

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 1 GENERAL PROVISIONS

9.2.1.1 ISSUING AGENCY: New Mexico Aging & Long Term Services Department (NMALTSB)
[9.2.1.1 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability populations.
[9.2.1.2 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.
[9.2.1.3 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.4 DURATION: Permanent.
[9.2.1.4 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.1.5 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the federal and state-funded programs administered by the aging and long-term services department.
[9.2.1.6 NMAC - Rp, SAA Rule No. 95-1, 06/30/2015]

9.2.1.7 DEFINITIONS: The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise or a different definition has been provided:

A. "Abuse" is the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish or the deprivation by a person, including a caregiver, of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.

B. The "administration on aging" is the federal agency, which is a part of the U.S. department of health and human services, charged with the responsibility of implementing the Older Americans Act.

C. "Advocacy" is defined as non-lobbying activities designed to create change in legislation and policies which benefit both individuals and groups of individuals.

D. "Aging and disability resource center" (ADRC) means an entity established as part of the state system of long-term care to provide comprehensive information on public and private long-term care programs, options, providers and resources; personal counseling to assist individuals in assessing existing or anticipated long-term care needs, and developing and implementing plans to meet their specific needs and circumstances; and access to the range of publicly-supported long-term care programs for which consumers may be eligible, by serving as a convenient point-of-entry for such programs.

E. "Aging network" means programs and services for older adults throughout New Mexico that receive federal or state funds under contract with the department or area agencies on aging. The aging network includes, but is not limited to, programs sponsored by tribal governments, local governments and private, non-profit organizations.

F. An "area agency on aging" (AAA) is an organization designated by the department to develop and administer a comprehensive and coordinated system of services for older persons within one or more planning and service areas.

G. "Area plan" is a document submitted by an area agency on aging to the department which provides for the provision of services and centers to meet the needs of older individuals in the planning and service area(s) administered.

H. "Assistant secretary" is the assistant secretary of aging of the administration on aging, U.S. department of health and human services.

I. "Civic engagement" means an individual or collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.

J. The “corporation for National and community service” (CNCS) is the federal agency that administers federal domestic volunteer programs.

K. “Department” means the New Mexico aging and long-term services department (ALTSD).

L. “Disability” means (except when such term is used in the phrases “severe disability,” “developmental disability,” and “physical disability”) a mental or physical impairment or a combination of the two, resulting in a functional limitation in one or more of the following activities of daily living: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning and emotional adjustment. The term “severe disability” means a severe, chronic mental or physical impairment, or a combination of mental or physical impairments, that is likely to continue indefinitely and results in substantial functional limitation in three or more activities of daily living.

M. “Exploitation” is the illegal or improper act or process of an individual, including a caregiver or fiduciary, using the resources of another person for monetary or personal benefit, profit or gain.

N. A “focal point” means a facility established to encourage the maximum co-location and coordination of services for older individuals.

O. “Greatest economic need” is need resulting from an income level at or below the federal poverty level.

P. “Greatest social need” is need caused by noneconomic factors which include physical and mental disabilities; language barriers; and cultural, social or geographical isolation, including isolation caused by racial or ethnic status, that restricts an individual’s ability to perform normal daily tasks or which threatens an individual’s capacity to live independently.

Q. “In-home services” includes: homemaker and home health aides; visiting; telephone reassurance; chore maintenance; in-home respite care for families; adult day care as a respite service for families; minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs; and personal care services and other services necessary to facilitate the ability of older individuals to remain at home, as may be defined in the State Plan or in an approved Area Plan.

R. “Indian tribal organization” is the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by the governing body.

S. “Indian tribe” means any tribe, band, nation or other organized group or community of Indians, which is either:

(1) Recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Located on, or in proximity to, a federal or state reservation.

T. “Long-term care” means any service, care, or item intended to assist individuals in coping with, or compensating for, a functional impairment in carrying out activities of daily living; furnished at home, in a community care setting, or in a long term care facility; and not furnished to prevent, diagnose, treat, or cure a medical disease or condition.

