfer of money from the fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act [27-10-1 to 27-10-4 NMSA 1978]; and

Q. may contract with ambulance providers, hospitals or health care providers for the provision of health care services.

History: 1953 Comp., § 13-2-17, enacted by Laws 1965, ch. 234, § 6; 1979, ch. 146, § 2; 1983, ch. 234, § 3; 1987, ch. 88, § 3; 1991, ch. 212, § 20; 1993, ch. 321, § 6; 1997, ch. 51, § 3; 1999, ch. 37, § 3; 2003, ch. 413, § 3.

Cross references. — For payment of claims, see 27-5-12 NMSA 1978. For provisions regarding the human services department, see Chapter 9, Article 8.

The 1991 amendment, effective July 1, 1991, rewrote Subsection B and deleted "human services" preceding "department" in Subsection E.

The 1993 amendment, effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, added Subsections E and L through O, redesignating former Subsections E through J as Subsections F through K and making a related grammatical change; substituted "and County Health Care" for "Claims" in Subsections A, B, C, H, and I; rewrote Paragraphs (1) through (3) of Subsection B, adding new introductory language for these paragraphs and closing off the former introductory language as the first sentence of the subsection; added the proviso at the end of Subsection C; substituted "ambulance services or health care providers" for "or ambulance service" in Subsection D; substituted "ambulance service or health care provider" for "or ambulance service" in two places in Subsection I and in Subsection J; and inserted "that are not matched with federal funds under the state medicaid program and" in Subsection K.

The 1997 amendment, in Subsection B, substituted "and costs of development of a countywide or multicounty health plan. The combined" for "which" following "Indigent Hospital and County Health Care Act", inserted "and planning" following "costs of administration", and made minor stylistic changes; in Subsection I, inserted "or health care services" following "ambulance service" and made a related stylistic change; in Subsection J, added "within sixty days after submission of the claim" at the end of the section; in Subsection K, added "and shall make

payment within sixty days after approval of a claim by the board"; and added Subsection P. Laws 1997, ch. 51 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective June 18, 1999, substituted "thirty days" for "sixty days" in Subsection K.

The 2003 amendment, effective June 20, 2003, substituted "not" for "in no event" following "and planning shall" in Subsection B; deleted "and regulations" following "rules" in Subsections C, I, and M; substituted "furnished by" for "in" following "for medical care" in Subsection D; deleted "treasurer" following "to the state" in Subsection N; added Subsection O and redesignated Subsections O and P as Subsection P and Q; and deleted "county indigent hospital claims" following "money from the" in present Subsection P.

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

Social Security Act. — The Social Security Act, referred to in this section, is codified at 42 U.S.C. § 301 et seq.

27-5-6.1. Sole community provider fund created.

A. The "sole community provider fund" is created in the state treasury. The fund, which shall be administered by the human services department, shall consist of funds provided by counties to match federal funds for medicaid sole community provider hospital payments. Money in the fund shall be invested by the state treasurer as other state funds are invested. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

B. Money in the sole community provider fund is appropriated to the human services department to make sole community provider hospital payments pursuant to the state medicaid program. No sole community provider hospital payments or money in the sole community provider fund shall be used to supplant any general fund support for the state medicaid program.

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

History: Laws 1993, ch. 321, § 18.

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the

United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

27-5-7. County indigent hospital claims fund.

A. There is created in the county treasury of each county a "county indigent hospital claims fund".

B. Collections under the levy made pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] and all payments shall be placed into the fund, and the amount placed in the fund shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act, by warrant upon vouchers approved by a majority of the board and signed by the chairman of the board. Payments for indigent hospitalizations shall not be made from any other county fund.

C. The fund shall be audited in the manner that other state and county funds are audited, and all records of payments and verified statements of qualification upon which payments were made from the fund shall be open to the public.

D. Any balance remaining in the fund at the end of the fiscal year shall carry over into the ensuing year, and that balance shall be taken into consideration in the determination of the ensuing year's budget and certification of need for purposes of making a tax levy.

E. Money may be transferred to the fund from other sources, but no transfers may be made from the fund for any purpose other than those specified in the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

History: 1953 Comp., § 13-2-18, enacted by Laws 1965, ch. 234, § 7; 1991, ch. 212, § 21; 1992, ch. 31, § 1; 1993, ch. 321, § 7; 1996, ch. 29, § 4; 1998, ch. 71, § 1; 1999, ch. 188, § 1.

The 1991 amendment, effective July 1, 1991, added the second sentence in Subsection D and made minor stylistic changes throughout the section.

The 1992 amendment, effective May 20, 1992, deleted "county indigent hospital claims" preceding "fund" at the second instance of that term in Subsection B and at the first instance of that term in Subsections C, D, and E; and in Subsection D, made a section reference substitution and inserted "except voluntary contributions made during the eightieth and eighty-first fiscal years" and added the last sentence.

The 1993 amendment, effective July 1, 1993, substituted "and County Health Care" for "Claims" in two places in the first sentence of Subsection B and in Subsection E; substituted "Payments" for "Contributions" in the first sentence of Subsection B; inserted "pursuant to Subsections F and G of this section" in Subsection D and deleted the former second and third sentences of that subsection, which related to transfers and payments from the fund in the eightieth and eighty-first fiscal years; and added Subsection F.

The 1996 amendment, substituted "Subsection F" for "Subsections F and G", in Subsection D and substituted "1998" for "1996" twice in Subsection F. Laws 1996, ch. 29 contains no effective date provi-

sion, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1998 amendment, in Subsection F, substituted "2000" for "1998" in the first sentence and deleted the former second sentence which read: "Beginning in 1998, the transfer shall be made by September 1 of each fiscal year" Laws 1998, ch. 71, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective June 18, 1999, deleted "pursuant to Subsection F of this section" following "fiscal year" in Subsection D and deleted former Subsection F, relating to the transfer of excessive medicaid funds.

Mill levy funds used for indigent medical care. — Colfax County could not use mill levy funds to provide indigent medical care for its non-miner residents admitted to Miners' Hospital, a state owned and operated facility, where such funds were not proceeds in the county indigent hospital claims fund but instead were proceeds from another county fund. The county could, however, use any proceeds in the indigent hospital claims fund to provide medical care for indigent patients at the Miners' Hospital if they otherwise qualify. 1988 Op. Att'y Gen. No. 88-41.

27-5-7.1. County indigent hospital claims fund; authorized uses of the fund.

A. The fund shall be used:

- (1) to meet the county's contribution for support of sole community provider payments as calculated by the department for that county;
- (2) to pay for expenses of burial or cremation of an indigent person; and
- (3) to pay all claims that have been approved by the board that are not matched with federal funds under the state medicaid program.

