

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 1            GENERAL PROVISIONS**

**9.2.1.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.1.1 NMAC - Rp, 9.2.1.1, 09/23/2025]

**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, 9.2.1.2, 09/23/2025]

**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, 9.2.1.3, 09/23/2025]

**9.2.1.4            DURATION:** Permanent.  
[9.2.1.4 NMAC - Rp, 9.2.1.4, 09/23/2025]

**9.2.1.5            EFFECTIVE DATE:** xx/xx/2025, unless a later date is cited at the end of a section.  
[9.2.1.5 NMAC - Rp, 9.2.1.5, 09/23/2025]

**9.2.1.6            OBJECTIVE:** The objective of this rule is to define terms used throughout the rule and to set forth basic requirements for carrying out Older Americans Act programs.  
[9.2.1.6 NMAC - Rp, 9.2.1.6, 09/23/2025]

**9.2.1.7            DEFINITIONS:** For definitions, see 42 U.S.C. Section 3002 and Section 9-23-3 NMSA 1978. 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.            Definitions Beginning with "A":**

(1)        **"Administration on aging"** is the federal agency, which is a part of the United States department of health and human services, charged with the responsibility of implementing the Older Americans Act.

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

(3)        **"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.

**B.            Definitions Beginning with "B": [RESERVED]**

**C.            Definitions Beginning with "C":**

(1)        **"Conflicts of interest"** means:  
(a)        one or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(b)        one or more conflicts between competing duties of an individual, or between the competing duties, services, or programs of an organization, or portion of an organization; and

(c)        other conflicts of interest identified in guidance issued by the assistant secretary.

(2)        **"Corporation for national and community service"** (CNCS) is the federal agency that administers federal domestic volunteer programs.

(3)        **"Cost sharing"** means requesting payment using a sliding scale, based on an individual's income and the cost of delivering the service, in a manner consistent with the exceptions, prohibitions, and other conditions laid out in the Act.

**D.            Definitions Beginning with "D":**

(1)        **"DAB"** means the departmental grant appeals board of the United States department of health and human services as described and defined in 45 C.F.R. Sections 1 and 2.

(2)        **"Department"** as used in these rules means the New Mexico Aging and Long-Term Services Department.

(3) **“Domestically produced foods”** means agricultural foods, beverages and other food ingredients which are a product of the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

- (a) produced in the United States; and
- (b) commercially available in the United States at fair and reasonable prices from

domestic sources.

**E. Definitions Beginning with “E”:** [RESERVED]

**F. Definitions Beginning with “F”:** **“Family caregiver”** means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer’s disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver. For purposes of this part, family caregiver does not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

**G. Definitions Beginning with “G”:** [RESERVED]

**H. Definitions Beginning with “H”:** [RESERVED]

**I. Definitions Beginning with “I”:** **“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.

**J. Definitions Beginning with “J”:** [RESERVED]

**K. Definitions Beginning with “K”:** [RESERVED]

**L. Definitions Beginning with “L”:** [RESERVED]

(1) **“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.

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

**M. Definitions Beginning with “M”:**

(1) **“Major disaster declaration”** means a presidentially declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act (42 U.S.C. Sections 5121 through 5207).

(2) **“Means test”** means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person’s eligibility to receive services under this part. Means tests shall be prohibited in determining eligibility for any services administered by the department or its designees.

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

**N. Definitions Beginning with “N”:**

(1) **“Native American”** means a person who is a member of any Indian Tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Section 1601 et seq.) who:

(a) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) Is located on, or in proximity to, a federal or state reservation or rancheria; or is a person who is Native Hawaiian, who is any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

(2) **“Nutrition Services Incentive Program”** means grant funding to state agencies, eligible tribal organizations, and Native Hawaiian grantees to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

**O. Definitions Beginning with “O”:**

(1) **“Older Americans Act”** means the Older Americans Act of 1965, 42 U.S.C. Sections 3001-3058.

(2) **“Older relative caregiver”** means a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for a child or an individual with a disability, and

- (a) in the case of a caregiver for a child, is:
- (i) the grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;
  - (ii) the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; or
  - (iii) has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and
- (b) in the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent, or other relative by blood, marriage, or adoption of the individual with a disability.

**P. Definitions Beginning with “P”:**

- (1) **“Participants”** are individuals who are eligible to receive services or to participate in particular programs administered by the department or its designees.
- (2) **“Policies and procedures”** is the aging and long-term services department’s policies and procedures guide. The policies and procedures provide detailed information for the successful administration of the department’s mission and the requirements and procedures necessary for the management of its programs, services, partnerships, and the systems it has established for the benefit of older individuals. The policies and procedures also detail the federal requirements mandated by the Older Americans Act of 1965 and its implementing regulations.
- (3) **“Private pay programs”** are a type of contract or commercial relationship and are programs, separate and apart from programs funded under the Act, for which the individual consumer agrees to pay to receive services under the programs.
- (4) **“Program income”** means gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance except as otherwise provided under federal grantmaking authorities. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds. Interest earned on advances of federal funds is not program income. Except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 35 U.S.C. Sections 200 to 212 (which applies to inventions made under federal awards).
- (5) **“Provider”** means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the state or area plan.

**Q. Definitions Beginning with “Q”: [RESERVED]**

**R. Definitions Beginning with “R”:**

- (1) **“Reservation”** means any federally or state recognized American Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Section 1601 et seq.), and Indian allotments.
- (2) **“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.

**S. Definitions Beginning with “S”:**

- (1) **“State ombudsman”** means the individual who heads the office and is responsible to personally, or through representatives of the office, fulfill the functions, responsibilities, and duties set forth in 45 C.F.R. Sections 1324.13 and 1324.19.
- (2) **“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.
- (3) **“Supplemental foods”** means foods that assist with maintaining health but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as additional beverage or food items, and may be specified by state agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home delivered meal services.

**T. Definitions Beginning with “T”: [RESERVED]**

**U. Definitions Beginning with “U”:** “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.

**V. Definitions Beginning with “V”:** “Voluntary contributions” means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Older Americans Act and its implementing regulations.

**W. Definitions Beginning with “W”:** [RESERVED]

**X. Definitions Beginning with “X”:** [RESERVED]

**Y. Definitions Beginning with “Y”:** [RESERVED]

**Z. Definitions Beginning with “Z”:** [RESERVED]

[9.2.1.7 NMAC - Rp, 9.2.1.7, 09/23/2025]

#### **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 and shall adhere to the regulations promulgated under the Older Americans Act. 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 2000(e); 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.

**F.** State agency policies and procedures:  
The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in these rules. These policies and procedures shall be developed in consultation with area agencies on aging, program participants, and other appropriate parties in the state. Except for the ombudsman program as set forth in 45 C.F.R. Section 1324(A) and where otherwise indicated, the state agency policies may allow for such policies and procedures to be developed at the area agency on aging level.

**G.** Emergency and disaster requirements:  
**(1)** The department shall establish emergency plans as set forth in 42 U.S.C. 3027(a)(28).  
**(2)** Area agencies on aging shall establish emergency plans which include:  
**(i)** the area agency’s continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;  
**(ii)** a description of coordination activities for both development and implementation of long range emergency and disaster preparedness plans; and  
**(iii)** other information as deemed appropriate by the area agency on aging.

