



## STATUTES

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

- A. There is created the "commission for deaf and hard-of-hearing persons", consisting of seven members, a majority of whom are deaf or hard-of-hearing persons, including three ex-officio members and four members appointed by the governor without regard for party affiliation, with the advice and consent of the senate. Terms of appointed members shall be for six years, expiring on December 31 of odd-numbered years, in accordance with the staggered terms of the appointed members holding office on the effective date of this 1999 amendment.
- B. Ex-officio members are:
- (1) the president of the New Mexico association for the deaf or his designee;
  - (2) the superintendent of the New Mexico school for the deaf or his designee;
- and
- (3) the director of the vocational rehabilitation division of the state department of public education or his designee who shall be knowledgeable in the area of deafness.
- C. Appointed members are:
- (1) a parent of a deaf or hard-of-hearing child;
  - (2) a professional person who is deaf or hard of hearing;
  - (3) a deaf or hard-of-hearing person who resides in southern New Mexico;
- and
- (4) a deaf or hard-of-hearing person who resides in northern New Mexico.
- D. A majority of the members of the commission for deaf and hard-of-hearing persons constitutes a quorum for transaction of business. The commission shall elect a chairman from its membership.

E. Members of the commission for deaf and hard-of-hearing persons shall be compensated as provided in the Per Diem and Mileage Act [ [10-8-1](#) to [10-8-8](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance.

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

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

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

- A. supervise the activities of the executive director of the commission;
- B. identify the needs of the deaf and hard-of-hearing population of New Mexico;
- C. provide educational assistance to state agencies and, specifically, ensure agency compliance with regulations pertaining to deafness promulgated pursuant to the federal Americans with Disabilities Act;
- D. coordinate with state agencies providing services for deaf and hard-of-hearing persons;
- E. advocate for equal access to services and opportunities for deaf and hard-of-hearing persons;
- F. provide continuing education services to deaf and hard-of-hearing persons;
- G. assist in the establishment of a statewide interpreter referral service;
- H. review and coordinate certification and evaluation processes for interpreters;
- I. convene a minimum of four times each year in varying locations throughout the state; and
- J. submit reports on its work for the preceding year to the governor and the legislature at least forty-five days prior to each regular legislative session.

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

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

B. The executive director shall employ such assistants and employees as are necessary for the efficient operation of the commission for deaf and hard-of-hearing persons. There shall be a minimum of five full-time staff members. The executive director shall not be subject to the Personnel Act [ [10-9-1](#) NMSA 1978]. All other staff members shall be subject to the Personnel Act [ [10-9-1](#) NMSA 1978].

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

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

#### **63-9F-1. Short title.**

Chapter 63, Article 9F NMSA 1978 may be cited as the "Telecommunications Access Act".

#### **63-9F-2. Findings and purpose.**

- A. The legislature finds that:
- (1) it supports those provisions of the federal Americans with Disabilities Act of 1990 that address the need to provide telecommunications access to all citizens;
  - (2) many New Mexicans are hearing or speech impaired and because of their impairment are unable to use traditional telecommunications equipment and services without assistance; and
  - (3) the state's hearing or speech impaired citizens are a substantial and valuable resource and their participation as contributing and productive members of our society would be enhanced substantially if full access to telecommunications service were made available to them.
- B. It is the purpose of the Telecommunications Access Act [ [63-9F-1](#) NMSA 1978] to provide a statutory framework and funding under which the opportunity for full access to telecommunications services is made available to hearing or speech impaired New Mexicans.

#### **63-9F-3. Definitions.**

As used in the Telecommunications Access Act [ [63-9F-1](#) NMSA 1978]:

- A. "commission" means the commission for deaf and hard-of-hearing persons;
- B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;
- C. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

D. "intrastate telephone services" means all charges for access lines, special services and intrastate toll services, including all calls originating and terminating in the state;

E. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network;

F. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978; and

G. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person.

**63-9F-4. Specialized telecommunications equipment program established.**

The commission shall design, establish and administer a program for providing specialized telecommunications equipment to impaired individuals. The commission shall adopt regulations for the program that:

A. shall include eligibility requirements for participation in the program, which requirements:

(1) shall provide financial eligibility conditions; and

(2) shall include provisions for determining eligibility thresholds based on:

(a) the quality and severity of the individual's impairment;

(b) the availability of current telecommunications services at the individual's place of residence;

(c) New Mexico residency; and

(d) minimum age;

B. establish detailed procedures and forms to be used by impaired individuals wishing to apply for participation in the program;

- C. establish minimum training requirements for all applicants receiving telecommunications equipment regarding etiquette and use of telecommunications equipment;
- D. include a statewide survey and information gathering component to identify the extent of the hearing and speech impairment problem in the state, the number of impaired individuals in the state and the existence and availability of any specialized telecommunications equipment; and
- E. include an outreach component designed to provide information about and facilitate access to the program for impaired individuals.

