

TITLE 9 HUMAN RIGHTS
CHAPTER 4 PERSONS WITH DISABILITIES
PART 20 GOVERNOR'S COMMISSION ON DISABILITY RULES

9.4.20.1 ISSUING AGENCY: Governor's Commission on Disability formally known as governor's committee on concerns of the handicapped.
[9.4.20.1 NMAC - Rp 9.4.20.1 NMAC, 12/27/2018]

9.4.20.2 SCOPE: The provisions in Part 20 apply to all parts of Chapter 4 of Title 9, and provide relevant information to anyone affected or interested in Chapter 4 of Title 9.
[9.4.20.2 NMAC - Rp 9.4.20.2 NMAC, 12/27/2018]

9.4.20.3 STATUTORY AUTHORITY: These rules are adopted pursuant to Subsection I of Section 28-10-2 NMSA 1978. Any conflict with the constitution or laws of the state of New Mexico or of the United States of America is not intended and void.
[9.4.20.3 NMAC - Rp 9.4.20.3 NMAC, 12/27/2018]

9.4.20.4 DURATION: [Permanent]
[9.4.20.4 NMAC - Rp 9.4.20.4 NMAC, 12/27/2018]

9.4.20.5 EFFECTIVE DATE: December 27, 2018, unless a later date is cited at the end of the section.
[9.4.20.5 NMAC - Rp 9.4.20.5 NMAC, 12/27/2018]

9.4.20.6 OBJECTIVE: The purpose of the governor's commission on disability is the removal of barriers to the full integration of persons with disabilities into the mainstream of New Mexico life, increase the quality of life of New Mexicans with disabilities, and to meet all of the responsibilities and exercise all of the authorities granted by law.
[9.4.20.6 NMAC - Rp 9.4.20.6 NMAC, 12/27/2018]

9.4.20.7 DEFINITIONS:

- A. "Agency"** means an entity, public or private, which provides various social and/or health related services.
- B. "Applicant"** means an individual in the community with a disability and capable of self-directed care.
- C. "Client"** means an applicant who has been approved by the governor's commission on disability to receive services of the residential accessibility modification program.
- D. "Commission"** means the governor's commission on disability.
- E. "Contractor"** means person(s) who may provide one or more of the services authorized for payment with residential accessibility modification program funds.
- F. "Disability"** means a physical or mental impairment that substantially limits one or more of the major life activities such as caring for oneself, walking, toileting, etc.
- G. "GCD"** means the governor's commission on disability;
- H. "Notice to Proceed"** means a notification letter from the RAMP project manager addressed to the contractor awarding the project, and notification stating the contractor can commence work on the referenced project within 10 consecutive calendar days.
- I. "Payer of last resort"** means as a condition of eligibility for residential accessibility modification program services, another public or private insurance or coverage and a community resource is exhausted first.
- J. "Proof of disability"** means a statement of disability signed by a physician or a verification of federally issued disability benefits.
- K. "RAMP"** means residential accessibility modification program.

[9.4.20.7 NMAC - Rp 9.4.20.7 NMAC, 12/27/2018]

9.4.20.8 COMMISSION CREATED:

A. There is created the "governor's commission on disability".

B. The commission shall consist of 15 members, nine of whom shall be appointed by the governor. Initially, three members shall be appointed for terms ending December 31, 1978, three members for terms ending December 31, 1980 and three members for terms ending December 31, 1982. Thereafter, appointments shall be for six years expiring on December 31 of even-numbered years. Appointed members shall be appointed from different geographic areas of the state and from the major disability services in the state. Appointed members shall include individuals with disabilities, representatives of government and private enterprise, parents or guardians of individuals with disabilities and professionals in, or those who are interested in, service for individuals with disabilities. Not more than five of the members appointed by the governor shall be of the same political party.

C. The six remaining members shall be the director of the department of vocational rehabilitation of the public education department, the secretary of labor or the secretary's designee, the director of the behavioral health services division of the human services department, the secretary of children, youth and families or the secretary's designee, the secretary of aging and long-term services or the secretary's designee and the secretary of human services or the secretary's designee.