**H.** Conflicts of interest:  
The State Agency on Aging shall develop policies and procedures regarding conflicts of interest, in accordance with the Act (42 U.S.C. Section 3058g(f)) and all other applicable federal requirements (45 C.F.R. Section 1324.21). These policies and procedures must safeguard against conflicts of interest on the part of the state agency, employees, and agents of the state who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers. Conflicts of interest policies and procedures must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels.

[9.2.1.8 NMAC - Rp, 9.2.1.8 NMAC, 09/23/2025]

#### **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.

9.2.1 NMAC, General Provisions (filed 6/17/2015) Repealed effective xx/xx/2025.

**Other:** 9.2.1 NMAC, General Provisions (filed 6/17/2015) Replaced by 9.2.1 NMAC, General Provisions effective xx/xx/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 2            FEDERAL AND STATE LAW**

**9.2.2.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB)  
[9.2.2.1 NMAC - Rp, SAA Rule No. 95-2.1, 06/30/2015]

**9.2.2.2            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.  
[9.2.2.2 NMAC - Rp, SAA Rule No. 95-2.2, 06/30/2015]

**9.2.2.3            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.  
[9.2.2.3 NMAC - Rp, SAA Rule No. 95-2.3, 06/30/2015]

**9.2.2.4            DURATION:** Permanent.  
[9.2.2.4 NMAC - Rp, SAA Rule No. 95-2.4, 06/30/2015]

**9.2.2.5            EFFECTIVE DATE:** June 30, 2015, unless a later date is cited at the end of a section.  
[9.2.2.5 NMAC - Rp, SAA Rule No. 95-2.5, 06/30/2015]

**9.2.2.6            OBJECTIVE:** The objective of this rule is to establish the requirement to comply with the Older Americans Act and its implementing regulations for all programs administered under the Older Americans Act.  
[9.2.2.6 NMAC - Rp, SAA Rule No. 95-2.6, 06/30/2015; A, 09/23/2025]

**9.2.2.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.2.7 NMAC - Rp, SAA Rule No. 95-2.7, 06/30/2015]

**9.2.2.8            LEGAL REFERENCES:** [RESERVED]  
[9.2.2.8 NMAC - Rp, SAA Rule No. 95-2.8, 06/30/2015]

**9.2.2.9            FEDERAL LAW:** [RESERVED]  
[9.2.2.9 NMAC - Rp, SAA Rule No. 95-2.9, 06/30/2015]

**9.2.2.10          STATE LAW:** [RESERVED]  
[9.2.2.10 NMAC - Rp, SAA Rule No. 95-2.10, 06/30/2015]

**9.2.2.11          OLDER AMERICANS ACT:** The department incorporates by reference the provisions of the Older Americans Act of 1965, as amended, and related implementing regulations for all programs funded by such act.  
[9.2.2.11 NMAC - Rp, SAA Rule No. 95-2.11, 06/30/2015]

**9.2.2.12          STATE PROVISIONS:**

**A.** State funds used to match federal Older Americans Act funds must be administered in accordance with the related federal and state rules and regulations.

**B.** State funds used in conjunction with federal corporation for national and community service funds must be administered in accordance with the related federal and state rules and regulations.

**C.** State funds that exceed required match must address eligibility criteria in accordance with 9.2.3 NMAC, unless a waiver is granted by the department pursuant to 9.2.3 NMAC.

[9.2.2.12 NMAC - Rp, SAA Rule No. 95-2.12, 06/30/2015; A, 09/23/2025]

**HISTORY OF 9.2.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State records center: SAA Rule No. 95-2, Federal and State Law, filed 4/13/1995.

**History of the Repealed Material:**

SAA Rule No. 95-2, filed 04/13/1995 - Repealed 06/30/2015.

**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 (NMALTSO).  
[9.2.3.1 NMAC - Rp, 9.2.3.1 NMAC, 09/23/2025]

**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, 9.2.3.2 NMAC, 09/23/2025]

**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, 9.2.3.3 NMAC, 09/23/2025]

**9.2.3.4 DURATION:** Permanent.  
[9.2.3.4 NMAC - Rp, 9.2.3.4 NMAC, 09/23/2025]

**9.2.3.5 EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.3.5 NMAC - Rp, 9.2.3.5 NMAC, 09/23/2025]

**9.2.3.6 OBJECTIVE:** The objective of this rule is to establish eligibility standards for the federal and state-funded programs administered by the department.  
[9.2.3.6 NMAC - Rp, 9.2.3.6 NMAC, 09/23/2025]

**9.2.3.7 DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.3.7 NMAC - Rp, 9.2.3.7 NMAC, 09/23/2025]

**9.2.3.8 OLDER AMERICANS ACT SERVICES:**

**A.** An individual must be age 60 or older at the time of service to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(a) Services shall be available to spouses of any age of older individuals.

(b) Services may be available to:

(i) A person with a disability who lives with an adult age 60 or older or

who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(ii) A volunteer during meal hours.

(2) Family caregiver support services for:

(a) adults caring for older adults and adults caring for individuals of any age with Alzheimer's or a related disorder;

(b) older relative caregivers who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

(c) older relative caregivers who are caring for individuals age 18 to 59 with disabilities and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be age 60 or older, but the information is targeted to those who are age 60 or older or the information benefits those who are age 60 or older.

(4) Ombudsman program services, as provided in 45 C.F.R. Section 1324.

**B.** State agencies, area agencies on aging, and local service providers may develop further eligibility requirements for implementation of services for older adults and family caregivers, as long as they do not conflict with the Act, this part, or guidance as set forth by the assistant secretary for aging. Such requirements may include:

(1) assessment of greatest social need;

- (2) assessment of greatest economic need;
- (3) assessment of functional and support need;
- (4) geographic boundaries;
- (5) limitations on number of persons that may be served;
- (6) limitations on number of units of service that may be provided;
- (7) limitations due to availability of staff/volunteers;
- (8) limitations to avoid duplication of services; and
- (9) specification of settings where services shall or may be provided.

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.

[9.2.3.8 NMAC - Rp, 9.2.3.8 NMAC, 09/23/2025]

### **9.2.3.9 CORPORATION FOR NATIONAL AND COMMUNITY 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, 42 U.S.C. Sections 4950 to 5028, and 45 C.F.R. Sections 2551 to 2553. The 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, 9.2.3.9 NMAC, 09/23/2025]

**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 50 or older;
- (2) spouses (of any age) of persons age 50 or older; and
- (3) persons with disabilities age 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 A 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, 9.2.3.10 NMAC, 09/23/2025]

### **9.2.3.11 [RESERVED]**

[9.2.3.11 NMAC - Repealed, 09/23/2025]

### **9.2.3.12 [RESERVED]**

[9.2.3.12 NMAC - Repealed, 09/23/2025]

**9.2.3.13 SUPPLEMENT, NOT SUPPLANT:** Funds awarded under the Act for services provided under Sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c-2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s-2), and 705(a)(4) (42 U.S.C. 3058d(a)(4)), must be used to supplement, not supplant existing federal, state, and local funds expended to support those activities.

[9.2.3.13 NMAC - N, 09/23/2025]

### **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 4/13/1995.

**History of Repealed Material:**

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

9.2.13 NMAC, Eligibility For Aging And Long - Term Services Department Service (filed 6/17/2015), Repealed effective 09/23/2025.