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

History: Laws 1993, ch. 321, § 16; 2001, ch. 307, § 2.

The 2001 amendment, effective June 15, 2001, inserted the current Paragraph A(2), redesignated the subsequent paragraph; and deleted Subsection C.

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing

administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

27-5-8. Board certification to county commissioners.

For the purpose of providing funds for the administration of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978], the board shall each year certify the amount needed to the board of county commissioners. For the first year of operation the board shall estimate the amount necessary, and in succeeding years the board may use the previous year's experience to determine the amount necessary.

History: 1953 Comp., § 13-2-19, enacted by Laws 1965, ch. 234, § 8; 1993, ch. 321, § 8.

The 1993 amendment, effective July 1, 1993, substituted "and County Health Care" for "Claims" in the first sentence and inserted "the board" before "may use" in the second sentence.

It is required that the amount needed to care for the indigent in any year shall be estimated and that a levy shall be made to raise sufficient money to cover the amounts estimated. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

27-5-9. Tax levies authorized.

A. Subject to the provisions of Subsection B of this section, the board of county commissioners, upon the certification of the board as to the amount needed in the fund, shall impose a levy against the net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of the property in the county sufficient to raise the amount certified by the board.

B. The question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] shall be submitted to the electors and voted upon as a separate question at the next subsequent general election or any special election called prior thereto for such purpose.

C. Upon finding by the board of county commissioners that an election will be necessary, the board of county commissioners shall meet and order an election to be held at a designated time in the county upon the question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] in the county. If the question is to be voted upon at a special election, the election shall be held not less than thirty nor more than fifty days after the finding, but in no event shall the election be held within five days preceding or succeeding any general

election held in the county. The order for the election shall be made a part of the official minutes of the board of county commissioners. A copy of the order shall be published in a newspaper of general circulation in the county at least fifteen days before the date set for the election, and an affidavit of publication shall be obtained. At least five days prior to the date for holding the election, the board of county commissioners shall publish in a newspaper of general circulation in the county and post in five conspicuous places in the county a notice of election, which shall be in substantially the following form:

“NOTICE OF ELECTION ON SPECIAL INDIGENT HOSPITAL LEVY

Notice is given on the _____ day of _____, 19____, there will be held in _____ county of New Mexico an election on the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property in the county and limited to an amount sufficient to provide funds necessary to pay claims pursuant to such act.

Official Title of the Authority

The election shall be held on the date specified in the notice and shall be, if a special election, conducted and canvassed in substantially the same manner as general elections are conducted and canvassed in the county; provided that the ballot used in any election shall be a special and separate ballot and shall be in substantially the following form:

“BALLOT

On the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property in _____ county of New Mexico, and limited to an amount sufficient to provide funds budgeted and certified as necessary to pay claims pursuant to such act:

FOR THE LEVY
AGAINST THE LEVY ”

D. If the electors vote in favor of an indigent hospital levy, the levy shall become effective in the same manner prescribed by law for all levies upon property within that county, and a levy for those purposes in such an amount as will provide sufficient money for the fund shall be made for each year thereafter.

E. Any board of county commissioners that has, prior to the effective date of this section, made a valid imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] shall not be required to hold an election on the existing tax, and that tax may be imposed and continue to be imposed in accordance with the provisions of law existing at the time of its imposition. However, if any such tax is not imposed in a given property tax year or if the authorization for its imposition terminates or expires, the election requirements of Subsections B and C of this section shall apply to any subsequent proposed imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act.

History: 1953 Comp., § 13-2-20, enacted by Laws 1965, ch. 234, § 9; 1981, ch. 37, § 85; 1993, ch. 321, § 9.

Cross references. — For constitutional provisions relating to limits on taxation, see N.M. Const., art. VIII, § 2.

The 1993 amendment, effective July 1, 1993, substituted “and County Health Care” for “Claims”

in Subsection B, the first sentence of Subsection C, in the two forms in Subsection C, and in the first and second sentences of Subsection E; divided the former third sentence of Subsection C into the present third and fourth sentences by deleting “and”; and made stylistic changes throughout Subsections C, D, and E.

Compiler’s notes. — Some of the annotations

appearing below were taken from a case decided prior to the 1981 amendment of this section, which deleted references to the constitutional limitation of twenty mills on levies for public debt.

It is required that the amount needed to care for the indigent in any year shall be estimated and that a levy shall be made to raise sufficient money to cover the amounts estimated. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

Limitations upon tax levy. — The county commissioners are required to make a tax levy sufficient to raise the amount certified as needed by the county indigent hospital claims board provided the levy for that purpose and for all other purposes authorized

by law does not exceed 20 mills. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

Constitutional provision permitting levies for public debts in excess of 20-mill limitation does not contemplate judgment for hospital against board of county commissioners for cost of care of indigent persons. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of state or municipality to appropriate funds or incur indebtedness, in excess of poor fund, for relief of distress due to general unemployment or other unusual conditions, 73 A.L.R. 255.

27-5-10. Subrogation of claim.

Payment to a hospital from the fund of any claim shall operate as an assignment to the board of any cause of action to the extent of the payment from the fund to the hospital.

History: 1953 Comp., § 13-2-22, enacted by Laws 1965, ch. 234, § 11.

27-5-11. Hospitals and ambulance services; health care providers; required to file data; sole community provider hospital duties.

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

- (1) current data, statistics, schedules and information deemed necessary by the board to determine the cost for all patients in that hospital or cared for by that health care provider or tariff rates or charges of an ambulance service;
- (2) proof that the hospital, ambulance service or health care provider is licensed under the laws of this state or the state in which the hospital operates; and
- (3) other information or data deemed necessary by the board.

B. A sole community provider hospital requesting or receiving medicaid sole community provider hospital payments shall:

- (1) accept indigent patients and request reimbursement for those patients through the appropriate county indigent fund. The responsible county shall approve requests meeting its eligibility standards and notify the hospital of such approval;
- (2) confirm the amount of payment authorized by each county for indigent patients, to that county for the previous fiscal year, by September 30 of each calendar year;
- (3) negotiate with each county the amount of indigent hospital payments anticipated for the following fiscal year by December 31 of each year; and
- (4) provide to the department prior to January 15 of each year the amount of the authorized indigent hospital payments anticipated for the following fiscal year after an agreement has been reached on the amount with each responsible county and such other related information as the department may request.

History: 1953 Comp., § 13-2-23, enacted by Laws 1965, ch. 234, § 12; 1983, ch. 234, § 4; 1993, ch. 321, § 10; 2003, ch. 413, § 4.

