

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 9 DIRECT SERVICES

9.2.9.1 ISSUING AGENCY: New Mexico Aging and Long Term Services Department (NMA LTSD)
[9.2.9.1 NMAC - Rp, SAA Rule No. 95-9.1, 6/30/2015]

9.2.9.2 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 population.
[9.2.9.2 NMAC - Rp, SAA Rule No. 95-9.2, 6/30/2015]

9.2.9.3 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.
[9.2.9.3 NMAC - Rp, SAA Rule No. 95-9.3, 6/30/2015]

9.2.9.4 DURATION: Permanent.
[9.2.9.4 NMAC - Rp, SAA Rule No. 95-9.4, 6/30/2015]

9.2.9.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.9.5 NMAC - Rp, SAA Rule No. 95-9.5, 6/30/2015]

9.2.9.6 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.
[9.2.9.6 NMAC - Rp, SAA Rule No. 95-9.6, 6/30/2015]

9.2.9.7 DEFINITIONS: See Section 9.2.1.7 NMAC for definitions.
[9.2.9.7 NMAC - Rp, SAA Rule No. 95-9.7, 6/30/2015]

9.2.9.8 LEGAL REFERENCES: [RESERVED]
[9.2.9.8 NMAC - Rp, SAA Rule No. 95-9.8, 6/30/2015]

9.2.9.9 GENERAL PROVISIONS: Area agencies on aging must develop a service delivery system by contracting with other organizations to provide services to older individuals. The role of an area agency on aging is to engage in area-wide planning and development and to purchase needed services. An area agency on aging shall not provide direct services to older individuals, except where, in the judgment of the department, the area agency on aging has demonstrated that:

A. The provision of such services by an area agency on aging is necessary to assure an adequate supply of such services; or

B. Such services are directly related to the area agency on aging's administrative function(s); or

C. Such services of comparable or higher quality can be provided more economically by the area agency on aging.

[9.2.9.9 NMAC - Rp, SAA Rule No. 95-9.9, 6/30/2015]

9.2.9.10 TEST STANDARDS: The department shall determine whether an area agency on aging shall be granted a direct service waiver based on the ability of the area agency on aging to document or demonstrate that, at a minimum, one (1) of the following test standards has been met.

A. Adequate supply test standard: this test standard requires the area agency on aging to demonstrate that service(s) are either not offered or are only partially available in the planning and service area. The adequate supply test is met when the area agency on aging provides documentation that it has not received any proposals to deliver the service(s) after the area agency on aging has:

(1) advertised the availability of funds;

(2) Written to bona fide service providers, inviting them to submit proposals; and

(3) Documented that attempts have been made to develop and encourage the establishment of service providers.

B. Administrative function test standard: this test standard requires the area agency on aging to identify the current specific administrative function(s) that relate to the service(s). The administrative function test is met when the area agency on aging provides documentation that:

- (1) The proposed service(s) can be integrated into its administrative function(s);
- (2) Such service delivery will not compete with or eliminate local efforts to provide the same service(s) in the area; and
- (3) There is no conflict of interest in the provision of direct services by the area agency on aging.

C. More economic test standard: This test standard requires an area agency on aging to demonstrate that a service of comparable or higher quality will be provided by the area agency on aging at a unit rate at least ten percent (10%) lower than the lowest responsive applicant's proposed unit rate, or the amount of area agency on aging resources invested would be diminished or removed should another provider be designated, resulting in a greater demand for federal or state funds to maintain the current level of services. The more economic test standard is met when the area agency on aging provides documentation that:

- (1) It can deliver the service(s) at a unit rate at least ten percent (10%) lower than the lowest responsive applicant's proposed unit rate, or its significant matching resources will be diminished or removed;
- (2) It has implemented a method for open competitive bidding for selecting a service provider; and
- (3) It has the ability to deliver services in a manner comparable in quality to the lowest responsive applicant's proposal.

[9.2.9.10 NMAC - Rp, SAA Rule No. 95-9.10, 6/30/2015]

9.2.9.11 WAIVER REQUEST PROCESS: An area agency on aging shall submit a written request for a waiver as part of its area plan or area plan amendment or as a separate request. An area agency on aging may request a multi-year or a single year waiver. The initial request shall include:

- A.** Identification of the specific test under which the waiver is being requested;
- B.** Specific documentation required for the test;
- C.** Documentation of review and support by the area agency on aging advisory council and governing body;
- D.** A general description of the proposed administrative structure for administering the service; and
- E.** A description of the impact on the area agency on aging's role and staffing and its ability to accomplish the area agency on aging roles and responsibilities.

[9.2.9.11 NMAC - Rp, SAA Rule No. 95-9.11, 6/30/2015]

9.2.9.12 DEPARTMENT REVIEW AND DISPOSITION PROCESS:

- A.** Upon receipt of a request, the department shall review the request and obtain clarification or documentation from the area agency on aging if necessary.
- B.** The department secretary shall notify the applicant of the approval or disapproval of the waiver.
- C.** In cases where a request is submitted separate from an area plan or area plan amendment and approval is granted, the department shall notify the area agency on aging of documentation necessary to include the waiver in the current area plan.

[9.2.9.12 NMAC - Rp, SAA Rule No. 95-9.12, 6/30/2015]

9.2.9.13 EMERGENCY SITUATIONS: If an area agency on aging service provider abruptly ceases services, the department may grant a temporary direct service waiver up to one hundred eighty (180) days to the area agency on aging, pending the implementation of a process to identify a new service provider. In such situations the area agency on aging shall immediately provide the following information to the department:

- A.** A description of the situation that has resulted in the direct service waiver request;
- B.** A plan for seeking a new service provider;
- C.** Documentation of review and support by the area agency on aging advisory council and governing body;
- D.** A general description of the proposed administrative structure contemplated by the area agency on aging for administering the service; and
- E.** A description of the impact on the area agency on aging's role and staffing.

[9.2.9.13 NMAC - Rp, SAA Rule No. 95-9.13, 6/30/2015]

HISTORY OF 9.2.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-9, Direct Services, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-9, filed 4/13/1995 - Repealed 6/30/2015