**Other:** 9.2.13 NMAC, Eligibility For Aging And Long - Term Services Department Services (filed 6/17/2015)  
Replaced by 9.2.13 NMAC, Eligibility For Aging And Long - Term Services Department Services effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 4            DESIGNATION OF PLANNING AND SERVICE AREAS**

**9.2.4.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.4.1 NMAC - Rp, 9.2.4.1 NMAC, 09/23/2025]

**9.2.4.2            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.  
[9.2.4.2 NMAC - Rp, 9.2.4.2 NMAC, 09/23/2025]

**9.2.4.3            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 30, and implementing regulations.  
[9.2.4.3 NMAC - Rp, 9.2.4.3 NMAC, 09/23/2025]

**9.2.4.4            DURATION:** Permanent.  
[9.2.4.4 NMAC - Rp, 9.2.4.4 NMAC, 09/23/2025]

**9.2.4.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.4.5 NMAC - Rp, 9.2.4.5 NMAC, 09/23/2025]

**9.2.4.6            OBJECTIVE:** The objective of this rule is to establish the PSA application and designation process.  
[9.2.4.6 NMAC - Rp, 9.2.4.6 NMAC, 09/23/2025]

**9.2.4.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.4.7 NMAC - Rp, 9.2.4.7 NMAC, 09/23/2025]

**9.2.4.8            LEGAL REFERENCES: [RESERVED]**  
[9.2.4.8 NMAC - Rp, 9.2.4.8 NMAC, 09/23/2025]

**9.2.4.9            DESIGNATION OF PLANNING AND SERVICE AREAS (PSAs):** Existing intrastate planning and service areas (PSAs) shall continue to be designated unless:

**A.** There is demonstrated evidence that designation of an existing PSA is inconsistent with the purpose of the rules and regulations issued pursuant to the Older Americans Act; or

**B.** The designation of another PSA is necessary for the assurance of the efficient and effective administration of programs authorized by the Older Americans Act and operating in the state.

[9.2.4.9 NMAC - Rp, 9.2.4.9 NMAC, 09/23/2025]

**9.2.4.10          TYPE OF DESIGNATION:** The department may designate "federally recognized" planning and service areas under the auspices of the Older Americans Act and may designate "non-federally recognized" planning and service areas under state authority. Non-federally recognized planning and service areas may duplicate or overlap with federally recognized planning and service areas and shall be established in order to address special service needs or target populations and to facilitate the distribution of state funds.

[9.2.4.10 NMAC - Rp, 9.2.4.10 NMAC, 09/23/2025]

**9.2.4.11          CRITERIA FOR PSA DESIGNATION:** The department shall divide the state into distinct planning and service areas, considering the following criteria:

**A.** geographical distribution of older individuals in the state;

**B.** incidence of the need for supportive services, nutrition services, multipurpose senior centers, legal assistance, and other services;

**C.** distribution of older individuals who have greatest economic need, particularly those with low-incomes;

**D.** distribution of older individuals residing in rural areas;

**E.** distribution of minority older individuals;

- F. distribution of older individuals with limited English proficiency;
  - G. distribution of older individuals who have greatest social need;
  - H. distribution of Native American Indian elders;
  - I. distribution of resources available to provide services;
  - J. boundaries of existing areas within the state which were drawn for the planning or administration of supportive services programs; and
  - K. location of units of general purpose local government within the state.
- [9.2.4.11 NMAC - Rp, 9.2.4.11 NMAC, 09/23/2025]

**9.2.4.12 PROCEDURE FOR DESIGNATING CHANGES TO PSA:** The procedure to designate a PSA is as follows:

**A.** Department initiated change: The department may designate additional planning and service areas or redefine existing planning and service areas based upon changes in the criteria for PSA designation in accordance with 9.2.4.11 NMAC.

(1) The department shall solicit public input with regard to any proposed changes or additions to PSA designation and at least one public hearing shall be held in each county and Indian tribe proposed to be affected. Hearings shall be conducted in accordance with the department's policies and procedures for hearings.

**B.** Non-department initiated change: Any unit of general purpose local government, region within a state recognized for area wide planning, metropolitan area, or Indian tribe may make application to the department to be designated as a planning and service area.

(1) The aging network division director, as the department secretary's designee, shall approve or disapprove any such application submitted under this section.

(2) Any applicant under this section whose application for designation as a planning and service area is denied by the department may appeal the denial in writing to the department secretary within 30 days of such denial.

(3) If the department denies an applicant for designation as a planning and service area under this section, the department shall provide a hearing on the denial of the application, in accordance with 9.2.11 NMAC if requested by the applicant, as well as issue a written decision on the denial within 60 days following the hearing.

[9.2.4.12 NMAC - Rp, 9.2.4.12 NMAC, 09/23/2025]

**9.2.4.13 NON -DEPARTMENT INITIATED APPLICATION PROCESS:** This application process applies when an entity other than the department seeks to apply to designate a new planning and service area or to change an existing planning and service area.

**A.** The applicant shall submit a notice of application to the aging network division director that includes:

(1) an explanation of why the new designation or change in designation is necessary;

(2) an explanation of how the new designation or change will benefit older individuals in both the established PSA and the new PSA;

(3) documentation that existing services can be substantially improved through the proposed change; and

(4) documentation of the results of a public hearing that meets the department's criteria (the applicant shall involve the area agencies on aging, service providers, and older individuals in all actions and proceedings by offering opportunities for feedback from interested parties).

**B.** The applicant shall establish and make publicly available the appeal process for affected parties:  
(1) a full disclosure of any potential conflicts of interest that would exist if the new PSA or requested change was approved by the department; and

(2) information that addresses each of the criteria for consideration enumerated in 9.2.4.11 NMAC.

**C.** The applicant shall comply with the department's timeframes and requests for additional information and documentation during the application process.

**D.** Once the department receives the additional information and documentation requested, it shall follow the procedures set forth in 9.2.4.12 NMAC, including Subsections B and C (the procedures for a department-initiated designation). The department shall review the application in accordance with the criteria and procedures set forth in 9.2.4.9 NMAC, 9.2.4.11 NMAC, and 9.2.4.12 NMAC.

[9.2.4.13 NMAC - Rp, 9.2.4.13 NMAC, 09/23/2025]

**9.2.4.14 APPROVAL OF PSA DESIGNATION:** All PSA designations for purposes of distribution of federal funds must be further approved by the assistant secretary pursuant to the submission of a state plan amendment or state plan as set forth in 9.2.4.18 NMAC.

[9.2.4.14 NMAC - Rp, 9.2.4.14 NMAC, 09/23/2025]

**9.2.4.15 APPEAL OF PSA DESIGNATION OR REVOCATION OF DESIGNATION:**

**A.** An applicant for PSA change in designation whose application to the aging network division director has been denied or a PSA whose designation the department has decided to revoke may appeal pursuant to the appeals process set forth in 9.2.11 NMAC.

**B.** Any applicant for “federally recognized” PSA designation changes whose application the department denies and who has been provided an appeal hearing and written decision by the department may appeal to the DAB in writing within 30 days of receipt of the department’s written decision, pursuant to 45 C.F.R Section 1321.17.