The 1993 amendment, effective on the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration, inserted "health care providers" and added "sole community provider hospital duties" to

the end in the catchline; designated the existing introductory language as Subsection A, redesignating former Subsections A through C as Paragraphs (1) through (3); in Subsection A, substituted "hospital or health care provider" for "or hospital", inserted "cared for by that health care provider or" in Paragraph (1), and substituted "ambulance service or health care provider" for "or ambulance service" in Paragraph (2); and added Subsection B.

The 2003 amendment, effective June 20, 2003, deleted "where required" following "provider is licensed" in Paragraph A(2); deleted "any" at the beginning of Paragraph A(3); and substituted "A" for "Every" at the beginning of Subsection B.

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing

administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992" Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

27-5-12. Payment of claims.

A. A hospital, ambulance service or health care provider filing a claim with the board shall:

- (1) file claim with the board of the county in which the indigent patient is domiciled;
- (2) file claim for each patient separately, with an itemized detail of the total cost; and
- (3) file with the claim a verified statement of qualification for ambulance service, indigent hospital care or care from a health care provider signed by the patient or by the parent or person having his custody to the effect that he qualifies under the provisions of the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] as an indigent patient and is unable to pay the cost for the care administered and listing all assets owned by the patient or any person legally responsible for his care. The statement shall constitute an oath of the person signing it, and any false statements in the statement made knowingly constitute a felony.

B. A hospital, ambulance service or health care provider that has contracted with a board for provision of health care services shall provide evidence of health care services rendered for payment for services in accordance with the procedures specified in the contract.

History: 1953 Comp., § 13-2-24, enacted by Laws 1965, ch. 234, § 13; 1983, ch. 234, § 5; 1984, ch. 101, § 2; 1993, ch. 321, § 11; 1997, ch. 51, § 4.

The 1993 amendment, effective July 1, 1993, substituted "ambulance service or health care provider" for "or ambulance service" in the introductory language and "ambulance service, indigent hospital care or care from a health care provider" for "indigent hospital care" and "and County health Care" for "Claims" in Subsection C.

The 1997 amendment designated the introductory paragraph as Subsection A; redesignated former Subsections A, B, and C as Paragraphs A(1), A(2), and A(3); and added Subsection B. Laws 1997, ch. 51 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

27-5-12.1. Appeal.

Any hospital or ambulance service aggrieved by any decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1978 Comp., § 27-5-12.1, enacted by Laws 1979, ch. 146, § 3; 1983, ch. 234, § 6; 1998, ch. 55, § 38; 1999, ch. 265, § 40.

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 1998 amendment, effective September 1,

1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1"

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

27-5-12.2. Duties of the county; sole community provider hospital payments.

A county that authorizes payment for services to a sole community provider hospital shall:

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

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

C. confirm the amount of the sole community provider hospital payments authorized for each hospital for the past fiscal year by September 30 of the current fiscal year based on a report prepared by the hospital using a format jointly prescribed by the counties and hospitals that provides aggregate data, including the number of indigent patients served and the total cost of uncompensated care provided by the hospital;

D. negotiate agreements with each sole community provider hospital providing services for county residents on the anticipated amount of the payments for the following fiscal year; provided that the agreements shall be in compliance with federal regulations regarding intergovernmental transfers and provider contributions and shall not include provisions for reimbursements to counties of matching and sole community provider fund allocations; and

E. provide the department by January 15 of each year with the budgeted amount of sole community provider hospital payments, by hospital, for the following fiscal year.

History: Laws 1993, ch. 321, § 15; 2003, ch. 413, § 5.

The 2003 amendment, effective June 20, 2003, substituted "A county" for "Every county in New Mexico" at the beginning of the introductory paragraph; added "based on a report prepared by the hospital using a format jointly prescribed by the counties and hospitals that provides aggregate data, including the number of indigent patients served and the total cost of uncompensated care provided by the hospital" at the end of Subsection C; added "provided that the agreements shall be in compliance with federal regulations regarding intergovernmental transfers and provider contributions and shall not include provisions for reimbursements to counties of matching and sole community provider fund allocations" at the end of Subsection D; and deleted "human services" near the beginning of Subsection E.

Compiler's notes. — Subsection A of § 22, Laws 1993, ch. 321, provides that §§ 3, 6, 10, 15, 16 and 18 (27-5-3, 27-5-6, 27-5-6.1, 27-5-7.1, 27-5-11 and 27-5-12.2 NMSA 1978) are effective the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department was advised by letter dated May 20, 1993, that the United States Department of Health and Human Services had approved the amendment of New Mexico's medicaid plan "to add a payment provision for sole community hospitals (SCH), effective July 1, 1993, and a payment provision for indirect medical education (IME) costs incurred by teaching hospitals, effective August 1, 1992". Chapter 321, Laws 1993, contained an emergency clause. The human services department published notice of the approval in the *New Mexican* on June 21, 1993.

27-5-13. Claim shall not expire because of lack of funds; priority of claims.

A claim made to the board for payment for the care of an indigent patient shall not expire or become invalid because of the lack of money in the fund during any fiscal year but shall be carried over into the ensuing fiscal year and, notwithstanding the provisions of any other law, shall be paid in the ensuing year. Whenever the balance of the fund is inadequate to pay all qualified claims as they become due, the claims of in-state hospitals providing acute medical care shall have priority for payment over all other claims regardless of the dates the other claims were submitted. The board shall, however, on a regular basis, estimate future demands upon the fund, based on past experience, and set aside sufficient funds to assure payment for in-state hospitals providing acute medical care and shall then address, on a regular basis, the claims from other hospitals or ambulance services.

History: 1953 Comp., § 13-2-25, enacted by Laws 1965, ch. 234, § 14; 1978, ch. 123, § 3; 1983, ch. 234, § 7.

27-5-14. Board to recover costs; presumption of payment.

A. The payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient creates a preferred claim in favor of the fund against the

estate of the indigent patient and a lien against all real property or interest in real property vested in or later acquired by the indigent patient or any person legally responsible for his debts for the amount of the payment made from the fund to the ambulance service, hospital or health care provider, without interest. Such claims shall be preferred over all claims except charges of the last sickness and funeral of the deceased and allowances made by the court for the maintenance of the widow and children, taxes, municipal levies, cost of administration and attorneys' fees.

B. Proceeds recovered from such claims shall be placed into the fund.

C. The board shall file a certificate of payment to the ambulance service, hospital or health care provider on behalf of the indigent patient. The certificate shall constitute notice to the public that the lien created by the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978] has attached. County clerks shall receive, index and file certificates and releases of liens created by the certificate, free of charge.

D. In all cases where a lien has been created under Subsection A of this section and a period of fourteen years has passed from the date the lien was created by the payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient, the payment for which the lien is claimed shall be discharged due to the passage of time and the board shall file a certificate releasing the lien due to the lapse of time.