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

E. The commission shall be primarily concerned with those individuals with disabilities who have a condition that, regardless of its physical or mental origin, constitutes a substantial occupational disadvantage. [9.4.20.8 NMAC - Rp 9.4.20.8 NMAC, 12/27/2018]

9.4.20.9 POWERS AND DUTIES: The governor's commission on disability shall establish and maintain a comprehensive statewide program designed to encourage and promote attention to the concerns of education and employment of individuals with disabilities in this state.

To further this purpose, the commission shall:

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

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

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

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

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

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

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

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

I. make by-laws as it determines advisable for the conduct of its own business;

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

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

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

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

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

[9.4.20.9 NMAC - Rp 9.4.20.9 NMAC, 12/27/2018]

9.4.20.10 MEETINGS: All meetings shall be conducted in accordance with the “Open Meetings Act” (Section 10-15-1 et. seq. NMSA 1978) and the commission’s open meetings resolution.

A. Regular meetings of the commission shall be held at least two times each year at the call of the chairperson in consultation with the director. Special or emergency meetings shall likewise be held following the provisions of the applicable section of the open meetings act.

B. No meeting shall be held before reasonable notice to the commission and to the public as described in 9.4.20.11 NMAC.

C. Meetings shall be conducted in accordance with generally accepted principles of parliamentary procedure as determined by the chairperson.

D. Meetings shall be held in accessible locations throughout the state as determined by the director.

E. Annual meeting: One of the regular meetings of the commission will be designated as the annual meeting. This meeting shall be held generally in the spring and shall be conducted in the manner of a statewide conference for all persons with disabilities and agencies and professionals working with persons with disabilities; other meetings shall be generally limited to regular business. The commission will endeavor to hold this meeting in different locations throughout the state. At the annual meeting, the commission will review and make necessary changes to the by-laws and rules, strategic plan and open meetings resolution. The commission shall also approve the operating budget for the next fiscal year at the annual meeting.

[9.4.20.10 NMAC - Rp 9.4.20.10 NMAC, 12/27/2018]

9.4.20.11 REASONABLE NOTICE: Notice for all meetings will be provided in accordance with the "Open Meetings Act" Section 10-15-1 et. seq. and the commission's open meetings resolution.

A. For the public:

(1) At least 10 days prior to each regular meeting an announcement in at least two newspapers of general circulation, including one with statewide circulation and a second with regional or local circulation in the community in which the meeting shall take place, shall be published advising the date, time, place, and general agenda.

(2) Special meetings may be held at least three days subsequent to the release of the general press announcement containing the date, time, location and specific need for a special meeting.

(3) Emergency meetings may be held at least 24 hours subsequent to release of a general press announcement containing the date, time, location and specific need for an emergency meeting.

B. For the commission:

(1) Commissioners shall be notified of the date, time and location of regular meetings via regular mail or email at least three weeks prior to the meeting.

(2) Commissioners shall be notified by regular mail or e-mail at least three days before a special meeting.

(3) Commissioners should be notified by regular mail or e-mail at least three days before an emergency meeting, but in no event without at least three attempted phone calls placed at least 24 hours prior to said emergency meeting.

[9.4.20.11 NMAC - Rp 9.4.20.11 NMAC, 12/27/2018]

9.4.20.12 VOTING:

A. All commissioners, including statutory members, shall be entitled to vote on all matters before the commission.

B. All votes shall be recorded.

C. A commissioner may vote by proxy executed in writing by that commissioner and filed with the director.

D. Commissioners whose terms of appointment have expired, but for whom no replacements have been named, shall continue to serve and be eligible to vote on all matters until such replacement are appointed.

[9.4.20.12 NMAC - Rp 9.4.20.12 NMAC, 12/27/2018]

9.4.20.13 OFFICERS:

A. At the annual conference meeting of each year a chairperson and vice chairperson shall be elected to serve for a period of one year.