[9.2.4.15 NMAC - Rp, 9.2.4.15 NMAC, 09/23/2025]

**9.2.4.16 DESIGNATED PSAs:**

**A.** The designated PSAs are posted to the department’s website.

**B.** All designation approvals shall be maintained in the appropriate department records.

[9.2.4.16 NMAC – Rp, 9.2.4.16 NMAC, 09/23/2025]

**9.2.4.17 EXPLANATION OF CHANGES:** The department shall provide an explanation of any decisions to change planning and service areas when it issues the decision. The explanation shall specifically address the department’s consideration of each of the factors set forth in 9.2.4.11 NMAC.

[9.2.4.17 NMAC - N, 09/23/2025]

**9.2.4.18 CHANGES TO PSAS IN STATE PLANS OR STATE PLAN AMENDMENTS:** Any changes to planning and service areas shall be included in a state plan amendment or in the prospective state plan submitted to the assistant secretary.

[9.2.4.18 NMAC - N, 09/23/2025]

**HISTORY OF 9.2.4 NMAC:**

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

SAA Rule No. 95-4, Designation of Planning and Service Areas, filed 4/13/95.

**History of Repealed Material:**

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

9.2.4 NMAC, Designation of Planning And Service Areas (filed 6/17/2015), Repealed effective 09/23/2025.

**Other:** 9.2.4 NMAC, Designation of Planning And Service Areas (filed 6/17/2015), Replaced by 9.2.4 NMAC, Designation of Planning And Service Areas effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 5            AREA AGENCY ON AGING DESIGNATION**

**9.2.5.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.5.1 NMAC - Rp, 9.2.5.1 NMAC, 09/23/2025]

**9.2.5.2            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.  
[9.2.5.2 NMAC - Rp, 9.2.5.2 NMAC, 09/23/2025]

**9.2.5.3            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.  
[9.2.5.3 NMAC - Rp, 9.2.5.3 NMAC, 09/23/2025]

**9.2.5.4            DURATION:** Permanent.  
[9.2.5.4 NMAC - Rp, 9.2.5.4 NMAC, 09/23/2025]

**9.2.5.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.5.5 NMAC - Rp, 9.2.5.5 NMAC, 09/23/2025]

**9.2.5.6            OBJECTIVE:** The objective of this rule is to establish the AAA application and designation process.  
[9.2.5.6 NMAC - Rp, 9.2.5.6 NMAC, 09/23/2025]

**9.2.5.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.5.7 NMAC - Rp, 9.2.5.7 NMAC, 09/23/2025]

**9.2.5.8            LEGAL REFERENCES:** [RESERVED]  
[9.2.5.8 NMAC - Rp, 9.2.5.8 NMAC, 09/23/2025]

**9.2.5.9            NEED FOR DESIGNATION:** Applications for designation as an area agency on aging (AAA), under the Older Americans Act, must be solicited by the department when a new planning and service area (PSA) has been designated, when an existing AAA has been de-designated, or when an existing AAA has voluntarily withdrawn its designation.  
[9.2.5.9 NMAC - Rp, 9.2.5.9 NMAC, 09/23/2025]

**9.2.5.10           TYPE OF DESIGNATION:** The department may designate federally recognized AAAs under the auspices of the Older Americans Act or may designate non-federally recognized AAAs under state authority. Non-federally recognized AAAs shall be established and shall operate under the same rules as federally recognized AAAs unless otherwise negotiated with the designated organization.  
[9.2.5.10 NMAC - Rp, 9.2.5.10 NMAC, 09/23/2025]

**9.2.5.11           ELIGIBILITY AND PREFERENCE FOR DESIGNATION:**

- A.** An AAA may be any of the following:
- (1)** an established aging organization which operates in a PSA;
  - (2)** any office or agency designated by the chief elected officials of a unit of general purpose local government to function only as an AAA;
  - (3)** any office or agency designated by the chief elected officials of any combination of units of general purpose local government to act on behalf of the combination for such purpose; or
  - (4)** any non-state local public or private non-profit organization in a PSA, or any separate unit within such organization, which is under the supervision or direction for this purpose of the designated state agency, and which demonstrates the ability and willingness to engage in the planning or provision of a broad range of services under the Older Americans Act within such planning and service area.
- B.** No regional or local office of state government may be designated as an AAA.

[9.2.5.11 NMAC - Rp, 9.2.5.11 NMAC, 09/23/2025]

**9.2.5.12 APPLICATION PROCESS AND PROCEDURE:**

**A.** When it is necessary to solicit applications for area agency on aging designation pursuant to 9.2.5.9 NMAC, the department shall provide public notice of the need to solicit applications for designation and the process by which an entity can apply for such designation.

**B.** The department shall provide public notice as follows:

- (1) in newspapers of general circulation in the planning and service area for which AAA applications are being solicited;
- (2) on the department website;
- (3) via electronic dissemination to New Mexico's aging network; and
- (4) in written notification to units of general purpose local government in the planning and service area.

**C.** In the written notification to the unit(s) of general purpose local government, the department shall solicit the views of such unit(s) of general purpose local government in the application process of any AAA.

[9.2.5.12 NMAC - Rp, 9.2.5.12 NMAC, 09/23/2025]

**9.2.5.13 AREA AGENCY ON AGING REPLACEMENT REQUIREMENTS:** Any unsolicited application for AAA designation which, if approved, would result in the replacement of a formally designated area agency on aging or substantially impact the aging network within the PSA involved, must include:

- A.** written indication of support, by resolution, of seventy-five percent of the governing bodies of municipalities and counties within the PSA boundaries;
- B.** documentation that existing services can be substantially improved through the proposed change in designation;
- C.** assurance that no staff or board member of the applicant has served on the staff or board of the existing area agency on aging within the affected PSA, the department, or the United States administration for community living for a period of not less than two years prior to the date of notification of application; and
- D.** other criteria deemed relevant by the department to the applicant's ability to carry out the duties of an AAA.

[9.2.5.13 NMAC - Rp, 9.2.5.13 NMAC, 09/23/2025]

**9.2.5.14 REVIEW AND ASSESSMENT:** The department shall review each application for completeness and ability to meet the necessary requirements of designation. The entity being considered for AAA designation shall provide an opportunity for on-site review and assessment by the department to ensure that said entity has the capacity to perform the functions of an AAA, including the requirements set forth in 9.2.6 NMAC. The department shall consider the views offered by the unit(s) of general purpose local government throughout its assessment process.

[9.2.5.14 NMAC - Rp, 9.2.5.14 NMAC, 09/23/2025]

**9.2.5.15 DESIGNATION REQUIREMENT:** The department is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area for which the department allocates funds under Title III of the Older Americans Act, supplemental state funds, or both.

**A.** An area agency that serves more than one planning and service area must maintain separate funding, planning, and advocacy responsibilities for each planning and service area.

**B.** When designating a new AAA, the department shall give right of first refusal to unit(s) of general purpose local government if such unit can meet the requirements of 9.2.5.13 NMAC and 9.2.5.14 NMAC, and the boundaries of the PSA are reasonably contiguous. If any unit of general purpose local government chooses not to exercise right of first refusal, the department shall then give preference to an established AAA or aging organization which operates in the PSA and shall take into consideration the historical experience applicants have had in coordination, planning, and delivery of services for older adults. The department secretary shall approve or disapprove any applications for designation in writing.