History: 1953 Comp., § 13-2-26, enacted by Laws 1965, ch. 234, § 15; 1975, ch. 178, § 1; 1987, ch. 88, § 4; 1993, ch. 321, § 12.

Cross references. — For payment of claims generally, see 27-5-12 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "an ambulance service, a hospital or health care provider" for "a hospital" near the beginning of Subsection A and in Subsection D; substituted "ambulance service, hospital or health care provider" for "hospital" near the end of the first sentence of Subsection A and near the beginning of

Subsection C; substituted "attorneys" for "attorneys" near the end of Subsection A; and substituted "and County Health Care" for "Claims" in the second sentence of Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality, construction, and application of statute releasing or authorizing release of claim or lien of public on account of aid extended to indigent person, 130 A.L.R. 1149.

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments, 29 A.L.R.2d 731.

27-5-15. Limitation on lien.

The provisions of Subsections A through C of Section 27-5-14 NMSA 1978 shall not apply to any county having adopted a sales tax for the support of indigent hospital patients pursuant to the provisions of Sections 7-21-1 through 7-21-7 NMSA 1978.

History: 1953 Comp., § 13-2-26.1, enacted by Laws 1971, ch. 72, § 2; 1975, ch. 178, § 2.

Compiler's notes. — Sections 7-21-1 to 7-21-7 NMSA 1978, referred to in this section, were re-

pealed by Laws 1986, ch. 20, § 136. For provisions relating to county gross receipts tax, see 7-20E-9 NMSA 1978.

27-5-16. Department; payments; cooperation.

A. The department shall not decrease the amount of any assistance payments made to the hospitals or health care providers of this state pursuant to law because of any financial reimbursement made to ambulance services, hospitals or health care providers for indigent or medicaid eligible patients as provided in the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

B. The department shall cooperate with each board in furnishing information or assisting in the investigation of any person to determine whether he meets the qualifications of an indigent patient as defined in the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

C. The department shall ensure that the sole community provider payment and the reimbursement to hospitals made under the state medicaid program do not exceed what would have been paid for under medicare payment principles. In the event the sole community provider payment and medicaid reimbursement to hospitals would exceed

medicare payment principles, the department shall reduce the sole community provider payment prior to making any reduction in reimbursement to hospitals made under the state medicaid program.

History: 1953 Comp., § 13-2-27, enacted by Laws 1965, ch. 234, § 16; 1987, ch. 88, § 5; 1993, ch. 321, § 13.

The 1993 amendment, effective July 1, 1993, deleted "human services" before "department" near the beginning and substituted "and County Health Care" for "Claims" near the end in Subsections A and

B; inserted "or health care providers" before "of this state" and substituted "ambulance services, hospitals or health care providers for indigent or medicaid eligible patients" for "hospitals for indigent or welfare patients" in Subsection A; and added Subsection C.

27-5-17. Repealed.

Repeals. — Laws 1986, ch. 20, § 136A repeals former 27-5-17 NMSA 1978, as amended by Laws 1975, ch. 44, § 2, relating to exclusion of class A

counties from the provisions of the Indigent Hospital Claims Act, effective July 1, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

27-5-18. Date of implementation.

No money shall be paid from the fund, and no judgment shall be rendered under the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978], for any services rendered to any indigent patient prior to the effective date of the Indigent Hospital and County Health Care Act.

History: 1953 Comp., § 13-2-29, enacted by Laws 1965, ch. 234, § 20; 1993, ch. 321, § 14.

The 1993 amendment, effective July 1, 1993, deleted "created by the Indigent Hospital Claims

Act" after "paid from the fund" and substituted "and County Health Care" for "Claims" in two places.

ARTICLE 6

Utility Supplements and Assistance

Sec.

27-6-1 to 27-6-10. Deleted.

27-6-11. Short title.

27-6-12. Legislative intent and purpose.

27-6-13. Administration of Low Income Utility Assistance Act.

27-6-14. Persons eligible for utility assistance.

Sec.

27-6-15. Utility assistance supplement program established; distribution to eligible recipients.

27-6-16. Fund created.

27-6-17. Utility service; procedures to follow prior to service being discontinued.

27-6-1 to 27-6-10. Deleted.

Compiler's notes. — Sections 27-6-1 to 27-6-10, the Utility Supplement Act, were enacted by Laws 1975, Chapter 300, contingent upon the passage and approval of the Electrical Energy Tax Act. The Electrical Energy Tax Act was enacted by Laws 1975, Chapter 263 and approved April 10, 1975. Laws 1975, ch. 300, § 10, compiled as 27-6-10 NMSA 1978, provides that no payments shall be made under the Utility Supplement Act if the Electrical Energy Tax Act is held invalid in any suit. The Electrical Energy

Tax Act was held invalid under the Supremacy Clause of the United States Constitution in Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979). Laws 1982, ch. 18, § 27 later repealed the Electrical Energy Tax Act, effective July 1, 1982. The provisions of 27-6-1 to 27-6-10 NMSA 1978, the Utility Supplement Act, have been deleted from the statutes compilation as they no longer have any force or effect.

27-6-11. Short title.

This act [27-6-11 to 27-6-16 NMSA 1978] may be cited as the "Low Income Utility Assistance Act".

History: Laws 1979, ch. 290, § 1.

Contract Number	_____
Vendor Number	0000054407
Project Number	See Appendix B
Control Number	See Appendix B

**CAPITAL COOPERATIVE AGREEMENT
CERTIFICATION PROJECT**

This Agreement made and entered into this _____ day of _____, 2009, by and between the New Mexico Department of Transportation, hereafter referred to as "Department," and the County of Valencia, hereafter referred to as "County."

In consideration of the covenants contained herein and pursuant to the NMSA 1978, Section 67-3-28, State Transportation Commission Policy No. 44, and New Mexico appropriation Laws of 2008, the parties agree as follows:

SECTION ONE: PURPOSE

The purpose of this Agreement is to specify and delineate the rights and duties of the parties hereto as outlined in Appendix B and made part of this Agreement. Projects shall hereafter be referred to interchangeably as "Project" or "Project Control Number." Each Project identified in Appendix B shall be assigned a separate control number and project number. The Project is a joint and coordinated effort for which the Department and the County each have authority or jurisdiction.

SECTION TWO: PROJECT FUNDING

1. For Severance Tax Bond and General Fund Appropriations Projects listed in Appendix B the Department shall reimburse the County funds in the amount not to exceed the total amount in Appendix B.
2. Funds must be expended for the purpose designated in Appendix B and must not exceed the amounts designated for each Project.
3. Any unexpended funds shall revert to the originating fund within six months of completion of the Project but no later than June 30, 2012.