B. The duty of the chairperson shall be to call and conduct the meetings and the vice chairperson shall serve in the absence of the chairperson.

C. No commissioner shall be elected to office in a year in which the term of appointment to the commission expires.

[9.4.20.13 NMAC - Rp 9.4.20.13 NMAC, 12/27/2018]

9.4.20.14 ATTENDANCE:

A. For commissioners appointed by the governor: The director shall request the governor to replace any commissioner who is absent for two consecutive regular meetings without an excuse approved by the chairperson regardless of whether a proxy is sent.

B. For statutory commissioners: The director shall notify the governor of any statutory commissioner who fails to attend any two consecutive regular meetings in person or by proxy, and request the governor to take appropriate action.

[9.4.20.14 NMAC - Rp 9.4.20.14 NMAC, 12/27/2018]

9.4.20.15 DUTIES OF THE COMMISSIONERS: The commissioners shall:

- A.** perform all duties required by law;
- B.** hire a director and perform an annual personnel evaluation of the director;
- C.** approve annual budget requests and operating budgets;
- D.** ratify inventory deletions;
- E.** establish priorities for staff activities, according to statute;
- F.** approve the commission's annual report;
- G.** adopt positions of support, neutrality or opposition for proposed legislation affecting persons with disabilities;
- H.** endeavor to learn the needs and concerns of persons with disabilities statewide;
- I.** perform such other tasks as the governor or legislature may request.

[9.4.20.15 NMAC - Rp 9.4.20.15 NMAC, 12/27/2018]

9.4.20.16 DUTIES OF THE DIRECTOR: The director shall:

- A.** direct daily operation of the agency in compliance with applicable laws and regulations;
- B.** hire and supervise staff as authorized by New Mexico state personnel board rules and regulations;
- C.** advocate for the achievement of agency goals within state, federal, and local governments, and among service providers, private sector and the general public;
- D.** maintain close ties to the executive and legislative branches of state government; provide testimony on issues affecting persons with disabilities, and keep advised of the status of legislative actions affecting persons with disabilities or the commission;
- E.** report on activities in past legislative sessions and present issues expected to be discussed in legislative hearings to the commission prior to each session and promote the positions, if any, adopted on such issues by the commission;
- F.** notify the chair or vice-chair before traveling out-of-state or taking more than three consecutive days of leave;
- G.** serve full time in that capacity and shall maintain residency in New Mexico during the times of occupancy of that position;
- H.** ensure that the annual report is prepared in a timely manner.

[9.4.20.16 NMAC - Rp 9.4.20.16 NMAC, 12/27/2018]

9.4.20.17 CODE OF CONDUCT:

A. All commissioners and staff shall be provided with a copy of the New Mexico Governmental Conflict of Interest Act and shall abide by the terms.

B. Any commissioner endorsing a particular commercial product or service shall do so in their individual capacity only.

C. The commission acts only as a body; commissioners wishing to volunteer time between meetings on commission business are encouraged to do so in consultation with the director. No per diem or travel expenses shall be reimbursed unless the travel or expense was first approved by the director.

D. No commissioner may make any commitment or decision which binds on the commission unless that commissioner received specific authorization.

E. All commissioners and staff shall treat their positions as a public trust. They shall use the powers and resources of their positions only to advance the public interest, and not obtain personal benefits or pursue private interests incompatible with public interest.

F. All commissioners and staff shall protect and maintain state property within their possession and shall promptly report all lost, stolen or damaged property beyond normal wear and tear.

G. All commissioners and staff shall familiarize themselves with applicable rules and laws governing their conduct.

H. All commissioners and staff shall conduct themselves in a manner that justifies the confidence placed in them by the public and at all times shall maintain their integrity and discharge ethically the high responsibilities of public service.

I. All commissioners and staff shall fully disclose all activities which constitute a real or potential conflict of interest.