[9.2.5.15 NMAC - Rp, 9.2.5.15 NMAC, 09/23/2025]

**9.2.5.16 RIGHT TO APPEAL:** Applicants who have been denied designation may appeal as provided in 9.2.11 NMAC.

[9.2.5.16 NMAC - Rp, 9.2.5.16 NMAC, 09/23/2025]

**9.2.5.17 DESIGNATED AAAs:**

- A. The designated AAAs are posted to the department's web site.
- B. All designation approvals shall be maintained in the appropriate department records.

[9.2.5.17 NMAC - Rp, 9.2.5.17 NMAC, 09/23/2025]

**9.2.5.18 CONFLICTS OF INTEREST POLICIES AND PROCEDURES:** The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the assistant secretary for aging, and state agency policies and procedures as set forth at 45 C.F.R. Section 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, and awardees who have responsibilities relating to the area agency's grants and contracts. Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels.

[9.2.5.17 NMAC - N, 09/23/2025]

**9.2.5.19 AREA AGENCY ON AGING TITLE III AND TITLE VI COORDINATION RESPONSIBILITIES:**

A. For planning and service areas where there are Title VI programs, the area agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in 45 C.F.R. Section 1322.13(a), must explain how the area agency's aging network, including service providers, will coordinate with Title VI programs to ensure compliance with 42 U.S.C. Section 3062(a)(11)(B).

B. The policies and procedures set forth in subsection (A) of this section must at a minimum address:

- (1) How the area agency's aging network, including service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III;
- (2) The communication opportunities the area agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;
- (3) The methods for collaboration on and sharing of program information and changes, including coordinating with service providers where applicable;
- (4) How Title VI programs may refer individuals who are eligible for Title III services;
- (5) How services will be provided in a culturally appropriate and trauma informed manner; and
- (6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils as set forth in 45 C.F.R. Section 1321.63.

[9.2.5.18 NMAC - N, 09/23/2025]

**9.2.5.20 STATE AGENCY OBLIGATION:** The department shall assume area agency on aging responsibilities in the event there are no successful applicants in the state agency's application process including the responsibility to administer the agency area on aging programs in accordance with 42 U.S.C. Section 306(f).

[9.2.5.20 NMAC - N, 09/23/2025]

**HISTORY OF 9.2.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-5, Area Agency Designation, filed 4/13/1995.

**History of Repealed Material:**

SAA Rule No. 95-5, filed 4/13/1995 - Repealed 6/30/2015.

9.2.5 NMAC, Area On Agency Designation (filed 6/17/2015) Repealed effective 09/23/2025.

Other: 9.2.5 NMAC, Area On Agency Designation (filed 6/17/2015) Replaced by 9.2.5 NMAC, Area On Agency Designation effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 6            AREA AGENCY ON AGING REQUIREMENTS**

**9.2.6.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.6.1 NMAC - Rp, 9.2.6.1, 09/23/2025]

**9.2.6.2            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.  
[9.2.6.2 NMAC - Rp, 9.2.6.2, 09/23/2025]

**9.2.6.3            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.  
[9.2.6.3 NMAC - Rp, 9.2.6.3, 09/23/2025]

**9.2.6.4            DURATION:** Permanent.  
[9.2.6.4 NMAC - Rp, 9.2.6.4, 09/23/2025]

**9.2.6.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.6.5 NMAC - Rp, 9.2.6.5, 09/23/2025]

**9.2.6.6            OBJECTIVE:** The objective of this rule is to establish standards and responsibilities for the area agencies on aging.  
[9.2.6.6 NMAC - Rp, 9.2.6.6, 09/23/2025]

**9.2.6.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.6.7 NMAC - Rp, 9.2.6.7, 09/23/2025]

**9.2.6.8            LEGAL REFERENCES:** [RESERVED]  
[9.2.6.8 NMAC - Rp, 9.2.6.8, 09/23/2025]

**9.2.6.9            AREA AGENCY ON AGING STRUCTURE:** An area agency on aging must:

- A.** administer Older Americans Act and state programs within one or more designated planning and service areas;
- B.** have a full-time, qualified director and adequate qualified staff;
- C.** include a commitment of public, private, voluntary, and personal resources committed to supporting the system;
- D.** involve collaborative decision-making principles that include public, private, voluntary, faith-based, civic, and fraternal organizations including trusted leaders of communities in greatest economic and greatest social need, older individuals, and family caregivers in the community; and
- E.** have a board of directors comprised of leaders in the community, including leaders from groups identified as in greatest economic need and greatest social need, who have the respect, capacity, and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

[9.2.6.9 NMAC - Rp, 9.2.6.9, 09/23/2025]

**9.2.6.10            AREA AGENCY ON AGING RESPONSIBILITIES:** A designated area agency on aging, in accordance with 45 C.F.R. Section 1321, shall:

- A.** Comply, as applicable, with all federal and state statutes, rules and policies. In addition, a designated area agency on aging may not engage in any activity which is inconsistent with its statutory mission prescribed in the Older Americans Act or policies prescribed by the department.
- B.** Coordinate services for older persons in its planning and service area(s) and serve as an advocate and focal point for older individuals within the area. This responsibility shall include having a point of contact where anyone may go or contact for help, information, and referral on any aging issue.

**C.** Plan and develop collaborative linkages; share information; monitor and evaluate services; and lead the development of comprehensive and coordinated community-based systems.

**D.** 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.

(1) the provision of such services by an area agency on aging is necessary to assure an adequate supply of such services; or

(2) such services are directly related to the area agency on aging's administrative function(s); or

(3) such services of comparable or higher quality can be provided more economically by the area agency on aging;

**E.** Conduct periodic public hearings on the effectiveness of services and the needs of older adults in the area.

**F.** Furnish appropriate training and technical assistance to providers of services in the area.

**G.** Develop and submit area plans and area plan amendments on or before dates determined by the department, or as needed, to the department for approval. Prior to department submission, proposed area plans and plan amendments shall be submitted to the agency's advisory council for review and comment. Submissions of area plans and plan amendments to the department shall be completed according to policies and guidelines issued by the department and shall cover each planning and service area administered. Proposed area plans and area plan amendments, when relevant, must:

(1) be made available for a public review and comment period of at least 30 calendar days unless a waiver is provided by the department during an emergency or when a time sensitive action is necessary;

(2) include objectively collected, and where possible, statistically valid, data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, evidence-based disease prevention and health promotion services, family caregiver support services, and multipurpose senior centers. The area agency evaluations shall consider all services in these categories regardless of the source of funding for the services;

(3) be accessible to the public in a public location and provided to the public in print by request;

(4) incorporate services which address the incidence of hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions;

(5) shall provide, to the extent feasible, for the furnishing of services through self-directed care as defined in 42 U.S.C. Section 3002; and

(6) meet all of the requirements set forth in 45 C.F.R. Section 1321.65;

**H.** Establish and support an advisory council. The advisory council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older individuals and family and older relative caregivers specific to each planning and service area.

(1) the advisory council membership shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency on aging in developing community-based systems of services. The advisory committee shall include:

(a) more than fifty percent older persons age 60 years or older, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act, with efforts made to include individuals identified as in greatest economic need and greatest social need as defined in 42 U.S.C. Section 3002;

(b) representatives of older persons;

(c) representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(d) representatives of supportive services provider organizations, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers;

(e) persons with leadership experience in the private and voluntary sectors;

(f) local elected officials;

(g) the general public;

(h) family caregivers;

available;

- (i) representatives from Indian Tribes, Pueblos, or Tribal aging programs as
- (j) older relative caregivers, including kin and grandparent caregivers of children or adults age 18-59 with a disability, as available; and
- (k) additional membership as determined by the department or the area agency on aging.