SECTION THREE: COUNTY SHALL

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state,

EXHIBIT C

federal laws, Uniform Relocation Act, and current design practices and specifications.

3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented County design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.
8. Submit quarterly status reports to the Department's Local Government Agreement Unit indicating the County's progress for each Project listed in Appendix B.
9. Within sixty days of Project completion, furnish the Department's Transit and Rail Division, Rail Section with the "Certification of Capital Cooperative Agreement Compliance/Completion" (see Appendix A) for each Project listed in Appendix B. The Chairman of County Commission or designee shall execute this Certification.

SECTION FOUR: DEPARTMENT SHALL

Reserve the right to inspect this Project for compliance of requirements specified in this Agreement. If such inspection discloses a failure to meet the requirements as determined by the Department, the Department may terminate this Agreement for default, reserving all rights and prerogatives available under New Mexico law.

SECTION FIVE: PROJECT RESPONSIBILITY

This Project is the County's sole responsibility and nothing herein requires the Department to have any responsibility for future maintenance of the Project. The County shall maintain with its own funds all facilities constructed.

SECTION SIX: JURISDICTION

By reason of the Department's participation in the funding of this Project, the Department is not incorporating this Project into the state highway system. After the completion of the Agreement's purpose, ownership of the resulting project shall remain with the County.

SECTION SEVEN: LEGAL COMPLIANCE

The County shall comply with all applicable federal, state and local laws, and Department regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental and cultural resources requirements, right-of-way acquisition, workplace safety, employer-employee relations, and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The County shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

SECTION EIGHT: THIRD PARTY BENEFICIARY CLAUSE

No provision of this Agreement creates in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION NINE: NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the County arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION TEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS

There shall be strict accountability for all receipts and disbursements relating hereto. The County shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The County shall furnish the Department or State Auditor, upon demand, any and all such records relevant to this Agreement and allow them the right to audit all records, which support the performance of this Agreement. If an audit finding determines that specific funding use was inappropriate or not related to the project, the County shall reimburse that portion to the Department within thirty days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expenses supported by such insufficient documentation shall be reimbursed to the Department within thirty days.

SECTION ELEVEN: AUTHORIZATION OF EXPENDITURES

The terms of this Agreement are contingent upon passage of sufficient appropriations by the Legislature of New Mexico, for performance of this Agreement. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final. If the County incurs costs prior to the full execution of the Agreement, they do so at their own risk.

SECTION TWELVE: REIMBURSEMENT FOR EXPENDITURES INCURRED

The Department's Transit and Rail Division, Rail Section Office shall reimburse the County for One Hundred percent (100%) of the eligible expenses upon receipt of invoices for the Projects listed in Appendix B, with sufficient supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Such invoices shall be submitted to the Department's Transit and Rail Division, Rail Section on a monthly basis. Invoices shall have a certification by the County authenticating that the invoices accurately reflect work completed, amount due, remaining Project balance and Project Control Number. All expenses must be actual rather than estimated and must be listed on the invoices as charged. Reimbursement requests must be submitted individually for each Project listed in Appendix B. Only those expenses that are properly documented and deemed eligible will be reimbursed under this Agreement. Incomplete submittals will be returned to the County for corrections. The Department's Transit and Rail Division, Rail Section will not reimburse the County for any costs incurred after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Final payment requests shall be submitted by the County to the Department's Transit and Rail Division, Rail Section within six months of completion of the Project.

SECTION THIRTEEN: TERMS OF THIS AGREEMENT

This Agreement constitutes the entire Agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement.

SECTION FOURTEEN: TERMINATION

1. This Agreement shall terminate on June 30, 2012. Neither party shall have obligation under this Agreement after said date except as stated in Section Five of this Agreement.
2. The Department may, at its option, terminate this Agreement if the County fails to comply with any provisions of this Agreement. By such termination neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

SECTION FIFTEEN: SEVERABILITY

In the event that any portion of this Agreement is determined to be void, unconstitutional, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION SIXTEEN: AMENDMENT

This Agreement shall not be supplemented or amended except by an instrument in writing and executed by the parties hereto.

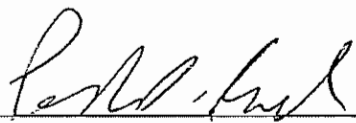
In witness whereof, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Deputy Secretary

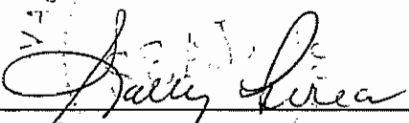
Date: _____

COUNTY OF VALENCIA

By: 
Chairman of County Commission

Date: 12.2.09

ATTEST

By: 
County Clerk

Date: 12.2.09

APPENDIX A

CERTIFICATION OF CAPITAL COOPERATIVE AGREEMENT FOR
RAILROAD CROSSING PROJECTS IN VALENCIA COUNTY
COMPLIANCE/COMPLETION

I, _____, in my capacity as _____ of
_____ do hereby certify as follows:

1. That the County has complied with all the terms and conditions in the Agreement for
Control Number C8G698, Project Number SP-GA-7561(257) ,and ,
Control Number C8G699, Project Number SP-GA-7561(258) .

COUNTY OF VALENCIA

By: _____ Date: _____
Chairman of County Commission or designee _____

Please notarize below

In witness whereof:

State of _____
County of _____

Signed and attested before me on : _____
date

print name

Signature of notarial officer

Title

When Completed, please send Certification to:

Tim Harris, Rail Manager
Transit and Rail Division
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149

APPENDIX B

2008 CAPITAL PROJECTS COOPERATIVE AGREEMENT FOR
RAILROAD CROSSING PROJECTS IN VALENCIA COUNTY

01.	2008 General Fund	
	SB471, Chapter 92, Section 61, Subsection 151	
	Control Number <u>C8G698</u> , Project Number <u>SP-GA-7561(257)</u>	
	to install a railroad safety signal at the intersection of Elaine road and the railroad in Valencia county;	\$114,000
02.	2008 General Fund	
	SB471, Chapter 92, Section 61, Subsection 152	
	Control Number <u>C8G699</u> , Project Number <u>SP-GA-7561(258)</u>	
	to plan, design and construct railroad quiet zones in Belen and in Valencia county	\$115,000
	TOTAL	<u>\$229,000</u>

Agreement No. 10-73-35-2489 (RA)
Account No. 073-7335-998
Tax Payer ID 85-6000261

PROGRAM WORK PLAN
COOPERATIVE WILDLIFE SERVICES PROGRAM
VALENCIA COUNTY

Pursuant to Cooperative Service Agreement No. 10-73-35-2489 (RA) between Valencia County and the United States Department of Agriculture, Animal Plant Health Inspection Service, Wildlife Services (APHIS/WS), this Work and Financial Plan defines the objectives, plan of action, resources and budget for the Wildlife Damage Management Program (WDM) to be conducted from **July 1, 2009 thru June 30, 2010**.