**63-9F-5. Repealed.**

**63-9F-6. Telecommunications relay system.**

- A. The commission shall administer a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals.
- B. The commission shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The commission shall comply with the provisions of the Procurement Code [ [13-1-28](#) NMSA 1978] in contracting for the services and property required. The commission shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section [13-1-21](#) NMSA 1978 shall receive a five percent preference. In the procurement process, the commission shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state.
- C. If the commission determines that no proposal or bid is acceptable after review, the commission may provide the telecommunications relay system.
- D. The telecommunications relay system shall:
  - (1) be available statewide for operation twenty-four hours a day every day of the year;
  - (2) relay all messages promptly and accurately;
  - (3) protect and maintain the privacy of individuals using the system;

- (4) preserve the confidentiality of all telephone communications; and
- (5) conform to all applicable standards established by state and federal laws and regulations adopted pursuant to those laws.

**63-9F-7. Repealed.**

**63-9F-8. Commission duties; power to audit.**

- A. The commission shall perform all actions necessary to carry out the provisions of the Telecommunications Access Act [ [63-9F-1](#) NMSA 1978], including;
- (1) promulgating and administering such policies, procedures and rules as are necessary to comply with the purpose of that act and to ensure that the specialized telecommunications equipment program and the relay system are in compliance with the applicable state and federal laws and rules adopted pursuant to those laws;
  - (2) obtaining certification from the federal communications commission that the telecommunications relay system is in compliance with applicable federal rules;
  - (3) making expenditures for the specialized telecommunications equipment program and the telecommunications relay system;
  - (4) ensuring the quality of the telecommunications relay system and the satisfaction of its users;
  - (5) identifying the need for specialized telecommunications equipment by impaired individuals;
  - (6) identifying the problems that impaired individuals have in acquiring specialized telecommunications equipment; and
  - (7) providing funding for the specialized telecommunications equipment program.
- B. The commission may require an annual audit of each telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act. Audits conducted pursuant to this subsection shall be at the expense of the requesting agency.

**63-9F-9. Limit on liability.**

The commission and the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or

resulting from the establishment, participation in or operation of the telecommunications relay system except for gross negligence or intentional acts.

**63-9F-10. Complaints.**

All complaints, including complaints about the service provided by the telecommunications relay system, the provider of the telecommunications relay system or the operation and administration of the telecommunications relay system, shall be made directly to the commission.

**63-9F-11. Imposition of surcharge.**

A. A telecommunications relay service surcharge of thirty-three hundredths percent is imposed on the gross amount paid by customers for:

- (1) intrastate telephone services, other than mobile telecommunications services, provided in this state; and
- (2) intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico.

B. The telecommunications relay service surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telephone services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer. For the purposes of Subsections A and B of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act .

C. A telecommunications company providing intrastate telephone services shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department, on or before the

twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act [ [7-1-1](#) NMSA 1978].

D. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection E of this section.

Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

E. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the general fund each month.

F. The commission shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

- (1) the amount and source of revenue received by the telecommunications access fund;
- (2) the amount and category of expenditures from the fund; and
- (3) the balance of the fund on that June 30.

**63-9F-12. Telecommunications access fund; established.**

There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund. The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission. The commission shall administer the fund. Money in the fund is appropriated to the commission for the purpose of carrying out the provisions of the Telecommunications Access Act [ [63-9F-1](#) NMSA 1978]. The commission may request the state budget division of the department of finance and administration to approve the expenditure of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the commission in the administration of the provisions of the Telecommunications Access Act. The state budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund

during any fiscal year for expenses incurred by the commission in administering that act. In addition, money in the fund shall be available for appropriation by the legislature to the commission for the performance of its duties pursuant to Chapter 28, Article 11B NMSA 1978. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

**63-9F-13. Confidentiality of translated or relayed conversations; penalty for breach of confidentiality.**

- A. A communications assistant who is employed to translate or relay a conversation to or from an impaired individual is a conduit for the conversation and shall not disclose, or be compelled to disclose in any nonjudicial proceeding, the contents of the conversation.
- B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of [Section 31-19-1](#) NMSA 1978.