(2) the advisory council responsibilities shall include advising the area agency on aging relative to:

- (a) all matters relating to the development and administration of the area plan;
- (b) conducting public hearings;
- (c) representing the interest of older persons and family caregivers;
- (d) reviewing and commenting on community policies, programs and actions affecting older persons and family caregivers with the intent of assuring maximum coordination and responsiveness to older persons and family caregivers;

- (e) service provision and assisting in evaluation of such;
- (f) policies, programs and actions representing the interests of older persons and encouraging the involvement of older persons;
- (g) developing and administering the area plan; and
- (h) ensuring the plan is available to older individuals, family caregivers, service providers, and the general public.

(3) the advisory council shall develop, implement and make public bylaws governing at least the following:

- (a) the role and functions of the advisory council;
- (b) the number and characteristics of membership;
- (c) the procedures for membership selection; and
- (d) the procedures for the conduct of the advisory council's business and activities, including preventing conflicts of interest.

(4) the advisory council shall review and comment upon the area plan and amendments before transmittal to the department for approval.

(5) the advisory council shall not operate as a board of directors for the area agency on aging. Individuals may not serve on both the advisory council and the board of directors for the same entity.

**I.** Determine the extent of need for supportive services, nutrition services and multipurpose senior centers, evaluate the effectiveness of resources to meet such need and enter into agreements with providers of services to meet the need.

**J.** Collaborate with public and private entities, including adult protective services, involved in the prevention, identification and treatment of abuse, neglect, and exploitation of older adults.

**K.** Comply with the requirements of its contract with the department.

**L.** Set objectives for providing services to older adults with the greatest economic or social needs, including minority adults with low-incomes and older adults residing in rural and frontier areas.

**M.** Set objectives for providing services to caregivers of older adults and older adult caregivers.

**N.** Identify and reach populations in need and inform them of the availability of assistance. This responsibility includes the offer of special help or targeted resources for the most vulnerable older individuals, family caregivers, and those in danger of losing their independence.

**O.** If there is a population of older Native American Indians in the service area, conduct outreach activities to identify those individuals and inform them of the availability of assistance. The area agency on aging will comply with all Title III and Title VI coordination responsibilities set forth in 45 C.F.R. Section 1321.69.

**P.** Establish a grievance procedure for persons who are dissatisfied with or denied services;

**Q.** List the telephone number of the area agency on aging in each telephone directory published in its service area(s).

**R.** Coordinate planning and delivery of transportation services (including the purchase of vehicles) to assist older adults in the service area(s).

**S.** Operate in an ethical and professional manner at all times, including in the development of policies and procedures that are in compliance with state agency policies and procedures as required in 45 C.F.R. Section 1321.59. The area agency on aging must have policies and procedures regarding conflicts of interest in accordance with the Older Americans Act and 45 C.F.R. Section 1321.67.

**T.** Establish financial management systems in accordance with federal and state requirements.

- U. Implement a budget and systematic contracting process.
- V. Respond, within established deadlines, to requests by the department to implement specific corrective action as may be required.
- W. Collaborate with the foster grandparent, senior companion, and retired senior volunteer programs, the state health insurance program (SHIP), long-term care ombudsmen, and the aging and disability resource center.
- X. Provide information on a range of available public and private long-term care services and support options and assure that these options are readily accessible to all older individuals and family caregivers, without regard to their income level.
- Y. Provide effective referral from agency to agency to assure that information and assistance is provided, no matter how or where contact is made in the community.
- Z. Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for vulnerable older individuals or family caregivers.
- AA. Be tailored to the specific nature of the community and the needs of older adults in the community.
- BB. Carry out the advocacy responsibilities described and mandated under 45 C.F.R. Section 1321.61. [9.2.6.10 NMAC - Rp, 9.2.6.10, 09/23/2025]

**9.2.6.11 WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:** If the department determines that an area agency on aging has not made progress to correct any identified deficiency(ies), the department may initiate the withdrawal of designation process or an area agency on aging may voluntarily relinquish their designation, pursuant to 9.2.7 NMAC and 45 C.F.R. Section 1321. [9.2.6.11 NMAC - Rp, 9.2.6.11, 09/23/2025]

**9.2.6.12 AREA PLAN ADMINISTRATION:** A designated area agency on aging must be responsible for the area plan administration. In this context, the area plan administration means funds used to carry out activities, as set forth in Section 306 of the Older Americans Act (42 U.S.C. Section 3026), and other activities to fulfill the mission of the area agency as set forth in 9.2.6 NMAC and in 45 C.F.R. Section 1321.55, including development of private pay programs or other contracts and commercial relationships. The resources made available to the area agency on aging shall be used in accordance with this section to finance those activities necessary to achieve the elements of a community-based system and shall be used consistent with the requirements for the provision of direct services as set forth in 45 C.F.R. Sections 1321.85 through 1321.93. [9.2.6.12 NMAC - N, 09/23/2025]

**HISTORY OF 9.2.6 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center:  
SAA Rule No. 95-6, Area Agency on Aging Requirements, filed 4/13/1995.

**History of Repealed Material:**

SAA Rule No. 95-6, (filed 4/13/1995) - Repealed 6/30/2015.  
9.2.6 NMAC, Area Agency on Aging Requirements filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.6 NMAC, Area Agency on Aging Requirements filed 6/17/2015 Replaced by 9.2.6 NMAC, Area Agency on Aging Requirements effective 09/23/2025.

**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, 9.2.7.1 NMAC, 09/23/2025]

**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, 9.2.7.2 NMAC, 09/23/2025]

**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, 9.2.7.3 NMAC, 09/23/2025]

**9.2.7.4            DURATION:** Permanent.  
[9.2.7.4 NMAC - Rp, 9.2.7.4 NMAC, 09/23/2025]

**9.2.7.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.7.5 NMAC - Rp, 9.2.7.5 NMAC, 09/23/2025]

**9.2.7.6            OBJECTIVE:** The objective of this rule is to establish standards and criteria for the de-designation of area agencies on aging.  
[9.2.7.6 NMAC - Rp, 9.2.7.6 NMAC, 09/23/2025]

**9.2.7.7            DEFINITIONS:** See 9.2.1.7 NMAC for definitions.  
[9.2.7.7 NMAC - Rp, 9.2.7.7 NMAC, 09/23/2025]

**9.2.7.8            LEGAL REFERENCES:** [RESERVED]  
[9.2.7.8 NMAC - Rp, 9.2.7.8 NMAC, 09/23/2025]

**9.2.7.9            BACKGROUND:** De-designation of an area agency on aging may occur voluntarily or involuntarily. An area agency on aging may voluntarily relinquish its area agency on aging designation. 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, 9.2.7.9 NMAC, 09/23/2025]

**9.2.7.10           DEPARTMENT RESPONSIBILITIES:** The department's written acceptance of any voluntary relinquishment of area agency on aging designation shall be considered the department's withdrawal of designation. Prior to any involuntary 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, 9.2.7.10 NMAC, 09/23/2025]

**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, the regulations and other guidance set forth by the assistant secretary, the terms and conditions of federal grant awards under the Older Americans Act, 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; or

**F.** the department changes one or more planning and service area designations; or

**G.** the area agency voluntarily requests the department withdraw its designation.

[9.2.7.11 NMAC - Rp, 9.2.7.11 NMAC, 09/23/2025]

**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 shall set forth 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, 9.2.7.12 NMAC, 09/23/2025]

**9.2.7.13 NOTIFICATION OF WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION:**

**A.** An area agency on aging shall be notified, by certified mail, return receipt requested, at least 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.