I. OBJECTIVES AND GOALS

Valencia County and Wildlife Services have identified the following objectives to be accomplished in this program.

- A. To maintain a cooperative WDM program in Valencia County. This will enable the general public, including farmers, ranchers, growers, and producers, to receive the necessary operational and technical assistance support to efficiently and effectively reduce wildlife damage and conflicts that adversely impact agricultural and other interests. The program also provides for the protection of public health and safety and the protection of other resources.
- B. The results or benefits to be expected from a cooperative WDM program include APHIS-WS expertise, APHIS-WS operational and technical assistance, the provision of necessary control equipment and the distribution of control materials such as restricted use pesticides. Additional benefits include APHIS-WS coordination and planning support with public land managing agencies and federal and state wildlife agencies such as the U.S. Fish and Wildlife Service and the New Mexico Department of Game and Fish in order to properly conduct WDM activities.

II. PLAN OF ACTION

This contract provides a portion of the funding for a fully funded Wildlife Specialist at \$64,000. Half of this \$64,000 position is derived from federal and state funds. The portion provided by Valencia County through this contract is \$4,000 and that funds up to 125 hours per year for the WDM program in Valencia County. Other cooperative contracts may contribute to the remainder needed to support the position and the assigned Wildlife Specialist may be detailed to other projects. Work hours will be used to provide operational and technical assistance, travel and conduct administrative duties such as reports and training seminars.

WDM may be provided at times and places where it is determined there is a need to resolve agricultural or other resource conflicts caused by problem animals. Conflict resolutions may be sought using two basic approaches, direct control operations and technical assistance.

EXHIBIT D

A. Damage Control Strategies:

1. Operational control work. If the desired approach requires skilled technicians, actual work will be performed by qualified WS Specialists. Operational management methods will be directed toward specific individuals or local populations by selecting the time, locations, technique, and specific applications of the control tool. Determinations of method will depend on considerations of efficacy, selectivity, human safety, effectiveness, practicability, and cost. Operational control work may be conducted on authorized areas of private and public lands, and will be conducted using one or more control strategies, depending on the conflict situation.

a. Corrective control on local depredating target populations or individual animals: This control will be utilized to solve problems after damage has occurred such as prairie dog damage to pastures or irrigation structures. This strategy will be employed as soon as possible after damage is confirmed. It would require the treatment of the affected area or removal of individuals of the target species causing the problem.

b. Preventive control or the general suppression of a local population of a target species: This strategy will be utilized in situations such as livestock grazing areas where high levels of predator caused losses have historically occurred. Control may involve the removal of potential depredating target animals from these areas prior to livestock utilization or prior to lambing or calving.

c. Non-lethal control strategies will be recommended whenever appropriate to reduce or prevent damage or conflicts.

2. Technical Assistance. When feasible, problems may be resolved by providing technical assistance to the individual(s) having the problem(s). WS Specialists may assist private control efforts or may serve in an advisory capacity to make such efforts more selective, effective, and efficient. APHIS-WS personnel may provide technical assistance by personal consultation, telephone consultation, group presentations or workshops, leaflets, or letter. Technical assistance may also involve the distribution of restricted-use pesticides and the assistance to individuals in becoming a certified pesticide applicator.

B. Control Methods and Techniques:

Basic operational damage control methods to address various wildlife/human conflicts include: (1) EPA registered rodenticides, (2) aerial shooting, (3) ground shooting, (4) snaring, (5) trapping, various types, including live traps, (6) Livestock Protection Collars and M-44's (sodium cyanide ejecting devices), (7) various other methods, such as glue boards, environmental manipulation, fencing, use of pyrotechnics, etc. Also, combinations of different methodologies and degrees of intensity, depending on local conditions and history of specific damage situations may be utilized. Each control method has advantages and disadvantages; each is effective in some situations but not in others. These methods will be used singly or in combinations, depending on circumstances involved.

III. PROCUREMENT

Purchases of supplies, equipment and services will be made by APHIS-WS through its administrative system. Any equipment and supplies purchased under the terms of this agreement will remain the property of APHIS-WS.

IV. STIPULATIONS AND RESTRICTIONS

- A. APHIS-WS will use only APHIS-WS employees and APHIS-WS Volunteer Program participants. All APHIS-WS employees have successfully met APHIS-WS firearm safety standards and are Certified Public Applicators of Restricted-Use pesticides.

- B. APHIS-WS will conduct the program in accordance with its established operating policies and all state and federal laws and regulations.

- C. General program operations shall have the joint concurrence of APHIS-WS and Valencia County, and shall be under the direct supervision of APHIS-WS. Program direction will be provided by the APHIS-WS State Director located in Albuquerque, New Mexico. District field supervision will be provided by APHIS-WS District Supervisor, Ken Podborny, located at 8441 Washington St. NE, Albuquerque, New Mexico, (505)-346-2640.

V. REPORTS

A report of WS activities will be prepared and available after the end of the fiscal year.

VI. COST ESTIMATE FOR SERVICES

Valencia County will reimburse APHIS-WS for expenses incurred. Such costs include, but are not limited to, salary and benefits, vehicle use, supplies and equipment, and reimbursement costs. An estimated itemization of expenses is listed below however funds may be distributed between itemized categories at the discretion of APHIS-WS. A payment of \$4,000 will be made upon receipt of billing. Cooperative funds equal approximately half of the actual cost and are expended as follows:

PERSONNEL COST:	Salaries	\$2,360	(59%)
	Benefits	\$ 680	(17%)
REIMBURSEMENTS		\$ 80	(2%)
VEHICLE MAINTENANCE/REPAIRS		\$ 120	(3%)
FUEL		\$ 400	(10%)
VEHICLE REPLACEMENT COST		\$ 280	(7%)
SUPPLIES/EQUIPMENT		\$ 80	(2%)
TOTAL		\$4,000	

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS/WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days must be forwarded to debt collection centers or commercial collection agencies for more aggressive action.

VII. AUTHORIZATION

VALENCIA COUNTY BOARD OF COMMISSIONERS
Tax Identification Number: 85-6000261



CHAIRMAN

12-2-09
DATE

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES
Tax Identification Number: 41-0696271

STATE DIRECTOR, NEW MEXICO

DATE

DIRECTOR, WESTERN REGION

DATE

**COOPERATIVE SERVICE AGREEMENT
REIMBURSABLE
between
VALENCIA COUNTY
and
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES (WS)**

ARTICLE 1 - PURPOSE

The purpose of this agreement is to conduct wildlife damage management (WDM) activities to control damage and conflicts caused by wildlife in Valencia County, New Mexico. The activities will include employing available technologies through operational and a technical assistance programs.