J. All commissioners and staff shall not engage in undue influence or abuse of their positions.

K. All commissioners and staff shall treat each other and members of the public with appropriate respect and courtesy.

L. Staff shall not hold outside employment or consulting work without the prior written approval of the director. The director shall not hold outside employment or consulting work without the prior written consent of the chair.

[9.4.20.17 NMAC - Rp 9.4.20.17 NMAC, 12/27/2018]

9.4.20.18 EXECUTIVE COMMITTEE: There is created an executive committee consisting of from three to six members appointed by the chairperson to serve at her or his pleasure. The executive committee shall:

A. Meet at least once between regular commission meetings and keep informed on activities of the agency;

B. Make recommendations to the commission on issues, legislative proposals, budget and finance matters and report on activities in process;

C. Advise the director on courses of action in pursuit of commission goals.

D. Perform specific duties and tasks as assigned by the full commission, including but not limited to:

(1) Review of budget requests and operating budgets;

(2) development of draft strategic plan;

(3) recommendations of special projects or taskforces pertinent to current issue resolutions;

(4) actions relative to the agency director; candidate search, recommendation for hire, annual

evaluation and recommendation of termination; and

E. all recommendations by executive committee will be taken to the full commission for possible action.

[9.4.20.18 NMAC - Rp 9.4.20.18 NMAC, 12/27/2018]

9.4.20.19 LOCAL CHAPTERS: [RESERVED]

[9.4.20.19 NMAC - Rp 9.4.20.19 NMAC, 12/27/2018]

9.4.20.20 COMPENSATION: Members of the governor's commission on disability shall be reimbursed as provided in the Per Diem Act, Section 10-8-1 et seq. NMSA 1978, but shall receive no other compensation, perquisite or allowance.

[9.4.20.20 NMAC - Rp 9.4.20 NMAC, 12/27/2018]

9.4.20.21 AMENDMENTS: As authorized by the State Rules Act, the Uniform Licensing Act, the attorney general's default procedural rule and other applicable state law, a quorum of the commission may amend its administrative rules.

[9.4.20.21 NMAC - Rp 9.4.20.21 NMAC, 12/27/2018]

9.4.20.22 RESIDENTIAL ACCESSIBILITY MODIFICATION PROGRAM: GCD will provide residential accessibility modifications to New Mexicans with disabilities, in accordance with policies and procedures as approved by the commission.

A. Eligibility: Applicants must meet all the following eligibility criteria:

(1) Must be a citizen of the United States of America;

(2) must be a resident of New Mexico for at least six months;

(3) must have a physical disability documented by receipt of Social Security Disability Benefits e.g. Social Security Disability Income, other federally issued benefits or a statement from a physician;

(4) must have applied for another appropriate and available residential modification community resource leaving the RAMP as the payer of last resort;

(5) Taxable or reportable income must be within two-hundred fifty percent of the most current federal poverty income eligibility guidelines for medicaid and children's health insurance program.

B. Application process: All completed applications must be returned, by United States mail, private carrier, or in person, with original signatures. Where providing an original signature is impossible or impractical, GCD staff may elect to accept an electronic or digital signature or a legally acceptable alternative, such as those accepted by the State of New Mexico and its agencies. GCD will accept the following types of applications:

(1) Regular applications containing all information needed for a decision on eligibility and need for service.

(2) Emergency applications may be submitted only by an independent living center or department of health developmental disabilities support division. The emergency must be such that an individual will likely be placed in an institutional setting within the next 30 days if action is not taken immediately.

C. Application review: All applications will be reviewed and evaluated by a review committee made up of GCD staff members, who will meet to determine which of the completed applications will be pre-approved to contract for good and services. The applications will be rated based on the information the applicant provides.

D. Review committee: The RAMP review committee will meet and determine which of the completed applications will be pre-approved to contract for goods and services.

E. Appeal process: If an applicant is denied services from RAMP, a written request for reconsideration may be made to the director of GCD and received within 30 calendar days from the date on the denial letter.