U. “Long-term care ombudsman” (LTCO) means an individual trained and certified to act as a representative of the office of the state long-term care ombudsman.

V. “Low income” is defined as having an annual family income at or below one hundred twenty five percent (125%) of the federal poverty level.

W. “Minorities” are individuals who are of Hispanic, Native American Indian (including Hawaiian and Eskimo), African-American or Asian heritage.

X. “Neglect” is the failure to provide for oneself the goods or services which are necessary to avoid physical harm, mental anguish or mental illness or the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an individual.

Y. “Older Americans Act” means the Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations.

Z. “Older individual” means an individual who is at least fifty (50) years of age or older, unless otherwise specified in these rules.

AA. “Participants” are individuals who are eligible to receive services or to participate in particular programs administered by the department or its designees.

BB. “Planning and service area” (PSA) is a portion or portions of the state designated by the department for purposes of planning, development, delivery and overall administration of services for older individuals.

CC. “Poverty level” is the official poverty level as defined by the United States office of management and budget, and adjusted by the secretary of the U.S. department of health and human services in accordance with the community services Block Grant Act, 42 U.S.C. Sections 9901 to 9926.

DD. “Provider” means an entity that is awarded a grant or contract from an area agency on aging or the department to provide services.

EE. “Reservation” means any federally or state recognized Indian tribe’s reservation or pueblo.

FF. “Right of first refusal” is a provision in the Older Americans Act which requires the department to give priority to public agencies or units of general purpose local government when designating area agencies on aging.

GG. “Self-directed care” means an approach to providing services intended to assist an individual with activities of daily living, in which services are planned, budgeted, and purchased under the direction and control of such individual; and such individual is provided with information and assistance as necessary and appropriate to enable him or her to make informed decisions about care options.

HH. “Senior center” is a community focal point where older adults come together for services and activities. A center may include multi-generational programs and serve as a resource for the entire community for information on aging, support for family caregivers, and training.

II. “State ombudsman” means an individual with expertise and experience in the fields of long-term care advocacy, designated by the department secretary to fulfill the duties defined in the Long-Term Care Ombudsman Act, Sections 28-17-1 to 28-17-19 NMSA 1978.

JJ. “State Plan on Aging” or “State Plan” is a document submitted by the state in order to receive grants from its allotments under the Older Americans Act.

KK. “Unit of general purpose local government” means a political subdivision of the state whose authority is general and not limited to one function or combination of related functions, or an Indian tribal organization.

[9.2.1.7 NMAC - Rp, SAA Rule No. 95-1.7, 06/30/2015]

9.2.1.8 BASIC REQUIREMENTS:

A. These rules apply to all functions and responsibilities required under the State plan on aging, in carrying out Older Americans Act programs.

B. The department, all area agencies on aging, grantees and subgrantees, contractors and subcontractors of funds administered by the department shall adhere to these rules. Additional terms and requirements not contained in these rules may be identified in contracts or grant awards.

C. Amendments to the Older Americans Act, any regulations promulgated thereunder, and state statutes may override these rules pending adoption of revised or new rules.

D. In the absence of department rules, federal laws, rules and regulations shall apply, as appropriate, to federal funds or to state funds used to match or supplement federal funds. In a like manner state statutes shall apply to state funds not governed by federal requirements.

E. The department, all area agencies on aging, grantees and subgrantees, contractors and subcontractors of funds administered by the department shall, where applicable, comply with the Civil Rights Act of 1964, 42 U.S.C. Section 2000e; the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 to 12103; Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, 45 C.F.R. Section 80; and Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Section 84.

[9.2.1.8 NMAC - Rp, SAA Rule No. 95-1.8, 06/30/2015]

HISTORY OF 9.2.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

SAA Rule No. 95-1, General Provisions, filed 4/13/1995.

History of the Repealed Material:

SAA Rule No. 95-1, (filed 4/13/1995) - Repealed 6/30/2015.