**B.** 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.

[9.2.7.13 NMAC - Rp, 9.2.7.13 NMAC, 09/23/2025]

**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 actions:

**A.** The department will notify, by certified mail, return receipt requested, the assistant secretary and others as specified in 9.2.7.12 NMAC or as required by federal regulation.

**B.** The department will submit a state plan or state plan amendment to the assistant secretary that includes the withdrawal of designation.

**C.** 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.

**D.** 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 180 days after its final decision to withdraw designation of the area agency on aging; this period may be extended by the

assistant secretary. The department may also elect to assign the responsibilities of the area agency to another agency in the planning and service area.  
[9.2.7.14 NMAC - Rp, 9.2.7.14 NMAC, 09/23/2025]

**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.

9.2.7 NMAC, De-Designation of Area Agencies on Aging filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.7 NMAC, De-Designation of Area Agencies on Aging filed 6/17/2015 Replaced by 9.2.7 NMAC, De-Designation of Area Agencies on Aging filed 6/17/2015 effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 11           APPEAL/HEARING PROCEDURES**

**9.2.11.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.11.1 NMAC - Rp, 9.2.11.1 NMAC, 09/23/2025]

**9.2.11.2            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.  
[9.2.11.2 NMAC - Rp, 9.2.11.2 NMAC, 09/23/2025]

**9.2.11.3            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.  
[9.2.11.3 NMAC - Rp, 9.2.11.3 NMAC, 09/23/2025]

**9.2.11.4            DURATION:** Permanent.  
[9.2.11.4 NMAC - Rp, 9.2.11.4 NMAC, 09/23/2025]

**9.2.11.5            EFFECTIVE DATE:** xx/xx/2025, unless a later date is cited at the end of a section.  
[9.2.11.5 NMAC - Rp, 9.2.11.5 NMAC, 09/23/2025]

**9.2.11.6            OBJECTIVE:** The objective of this rule is to establish the appeals process for decisions made by the aging and long-term services department.  
[9.2.11.6 NMAC - Rp, 9.2.11.6 NMAC, 09/23/2025]

**9.2.11.7            DEFINITIONS:** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

**A.            “Hearing”** is an administrative review of documentation and evidence and an opportunity for oral testimony at the discretion of a hearing officer.

**B.            “Hearing officer”** means an impartial person selected by the department secretary to conduct a hearing and render a proposed final decision.

**C.            “Party”** means any petitioner and all interested persons affected by the outcome of a decision under this rule.

**D.            “Petitioner”** means any person or organization who has a right to a hearing under these rules and has filed a written request for a hearing.

[9.2.11.7 NMAC - Rp, 9.2.11.7 NMAC, 09/23/2025]

**9.2.11.8            LEGAL REFERENCES:** [RESERVED]

[9.2.11.8 NMAC - Rp, 9.2.11.8 NMAC, 09/23/2025]

**9.2.11.9            PERSONS OR ORGANIZATIONS ENTITLED TO APPEAL:** The following persons or organizations (“petitioners”) have a right to a hearing:

**A.** any applicant for designation as a PSA, whose application is denied by the department, according to 9.2.4.15 NMAC;

**B.** any affected party when the department initiates an action or a proceeding to designate an additional PSA, divide the state into different PSAs, or otherwise affect the boundaries of PSAs, according to 9.2.4.12 NMAC;

**C.** an area agency on aging when the department proposes to:

**(1)** disapprove an area plan or plan amendment, according to Section G of 9.2.6.10 NMAC;

or

**(2)** withdraw an area agency on aging designation, according to 9.2.7 NMAC; and

**D.** any applicant for area agency on aging designation denied designation, according to 9.2.5 NMAC.

[9.2.11.9 NMAC - Rp, 9.2.11.9 NMAC, 09/23/2025]

**9.2.11.10           HEARING PROCEDURES FOR PETITIONERS:**

**A. Request for a hearing:**

(1) A request for a hearing must be submitted in writing to the secretary of the department within 10 working days of the receipt of the notice of action and must state with specificity the grounds upon which the proposed action is appealed or contested and the grounds upon which the petitioner refutes the basis of the proposed action. The request must include:

(a) a copy of the department's action letter;

(b) the dates of all relevant actions;

(c) the names of individuals or organizations involved in the proposed action being appealed;

(d) a specific statement of any section of the Older Americans Act or state or federal rules or regulations believed to have been violated by the department; and

(e) for organizations, a copy of the minutes or resolution in which the petitioner's governing body requests a hearing, and which authorizes a person(s) to act on behalf of the organization; the minutes or resolution shall indicate adoption by a majority of the quorum of the governing body of the organization.

(2) The petitioner may submit written amendments to the request for hearing which must be received by the secretary of the department or designee not less than 10 working days prior to the date set for hearing.

(3) The secretary of the department or designee may require additional information at any time prior to the hearing. The secretary or designee will provide a reasonable amount of time for the petitioner to respond to any such request.

(4) Failure to submit all the information required in the request within the required time period will result in the forfeiture of the petitioner's right to a hearing.

**B. Notice of hearing:**

(1) Within 20 calendar days of receipt of a request for a hearing, the secretary of the department or designee shall acknowledge in writing the receipt of the request for a hearing and shall determine if the petitioner is entitled to a hearing. If so, the hearing date and notice of the hearing shall be provided to the petitioner(s). The hearing date shall not be later than 120 calendar days from the receipt of the request for a hearing.

(2) The secretary of the department or designee shall provide written notice of any hearing to the petitioner, which shall include:

(a) a statement of the time, date, location, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held; and

(c) a reference to the particular section of statutes, regulations and rules involved.

(3) The secretary of the department or designee shall, after the initial notice, issue a written statement of the issues involved in the appeal. Thereafter a more definite and detailed statement may be furnished not less than 10 calendar days prior to the date set for the hearing.

**C.** The secretary shall appoint an impartial hearing officer to preside at the hearing. The hearing officer may be an employee of the department. The hearing officer shall have authority to administer oaths, rule on the parties' motions, determine the admissibility of evidence, recess any hearing, and rule on such other procedural motions as may be presented by any of the parties.

**D. Conduct of the hearing:**

(1) Documentary evidence may be received by the hearing officer in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original.

(2) Parties may submit documents to the hearing officer and other parties in written form prior to the hearing. Parties may also stipulate as to facts or circumstances.

(3) Either party may cross-examine witnesses to obtain a full and true disclosure of the facts.

(4) The hearing officer may take official notice of generally recognized facts within the area of the department's specialized knowledge. The hearing officer shall inform the parties of the facts officially noticed either before or during the hearing, and shall afford the parties an opportunity to contest the facts officially noticed. The special skills or knowledge of the department and its staff may be used in evaluating the evidence.

(5) The parties need not make formal exceptions to the hearing officer's rulings during a hearing. It shall be sufficient that the party informs the hearing officer of any objection to any ruling at the time it is made.

