

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 3 ELIGIBILITY FOR AGING AND LONG-TERM SERVICES DEPARTMENT SERVICES

9.2.3.1 ISSUING AGENCY: New Mexico Aging and Long Term Services Department (NMA LTSD)
[9.2.3.1 NMAC - Rp, SAA Rule No. 95-3.1, 6/30/2015]

9.2.3.2 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.
[9.2.3.2 NMAC - Rp, SAA Rule No. 95-3.2, 6/30/2015]

9.2.3.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, 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.
[9.2.3.3 NMAC - Rp, SAA Rule No. 95-3.3, 6/30/2015]

9.2.3.4 DURATION: Permanent.
[9.2.3.4 NMAC - Rp, SAA Rule No. 95-3.4, 6/30/2015]

9.2.3.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.3.5 NMAC - Rp, SAA Rule No. 95-3.5, 6/30/2015]

9.2.3.6 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.
[9.2.3.6 NMAC - Rp, SAA Rule No. 95-3.6, 6/30/2015]

9.2.3.7 DEFINITIONS: See 9.2.1.7 NMAC for definitions.
[9.2.3.7 NMAC - Rp, SAA Rule No. 95-3.7, 6/30/2015]

9.2.3.8 OLDER AMERICANS ACT SERVICES: Except as otherwise provided, eligibility for federally-funded supportive services, nutrition services, caregiver services, legal services, long-term care ombudsman services, employment services, and other services funded by the Older Americans Act shall be pursuant to the Older Americans Act and Provisions Governing the Senior Community Service Employment Program, 20 C.F.R. Section 641, and is incorporated by reference into this part.

- A.** Criteria for employment services is set forth in 9.2.13 NMAC.
- B.** Criteria for legal services is set forth in 9.2.17 NMAC.
- C.** Criteria for nutrition services is set forth in 9.2.18 NMAC.
- D.** Criteria for long-term care ombudsman services is set forth in 9.2.19 NMAC.

[9.2.3.8 NMAC - Rp, SAA Rule No. 95-3.8, 6/30/2015]

9.2.3.9 CORPORATION FOR NATIONAL SERVICE VOLUNTEER PROGRAMS: Except as otherwise provided, eligibility for federally-funded foster grandparent, senior companion, and retired senior volunteer programs shall be pursuant to Title II, Part B, of the Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5028; 45 C.F.R. Sections 2551 to 2553. The corporation for national and community service (CNCS) handbooks are incorporated by reference into this part.

- A.** Criteria for the foster grandparent program is further set forth in 9.2.14 NMAC.
- B.** Criteria for the senior companion program is further set forth in 9.2.15 NMAC.
- C.** Criteria for the retired senior volunteer program is further set forth in 9.2.16 NMAC.

[9.2.3.9 NMAC - Rp, SAA Rule No. 95-3.9, 6/30/2015]

9.2.3.10 STATE-FUNDED SERVICES: Eligibility for programs funded solely with state funds are as follows:

A. Except where otherwise noted, the following may be deemed eligible for state-funded services provided under contract with the department:

- (1)** Persons age fifty (50) or older;
- (2)** Spouses (of any age) of persons age fifty (50) or older;

- (3) Persons with disabilities age eighteen (18) or older.
- B. Criteria for adult protective services is set forth in 8.11.4 NMAC.
- C. Area agencies on aging and other contract providers may elect to serve subsets of the populations specified in Subsection D of 9.2.3.10 NMAC, which shall be defined in their area plans and contract documents.
- D. Area agencies on aging and other contract providers may request waivers from the department to serve additional populations other than those specified in Subsection A of 9.2.3.10 NMAC, based upon community need. Application for such a waiver shall include a description of:
 - (1) The population(s) to be served;
 - (2) The need for the proposed service(s) by the proposed population(s); and
 - (3) A budget for the proposed service(s).

Approval of any such waiver will be made by the department contingent upon documented need and availability of funding. Final or conditional written approval will be provided by the department.
 [9.2.3.10 NMAC - Rp, SAA Rule No. 95-3.10, 6/30/2015]

9.2.3.11 VOLUNTARY CONTRIBUTIONS:

- A. The Older Americans Act establishes requirements for voluntary contributions. Each older person who receives Older Americans Act-funded services shall be provided an opportunity to voluntarily contribute to the cost of services rendered.
- B. Area agencies on aging and other programs are allowed to, and may solicit, voluntary contributions for all Older Americans Act-funded services, provided that the method of solicitation is non-coercive. Each service provider may develop a suggested contribution schedule for services provided with Older Americans Act funds. In developing such a schedule, the provider shall consider the income ranges of older persons in the provider's community, as well as the provider's other sources of income.
- C. Area agencies on aging and providers shall not means test for any service for which contributions are accepted, or deny services to any individual who does not contribute.
- D. Each area agency on aging shall consult with its relevant service providers and older individuals in its planning and service area(s) to determine the best method(s) for accepting voluntary contributions.
- E. Area agencies on aging and programs shall:
 - (1) Establish policies and procedures for soliciting, safeguarding, and accounting for contributions;
 - (2) Protect the privacy of each person with respect to his/her contribution, or lack of contribution;
 - (3) Clearly inform each person that there is no obligation to contribute, and that contribution is voluntary;
 - (4) Fully describe the contribution policy in the area plan or in a provider's program plan;
 - (5) Use any collected contributions to expand the service(s) for which the contributions were given; and
 - (6) Post information regarding any suggested contributions at the service premises in a location convenient to the participants.

