

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 17 LEGAL ASSISTANCE SERVICES

9.2.17.1 ISSUING AGENCY: New Mexico Aging and Long Term Services Department (NMALTSB)
[9.2.17.1 NMAC - Rp, SAA Rule No. 95-17.1, 6/30/2015]

9.2.17.2 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.
[9.2.17.2 NMAC - Rp, SAA Rule No. 95-17.2, 6/30/2015]

9.2.17.3 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.
[9.2.17.3 NMAC - Rp, SAA Rule No. 95-17.3, 6/30/2015]

9.2.17.4 DURATION: Permanent.
[9.2.17.4 NMAC - Rp, SAA Rule No. 95-17.4, 6/30/2015]

9.2.17.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.17.5 NMAC - Rp, SAA Rule No. 95-17.5, 6/30/2015]

9.2.17.6 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.
[9.2.17.6 NMAC - Rp, SAA Rule No. 95-17.6, 6/30/2015]

9.2.17.7 DEFINITIONS:

A. A "fee generating case" includes any matter which, if undertaken by a private legal practitioner on behalf of a client, could reasonably be expected to result in an awarded legal fee directly payable out of the amount awarded the client from the opposing parties, or from public funds.

B. "Legal assistance" means legal advice, education and representation provided by an attorney to older individuals with economic or social needs; and includes, to the extent feasible, counseling or other appropriate assistance provided by a paralegal or law student under the direct supervision of a licensed attorney; and counseling and representation provided by a non-lawyer where permitted by law.

C. "Legal assistance providers" are those who, pursuant to the Older Americans Act, Title III B, provide services, legal assistance and other counseling services and assistance.

D. "Means test" is defined as the use of an older individual's income or resources to deny or limit that individual's receipt of services.

[9.2.17.7 NMAC - Rp, SAA Rule No. 95-17.7, 6/30/2015]

9.2.17.8 LEGAL REFERENCES: [RESERVED]

[9.2.17.8 NMAC - Rp, SAA Rule No. 95-17.8, 6/30/2015]

9.2.17.9 ALLOWABLE SERVICES:

A. Providers of legal assistance, funded by the department, must provide such services to New Mexicans age sixty (60) or older and others as described in contracts supported by state funds. Allowable services include, but are not limited to:

(1) Direct service delivery programs using staff attorneys, paralegals, law students and/or other non-lawyers under the direct supervision of an attorney;

(2) Legal clinics which combine education addressing specific legal issues or topics of concern to older individuals, outreach and intake efforts that target those in greatest social and economic need, and the direct provision of legal advice, representation, and follow-up services to individuals in attendance;

(3) Interactive workshops at which the individuals in attendance are counseled and provided with direct legal assistance with regard to legal and elder rights issues;

(4) Referral programs enlisting the services of a panel of volunteer attorneys to provide direct *pro bono* legal assistance;

(5) Impact case work, for example, lawsuits that benefit entire classes of clients, nursing home reform efforts, and Medicaid advocacy;

(6) The production and provision of educational materials and other legal resources for the benefit of New Mexicans age sixty (60) or older and others as described in contracts supported by state funds; and

(7) Any programs using any combinations of the activities described above.

B. Legal assistance services cannot include legal representation in any fee generating case, unless other adequate representation is unavailable or there is an emergency requiring immediate legal action.

[9.2.17.9 NMAC - Rp, SAA Rule No. 95-17.9, 6/30/2015]

9.2.17.10 SELECTION OF PROVIDERS: The department or an area agency on aging shall consider the following factors when awarding funds to legal assistance providers:

A. Staff with expertise in those specific areas of law affecting older individuals in greatest economic and greatest social need, such as income, public benefits, institutionalization and alternatives to institutionalization, defense of guardianships, protective services, age discrimination, health care, long-term care, nutrition, housing, utilities and abuse and neglect.

B. The ability to develop and implement outreach efforts designed to identify and serve targeted populations.

C. The ability to provide administrative and judicial representation in the specific areas of law affecting older individuals in greatest economic and greatest social need.

D. The ability to provide legal services to institutionalized, isolated and homebound older individuals.

E. The ability to provide legal assistance in the principal language spoken by clients in those areas of the state where a significant number of clients do not speak English as their principal language.

F. The ability to provide support and advice to the long-term care ombudsman program.

G. The ability to provide support to aging network elder rights initiatives.

H. The ability to provide support to other advocacy efforts, adult protective services, and protection and advocacy and public guardianship programs; and.

I. A commitment to the statewide aging network, including participation in aging network training sessions; coordination with, and referrals to and from, other service providers; involvement in local and statewide publicity efforts to identify the availability of legal assistance services; and training local service providers, site managers, staff, and the like as to the availability and extent of legal assistance services.

[9.2.17.10 NMAC - Rp, SAA Rule No. 95-17.10, 6/30/2015]

9.2.17.11 EVALUATING PROVIDERS: The department or area agencies on aging should evaluate providers at least annually using procedures and instruments developed by such groups as the National senior citizens law center, the center for social gerontology, or other similar groups with proven experience in the evaluation of Older Americans Act, Title III(B), legal assistance providers. If applicable, random tests of client services should be administered in the evaluation process. Copies of written evaluations conducted by area agencies on aging must be provided to the department when they are released to the providers.

[9.2.17.11 NMAC - Rp, SAA Rule No. 95-17.11, 6/30/2015]

9.2.17.12 MEANS TEST AND TARGETING:

A. Legal assistance providers may not use a means test as a criterion for determining whether an individual is entitled to legal assistance services. Legal assistance providers may question an older individual about his/her financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older individual may be eligible.

B. The Older Americans Act requires that providers target minority older individuals with low incomes, older individuals residing in rural areas, and older individuals with the greatest economic and social needs.

[9.2.17.12 NMAC - Rp, SAA Rule No. 95-17.12, 6/30/2015]

9.2.17.13 CONFIDENTIALITY: Legal assistance providers shall not be required to reveal any information that is protected by the attorney-client privilege. The fiduciary relationship between lawyer and client and the proper functioning of the legal system require the lawyer to preserve client confidences and secrets. Legal assistance providers must comply with client confidentiality requirements, as defined in the Older Americans Act, and all federal and state financial management requirements, including the collection, documentation and use of program income.

[9.2.17.13 NMAC - Rp, SAA Rule No. 95-17.13, 6/30/2015]

9.2.17.14 COORDINATION WITH LEGAL SERVICES CORPORATION AND OTHER SEPARATELY FUNDED LEGAL ASSISTANCE PROGRAMS: Legal assistance providers must coordinate with legal services corporation (LSC) providers and any other providers of legal assistance to older individuals to supplement current service levels. Area agencies on aging and providers must also attempt to involve the private bar on a reduced fee and *pro bono* basis.

[9.2.17.14 NMAC - Rp, SAA Rule No. 95-17.14, 6/30/2015]

HISTORY OF 9.2.17 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-17, Legal Assistance Services, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-17, (filed 4/13/1995) - Repealed 6/30/2015.