F. Construction contractor:

(1) Qualifications: The contractor must:

(a) Verify that the contractor and any subcontractors utilized are licensed and bonded in the state of New Mexico.

(b) Demonstrate knowledge and have a work history that shows the ability to:

- (i) Interpret the principles and practices of architecture; building codes and standards; building materials and construction methods; and structural, mechanical, plumbing and electrical systems;
- (ii) interpret architectural working drawings and specifications to ensure compliance with all laws, rules, and standards of the state of New Mexico, including the federal, state and local building codes;

(iii) understand and implement contracting practices and procedures, construction costs, estimating and knowledge of comparable costs to accomplish the adaptations;

(iv) incorporate architectural design, standards and technical data relating to design and construction; and

(v) interpret, implement and ensure that applicable guidelines are followed in all environmental adaptations when applicable to the client's needs.

(2) Responsibilities. The contractor is responsible for:

(a) Providing an itemized price quote to GCD staff within 10 calendar days from receipt of plans and scope of work;

(b) commencing work on a project within 10 calendar days of receipt of notice to proceed letter;

(c) attending RAMP project preliminary construction meetings with the client or client's representative and GCD staff;

(d) providing consultation to client or representative and subcontractors regarding RAMP modifications throughout the construction process;

(e) obtaining all necessary permits as required by local and state laws;

(f) meeting reasonable timelines for completion of RAMP projects;

(g) completing all modifications within four weeks. A waiver of the time period must be sought from GCD if extraordinary circumstances prevent the contractor from meeting this requirement.

Issues surrounding extraordinary circumstances resolution may occur in person, via US mail, fax or electronic mail;

- (h) completing all project work to GCD satisfaction;
- (i) Participating in project meetings which can occur in person or via electronic media with GCD staff; and
- (j) providing a minimum one-year written warranty of the work completed, including materials and labor to GCD and the client or the client's representative.

G. Reimbursement procedures:

(1) All RAMP service providers must maintain all records necessary to fully disclose the costs, service, quality and quantity of materials necessary for RAMP project. The records must be sufficiently detailed to substantiate the date, project name, and nature of services.

(2) Two business days prior to completion of work, contractor shall contact GCD staff. Upon completion, contractor shall submit written notice by electronic mail or fax stating project is complete and ready for final inspection and approval.

(3) Upon final approval contractor shall submit a completed GCD generated invoice with the following information:

- (a) Governor's commission on disability purchase order number indicated;
- (b) contractor's name and address;
- (c) residential accessibility modifications program project name and address;
- (d) original contract awarded amount;
- (e) change order information, if any were approved;
- (f) contractor to sign and date the invoice;
- (g) must provide an invoice number; and
- (h) addressed to the main office of GCD.

(4) Contractor must complete work to GCD satisfaction, withholding or denial of payment may occur if (a) the client or the client's representative files a written dispute to GCD regarding the quality of work completed and (b) GCD agrees with the complaint.

H. Report to governor's commission on disability commission: A project tracking spreadsheet will be provided to the commission at each commission meeting. An annual summary report will be provided to the commission at its annual meeting. The project tracking spreadsheet and annual summary report will contain the following information, but not limited to:

- (1) Type of modification;
- (2) location where the home modification took place;
- (3) project budget; and
- (4) the project construction start date; and
- (5) the project completion date.

[9.4.20.22 NMAC; N, 12/27/2018]

9.4.20.23 [RESERVED]

HISTORY OF 9.4.20 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: GCCH 72-1, Plan of Operation, filed 7/27/1972.

GCCH-83-1, Governor's Commission On Disability Rules, filed 1/5/1984.

GCCH-84-1, Governor's Commission On Disability Rules, filed 11/9/1984.

History of Repealed Material:

9.4.20 NMAC - Governor's Committee On Concerns Of The Handicapped By-Laws, filed 11/9/1984 was repealed and replaced by 9.4.20 NMAC - Governor's Commission On Disability Rules, effective 12/27/2018.