[9.2.3.11 NMAC - Rp, SAA Rule No. 95-3.11, 6/30/2015]

9.2.3.12 COST SHARING AND SLIDING FEE SCALES:

- A. In making application to apply cost sharing to services, area agencies on aging and providers must consider the intent of the Older Americans Act to serve targeted populations and must ensure that the application of cost sharing will not prevent the provision of services to low-income, minority, socially isolated, or rural populations. Cost sharing is a process which enables clients to contribute monetarily to the cost of the services they receive. Cost sharing may include the implementation of a sliding fee scale.
- B. A fee is defined as a charge allowed by law for a service. A sliding fee scale is a graduated series of fees to be paid based on amount of income. If a sliding fee scale is implemented, area agencies on aging and providers must protect the privacy and confidentiality of older individuals. The individuals to be served must be informed that the service is provided on a fee-for-service basis and be notified of the sliding fee scale.
- C. Area agencies on aging shall solicit the views of older individuals, providers, and other stakeholders prior to implementation of cost sharing in each respective service area of the state.
- D. Area agencies on aging may contract to purchase services that charge a sliding fee based on income and the cost of delivering services. Such services may include, and, if Older Americans Act funds are used, are limited to:

- (1) Transportation/assisted transportation;
- (2) Shopping assistance;
- (3) Homemaker/housekeeping;
- (4) Adult day care/day health care;
- (5) Personal care;
- (6) Home health;
- (7) Respite care;
- (8) Home repair;
- (9) Chores;
- (10) Escort;
- (11) Recreation;
- (12) Physical fitness/exercise;
- (13) Education/training;
- (14) Home safety/accident prevention.

E. If Older Americans Act funds are used, such services may *not* include:

- (1) Information and assistance;
- (2) Outreach;
- (3) Benefits counseling;
- (4) Case management;
- (5) Ombudsman services;
- (6) Consumer protection services;
- (7) Congregate meals;
- (8) Home delivered meals;
- (9) Legal assistance;
- (10) Elder abuse prevention;
- (11) Any services delivered through tribal organizations.

F. With regard to any fees charged for Older Americans Act services, determination of a client's fee for a service shall be based on a client's confidential self-declaration of income, and spouse's income (if applicable), without verification. Older Americans Act services may not be denied due to the income of an individual or an individual's failure to make a cost sharing payment.

G. If a sliding fee scale is to be used, a description of the scale - its criteria, policies and payments must be written in language(s) reflecting the reading abilities of older individuals served and posted in high visibility areas. Such posting must include a statement that no services will be denied for failure to pay any fee. Assets, savings, or other property owned may not be considered in determining the fee for a service.

H. Revenues generated by a fee-for-service program must be spent on the same program that generates the funds in order to enhance the program.

I. Appropriate procedures to safeguard and account for cost sharing payments must be established.

J. The basis for a sliding fee scale is to be the U.S. administration on aging's annual issuance of "estimated poverty and near poverty thresholds." "near poverty" is defined as one hundred twenty five percent (125%) of the poverty level. Individuals and families whose income is at or below the near poverty threshold shall not be charged for services.

K. Each and any specific sliding fee scale must be:

- (1) Reviewed and approved by the department;
- (2) Reviewed in a public hearing prior to implementation. The department may grant short-term approval prior to a public hearing to test the concept;
- (3) Fully described by an area agency on aging in its area plan;
- (4) Implemented based on established policies and procedures. These policies and

procedures must address the circumstances that allow the provider to waive the fee-for-service and also address when an individual's or family's net income may be considered rather than gross income.

L. Fees:

- (1) Are to be based on the actual cost of providing a service (as determined by a program, submitted to an area agency on aging and approved by the department).
- (2) Cannot exceed the actual cost of providing a service.

[9.2.3.12 NMAC - Rp, SAA Rule No. 95-3.12, 6/30/2015]

HISTORY OF 9.2.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
SAA Rule No. 95-3, Eligibility for State Agency on Aging Services, filed 4/13/95.

History of Repealed Material:
SAA Rule No. 95-3, (filed 4/13/1995) - Repealed 6/30/2015.