ARTICLE 2 – AUTHORITY

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426b) as amended, and the Act of December 22, 1987 (101 Stat.1329-331, 7 U.S.C. 426c), for the Secretary of Agriculture to cooperate with States, individuals, public and private agencies, organizations, and institutions in the control of wild mammals and bird species that are reservoirs for zoonotic diseases or are injurious or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife and public health and safety.

ARTICLE 3 - MUTUAL RESPONSIBILITIES

The Cooperator and WS agree:

- a. To confer and plan a WDM program that addresses the need for managing conflicts caused by wildlife in Valencia County, New Mexico. Based on this consultation, WS will formulate annually, in writing, the program work plan and associated budget and present them to the Cooperator for approval.
- b. Each year the Cooperator and APHIS-WS must agree to and sign the annual Work and Financial Plans, which upon execution are incorporated into this Agreement by reference.
- c. When either of the Cooperating parties address the media or incorporate information into reports and/or publications, both Cooperating parties must agree, in writing, to have their identities disclosed when receiving due credit related to the activities covered by this agreement.
- d. That APHIS-WS has advised the Cooperator that other private sector providers may be available to provide wildlife management services and notwithstanding these other options, Cooperator requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.

ARTICLE 4 - COOPERATOR RESPONSIBILITIES

The Cooperator agrees:

- a. To designate the County Manager, P.O. Box 1119, Los Lunas, New Mexico, 87031, (505) 866-2005 as the authorized representative who shall be responsible for collaboratively administering the

EXHIBIT E

activities conducted in this Agreement.

- b. To reimburse APHIS-WS for costs, not to exceed the annually approved amount specified in the Work and Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the Work and Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The Cooperator agrees to pay all costs of service submitted via an invoice within 30 days of the date of the submitted invoice or invoices as submitted by APHIS-WS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the Cooperator is delinquent in paying the full amount of the due service costs submitted by APHIS-WS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS-WS will immediately cease to provide the respective service associated with the submitted service costs. APHIS-WS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.
- c. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.
- d. As a condition of this Agreement, The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

ARTICLE 5 – WS RESPONSIBILITIES

WS agrees:

- a. To designate Kenneth R. Podborny, District Supervisor, 8441 Washington St. NE, Albuquerque, New Mexico, 87113, (505) 346-2640 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;
- b. The performance of wildlife damage management actions by WS under this agreement is contingent upon a determination by WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance;
- c. To provide qualified personnel and other resources necessary to implement the approved WDM activities delineated in the Work and Financial Plan referenced in 3.a of this Agreement.
- d. To bill the Cooperator for costs incurred in performing WDM activities in Valencia County, New Mexico as authorized in the approved annual Work and Financial Plan as may be amended.
- e. To notify the Cooperator if costs are projected to exceed the amounts estimated and agreed upon in the Financial Plan. WS will cease providing goods or services until a revision to the Work and Financial Plan, as appropriate, have been agreed to and signed by both parties to this Agreement.
- f. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of WS pertaining to such claims for reimbursement to the extent permitted by Federal laws and regulations.

ARTICLE 6 – WS CONDITIONS

For costs borne by WS, this agreement is contingent upon the passage of the Agriculture, Rural Development, and Related Agencies Appropriation Act for the current fiscal year from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS funds only for a finite period under a Continuing Resolution.

ARTICLE 7 - ASSURANCES

Nothing in this agreement shall prevent any other State, agency, organization or individual from entering into separate agreements with WS or the Cooperator for the purpose of managing wildlife damage.

ARTICLE 8 – CONGRESSIONAL RESTRICTIONS

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise there from.

ARTICLE 9 – APPLICABLE REGULATIONS

All WDM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations.

This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients.

ARTICLE 10 – LIABILITY

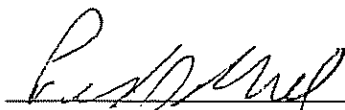
APHIS assumes no liability for any actions or activities conducted under this agreement except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

ARTICLE 11 – AGREEMENT EFFECTIVE DATE

This agreement shall become effective upon the date of final signature and shall continue for a period not to exceed 5 years. This agreement may be amended at any time by mutual agreement of the parties in writing. It may be terminated by either party upon 60 days written notice to the other party. Further, in the event the Cooperator does not for any reason reimburse expended funds, WS is relieved of the obligation to continue any operations under this agreement.

AUTHORIZATION:

VALENCIA COUNTY
Los Lunas, New Mexico
Tax ID No. 85-6000261



CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

12-2-09

Date

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES
Albuquerque, New Mexico:
Tax Identification Number: 41-0696271

State Director, New Mexico

Date

Director, Western Region

Date

VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION 2009- 56

VALENCIA COUNTY COMPENSATION PLAN FOR A NON-REOCCURRING
ADDITION TO PAYROLL AND EMPLOYEE ELIGIBILITY REQUIREMENTS
FOR THE SAME

WHEREAS, the County of Valencia is a subdivision of the State of New Mexico existing by and under the Constitution and Laws of the State of New Mexico; and,

WHEREAS, NMSA 1978 Section 4-38-19 (A) (1973) provides in part that, “[a] board of county commissioners may set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county. . .” and,

WHEREAS, the County of Valencia, may, “. . . consistent with the constitution, pay its employees a bonus or one-time salary increase if the bonus or increase and the criteria for receiving it were included in the employees’ compensation plan or agreement before the services [a]re rendered.” See, e.g. Att’y Gen. Letter Op. Cisco McSorley, 2004 WL 1988102 (June 4, 2004).

WHEREAS, by adoption of this resolution, the Board of County Commissioners will provide to its employees a one-time increase in an amount up to \$300.00; and,

WHEREAS, this payroll increase being provided based on the dedication and support of our employees, in recognition of the meaningful work they perform for the citizens of this County, in exchange for their continued and future service to the County, and to retain qualified employees who may otherwise be forced to seek other employment outside of the County, and,

NOW THEREFORE, BE IT RESOLVED, by the Valencia County Board of County Commissioners that to be eligible for the Non-reoccurring addition to payroll an employee must meet the following conditions:

This one-time payroll addition for FY 09-10 will be distributed to those County of Valencia employees who are in county service from December 3, 2009 thru December 25, 2009.

