

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 7            DE-DESIGNATION OF AREA AGENCIES ON AGING**

**9.2.7.1            ISSUING AGENCY:** New Mexico Aging and Long Term Services Department (NMALTSB)  
[9.2.7.1 NMAC - Rp, SAA Rule No. 95-7.1, 6/30/2015]

**9.2.7.2            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.  
[9.2.7.2 NMAC - Rp, SAA Rule No. 95-7.2, 6/30/2015]

**9.2.7.3            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.  
[9.2.7.3 NMAC - Rp, SAA Rule No. 95-7.3, 6/30/2015]

**9.2.7.4            DURATION:** Permanent.  
[9.2.7.4 NMAC - Rp, SAA Rule No. 95-7.4, 6/30/2015]

**9.2.7.5            EFFECTIVE DATE:** June 30, 2015, unless a later date is cited at the end of a section.  
[9.2.7.5 NMAC - Rp, SAA Rule No. 95-7.5, 6/30/2015]

**9.2.7.6            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.  
[9.2.7.6 NMAC - Rp, SAA Rule No. 95-7.6, 6/30/2015]

**9.2.7.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.7.7 NMAC - Rp, SAA Rule No. 95-7.7, 6/30/2015]

**9.2.7.8            LEGAL REFERENCES:** [RESERVED]  
[9.2.7.8 NMAC - Rp, SAA Rule No. 95-7.8, 6/30/2015]

**9.2.7.9            BACKGROUND:** When an area agency on aging fails to comply with applicable federal or state rules, statutes or codes, or terms of a contract, the department may take action as may be legally available and appropriate to the circumstance.  
[9.2.7.9 NMAC - Rp, SAA Rule No. 95-7.9, 6/30/2015]

**9.2.7.10           DEPARTMENT RESPONSIBILITIES:** Prior to any de-designation effort the department must provide the area agency on aging with the opportunity to correct any deficiency which may be cause for de-designation.  
[9.2.7.10 NMAC - Rp, SAA Rule No. 95-7.10, 6/30/2015]

**9.2.7.11           DE-DESIGNATION:** The department shall withdraw an area agency on aging designation whenever the department, for specific documented reasons and after reasonable notice and opportunity for a hearing, as provided in 9.2.11 NMAC, finds that:

**A.**            The area agency on aging does not meet the requirements of federal or state regulations, as specified in 9.2.6 NMAC and 45 C.F.R. Section 1321; or

**B.**            The area plan or area plan amendment is not approved in the current funding period; or

**C.**            There is substantial failure to properly administer the approved area plan or to comply with any provision of the Older Americans Act, 45 C.F.R. Section 1321, or the department's rules or published policies and procedures; or

**D.**            Activities of the area agency on aging are inconsistent with the statutory mission prescribed in the Older Americans Act or in conflict with the requirement of the Act that it function only as an area agency on aging; or

**E.**            The area agency on aging does not perform its responsibilities as required by its contract with the department.

[9.2.7.11 NMAC - Rp, SAA Rule No. 95-7.11, 6/30/2015]

**9.2.7.12 NOTIFICATION OF CONTEMPLATION OF WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:** If the department contemplates withdrawal of designation of an area agency on aging, the department will notify appropriate individuals and organizations in advance of the contemplated withdrawal and of the reasons which make it necessary. This notification shall be sent by certified mail, return receipt requested, to:

- A. The governor of New Mexico;
- B. The New Mexico congressional delegation;
- C. State senators and representatives of the districts in which the area agency on aging provides services;
- D. The department policy advisory committee;
- E. County commission chairpersons and mayors of cities, towns and villages in the affected planning and service area(s);
- F. Governors or presidents of Indian pueblos or tribes in the affected planning and service area(s);
- G. The governing body of the area agency on aging;
- H. Service providers that have current contracts with the area agency; and
- I. The area agency on aging advisory council.

[9.2.7.12 NMAC - Rp, SAA Rule No. 95-7.12, 6/30/2015]

**9.2.7.13 NOTIFICATION OF WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:** An area agency on aging shall be notified, by certified mail, return receipt requested, at least ten (10) working days prior to the effective date of its de-designation as an area agency on aging. Such notification shall explain the right of the area agency on aging to appeal such decision as outlined in 9.2.11 NMAC.

- A. If, in the department's judgment, an egregious situation exists that seriously threatens the health and welfare of a significant segment of the older adult population within the affected planning and service area(s), the de-designation may be made effective immediately, and so stated in the letter of notification. Immediate de-designation does not preclude processing appeals under 9.2.11 NMAC.
- B. If an area agency on aging is de-designated, the department may, if necessary to ensure continuity of services in a planning and service area, assume the role of the area agency on aging for a period of up to one hundred eighty (180) days following its final decision to withdraw designation of the area agency on aging; this period may be extended by the head of the U.S. administration on aging pursuant to 45 C.F.R. Section 1321.35.
- C. If an area agency on aging is de-designated, the department may alternatively, if necessary to ensure continuity of services in a planning and service area, assign the responsibilities of the area agency on aging to another agency in the planning and service area for a period of up to hundred eighty (180) days. This period may be extended by the head of the U.S. Administration on Aging pursuant to 45 C.F.R. Section 1321.35.

[9.2.7.13 NMAC - Rp, SAA Rule No. 95-7.13, 6/30/2015]

**9.2.7.14 PROCEDURES FOLLOWING WITHDRAWAL OF DESIGNATION:** If the department de-designates an area agency on aging, the department shall take the following action:

- A. The department will notify, by certified mail, return receipt requested, the head of the U.S. Administration on Aging and others as specified in 9.2.7.12 NMAC or as required by federal regulation;
- B. The department will provide a plan for continuity of services in the affected planning and service area(s) and will:
  - (1) Discontinue reimbursement to the former area agency on aging except for outstanding obligations;
  - (2) Notify area agency on aging contractors regarding where to submit requests for reimbursement;
  - (3) Terminate any contracts with the former area agency on aging; and
  - (4) Designate an interim or new area agency on aging to administer the planning and service area(s) in a timely manner.

[9.2.7.14 NMAC - Rp, SAA Rule No. 95-7.14, 6/30/2015]

**HISTORY OF 9.2.7 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State records center: SAA Rule No. 95-7, Withdrawal of Area Agency Designation, filed 4/13/1995.

**History of Repealed Material:**

SAA Rule No. 95-7, filed 4/13/1995 - Repealed 6/30/2015