This amount will be paid the week of December 25, 2009

This includes:

- Number – Full-Time Non-Probationary Employees = 100% (\$amount)

EXHIBIT F

Page 1 of 2

BOOK 068 PAGE 542

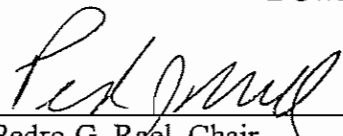
- Number – Part-Time Non-Probationary Employees = 50% (\$amount)
- Number – Temporary Employees = 25% (\$amount)
- Number – Temporary Employees = 25% (\$amount)

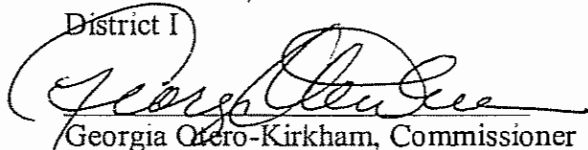
Elected Officials, their Chief Deputies and all "Bargaining Unit" employees are excluded from this compensation plan and distribution.

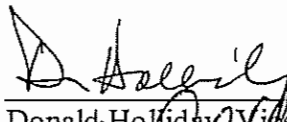
NOW THEREFORE, BE IT FURTHER RESOLVED, by the Valencia County Board of County Commissioners that the terms of this addition to payroll is contingent upon sufficient appropriations and authorization being made by this Board and that such increase is approved by the New Mexico Department of Finance. If sufficient appropriations are not made by the governing body or if such appropriations are not approved by the New Mexico Department of Finance, this Resolution shall be void.

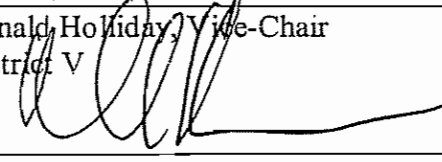
APPROVED, ADOPTED, AND PASSED on this 2nd day of December, 2009.

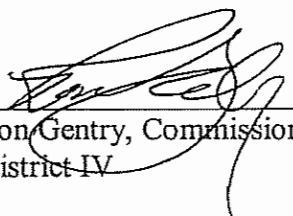
BOARD OF COUNTY COMMISSIONERS


 Pedro G. Rael, Chair
 District I

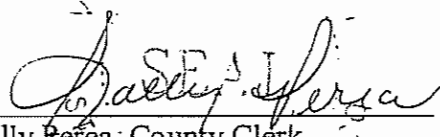

 Georgia Otero-Kirkham, Commissioner
 District II


 Donald Holiday, Vice-Chair
 District V


 David R. Medina, Commissioner
 District III


 Ron Gentry, Commissioner
 District IV

Attest:


 Sally Peres, County Clerk

ENTITY NAME: Valencia
FISCAL YEAR: F.Y. 09-10
DFA Resolution Number:

ENTITY NAME: Valencia
FISCAL YEAR: F.Y. 09-10
DFA Resolution Number:

[illegible]

Attest: [Signature] 12.2.09
Mayor/Board Chairman
Pedro G. Rael
(Date)

[Signature]

Title Chairman

Date 12.7.09

Attest: [Signature] 12.2.09
Mayor/Board Chairman
Pedro G. Rael
(Date)

[Signature]

Title Chairman

Date 12.7.09

**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
ACCOUNTS PAYABLE AUTHORIZATION**

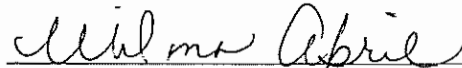
The attached computer printout lists all the checks issued by the Manager's Office on November 30, 2009 covering vendor bills processed on the above date. Check # 101368 thru Check # 101524 inclusive, for the total of \$580,787.10.

All have been reviewed for:

1. Appropriate documentation and approvals.
2. Authorized budget appropriations.
3. Compliance with New Mexico Statutes, and
4. DFA Rules and Regulations.

In recognition of the above, the Fiscal Office requests this action be officially recorded in the minutes of the regular county commission meeting before which body this matter came.

Recommended:



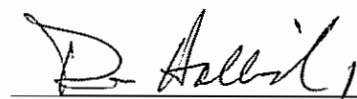
Wilma Abril, Director of Finance

Done this 2nd day of December, 2009.

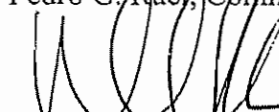
VALENCIA COUNTY BOARD OF COMMISSIONERS



Pedro G. Rael, Commissioner, Chair




Donald Holliday, Commissioner, Vice Chair



David R. Medina, Commissioner

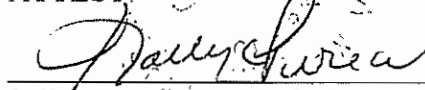


Ron Gentry, Commissioner



Georgia Otero-Kirkham, Commissioner

ATTEST:



Sally Perea, County Clerk

EXHIBIT H

**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
PAYROLL AUTHORIZATION**

The attached computer printout lists all checks issued by the Managers Office on
11/20/2009 covering payroll process on the above date.

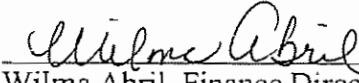
Direct Deposit Check # 13205 thru direct deposit check# 13379 inclusive.
Deduction Check# 101333 thru deduction check# 101367 inclusive.
Payroll Check # 85973 thru payroll check # 86068 inclusive.
Listing total \$ 370,383.34

All have been reviewed for:

1. Appropriate documentation and approvals
2. Authorized budget appropriations.
3. Compliance with New Mexico Statutes, and
4. DFA Rules and Regulations.

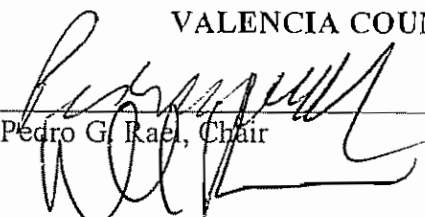
In recognition of the above, the Manager's Office request this action be officially recorded in the minutes of the regular county commission meeting before which body this matter came.

Recommended:

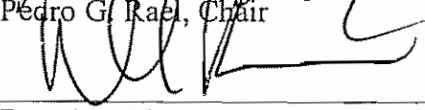

Wilma Abril, Finance Director

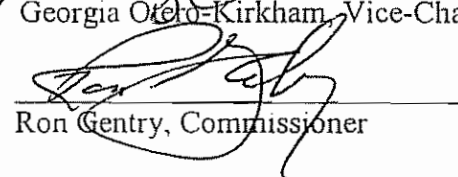
Done this 2nd day of December, 2009


VALENCIA COUNTY BOARD OF COMMISSIONERS


Pedro G. Rael, Chair

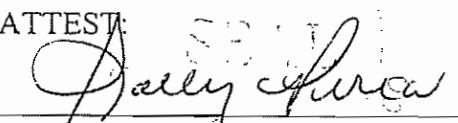

Georgia Otero-Kirkham, Vice-Chair


David R. Medina, Commissioner


Ron Gentry, Commissioner


Donald E. Holliday, Commissioner

ATTEST:


Sally Perea, County Clerk