**E.** During the hearing, the petitioner shall present evidence first. Other parties shall follow and present their evidence. The petitioner may thereafter present rebuttal evidence only. Rebuttal evidence must be

confined to the issues raised in any other party's presentation of evidence. The petitioner shall be given the opportunity to offer a final argument without additional presentation of evidence. In addition, the other party may present a final argument without additional presentation of evidence;

**F.** The hearing shall be completed within 120 days of the date the request for hearing was received by the department.

**G.** An oral hearing shall be electronically recorded. Upon request of any party to the hearing, a copy of this recording shall be made available to the requesting party at cost. In addition, any party may request that a court reporter record the hearing at the requestor's expense. Any transcript must be certified by the hearing officer.

**H.** Record: The record in a hearing under this section consists exclusively of:

- (1) a copy of the notice of proposed action that generated the appeal;
- (2) the request for hearing, including all amendments;
- (3) the notice of hearing;
- (4) written information supporting the appeal, which was submitted to the department;
- (5) the department's written statement of the issues involved in the appeal;
- (6) all motions and rulings made before the hearing;
- (7) all evidence received or considered;
- (8) a statement of facts officially noticed;
- (9) any decision, opinion or report by the hearing officer;
- (10) all staff memoranda or data submitted to and considered by the hearing officer;
- (11) the recording and transcription, if any, of the hearing;
- (12) the hearing officer's recommended decision; and
- (13) the final decision.

**I.** Final decision:

- (1) The hearing officer shall base his/her recommended decision solely on the record.
- (2) The hearing officer shall present to the secretary a recommended decision, including proposed findings of fact and conclusions of law, within 10 working days after the close of the hearing. The recommendation must be in writing and signed by the hearing officer.
- (3) The secretary shall issue a final decision, based on the hearing officer's recommendation, for the record, within five working days of the receipt of the hearing officer's recommendation. The secretary shall affirm the action heard, unless it is unlawful, arbitrary or not reasonably supported by substantial evidence in the record.

(4) The secretary shall send a copy of the final decision to all parties by registered or certified mail, return receipt requested, within five working days after it is rendered.

**J.** Appeal to the assistant secretary of the U.S. administration on aging: Only an applicant for designation as a federally recognized planning and service area whose application is denied by the department and whose appeal to the department has been denied may appeal the denial to the assistant secretary of the U.S. Administration on Aging under the procedures specified in the Older Americans Act and its implementing regulations. In all other cases, the secretary's decision, based on the hearing officer's recommendation, shall be final.

[9.2.11.10 NMAC - Rp, 9.2.11.10 NMAC, 09/23/2025]

**9.2.11.11 APPEAL TO THE DEPARTMENTAL APPEALS BOARD:** Any area agency on aging that has appealed a state agency's decision to withdraw area agency on aging designation, and that has been provided a hearing and a written decision, may appeal the decision to the departmental appeals board. The petitioner must follow the procedures for such appeal as set forth in 45 C.F.R. Section 1321.23 and 45 C.F.R. Part 16.

[9.2.11.11 NMAC - N, 09/23//2025]

#### **HISTORY OF 9.2.11 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: AOA 85-1, State Agency on Aging Hearing Procedures, filed 1/15/1985. SAA Rule No. 95-11, Appeal/Hearing Procedures, filed 4/13/1995.

#### **History of Repealed Material:**

SAA Rule No. 95-11, filed 4/13/1995 - Repealed 6/30/2015.

9.2.11 NMAC, Appeal/Hearing Procedures filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.11 NMAC, Appeal/Hearing Procedures filed 6/17/2015 Replaced by 9.2.11 NMAC, Appeal/Hearing Procedures effective 09/23/2025.

**TITLE 9 HUMAN RIGHTS**  
**CHAPTER 2 AGE**  
**PART 13 EMPLOYMENT PROGRAMS FOR OLDER WORKERS**

**9.2.13.1 ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department.  
[9.2.13.1 NMAC - Rp, 9.2.13.1 NMAC, 09/23/2025]

**9.2.13.2 SCOPE:** These rules apply to members of the public and organizations that apply to participate in one or more of the programs created in this part.  
[9.2.13.2 NMAC - Rp, 9.2.13.2 NMAC, 09/23/2025]

**9.2.13.3 STATUTORY AUTHORITY:** Sections 9-23-1 et seq. and 28-4-1 et seq. NMSA 1978.  
[9.2.13.3 NMAC - Rp, 9.2.13.3 NMAC, 09/23/2025]

**9.2.13.4 DURATION:** Permanent.  
[9.2.13.4 NMAC - Rp, 9.2.13.4 NMAC, 09/23/2025]

**9.2.13.5 EFFECTIVE DATE:** 09/23/2025, unless a later date is cited in the history note at the end of a section.  
[9.2.13.5 NMAC - Rp, 9.2.13.5 NMAC, 09/23/2025]

**9.2.13.6 OBJECTIVE:** The objective of this rule is to establish standards and requirements for eligibility of participants and host agencies for the federal and state funded programs administered by the employment programs bureau of the aging network division of the aging and long-term services department and to comply with Older Americans Act Sections 501 through 518, (codified as amended at 42 U.S.C. Section 3056); and implementing regulations, 20 C.F.R. Section 641 (as amended).  
[9.2.13.6 NMAC - Rp, 9.2.13.6 NMAC, 09/23/2025]

**9.2.13.7 DEFINITIONS:** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

**A. "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.

**B. "Applicant"** means a member of the public who completes an application to become a participant in one of the programs created in this part.

**C. "Community service"** means social, health, welfare and educational services; legal and other counseling services and assistance; library, recreational services, conservation, maintenance or restoration of natural resources, community betterment or beautification, pollution control or environmental quality efforts, economic development or other types of service, which the department approves, excluding building and construction, except that which is normally performed by the department, or work which primarily benefits private profit-making organizations.

**D. "Department"** means the New Mexico aging and long-term services department (ALTSD).

**E. "Equitable distribution plan"** means the process of allocating positions based on age and income census data as required pursuant to 20 C.F.R. Sections 641.140, 641.360, 641.365, and 641.879 (Older Americans Act regulations as amended).

**F. "Host agency"** is an agency or organization selected by the department where an eligible employment program participant is placed in a subsidized position for work experience and training.

**G. "New Mexico senior employment program"** means the state funded employment and training program designed to provide community service employment opportunities for older adults that enable them to remain actively engaged in their communities.

**H. "Older Americans Act of 1965"** (Older Americans Act) means Sections 501 through 518, title V, "The Older American Community Service Employment Act", Pub. L. 89-73, as amended by Pub. L. 109-363, enacted Oct. 16, 2006, (codified as amended at 42 U.S.C. Section 3056), and implementing regulations, 20 C.F.R. Part 641 (as amended).

**I. "Participants"** are applicants who:

(1) have been deemed eligible for training under the programs set forth in this part and have been placed in subsidized on-the-job training; or

(2) have been hired and placed in community service and training opportunities.

**J. “Pay period”** means the two-week period as established and published by the New Mexico department of finance and administration.

**K. “Position”** is an on-the-job training or community service opportunity created by one of the programs set forth in this part.

**L. “Program year”** is the period of July 1 through June 30.

**M. “Senior community service employment program” (SCSEP)** means the federal employment and training program funded pursuant to the provisions of Title V of the Older Americans Act, sections 501 through 518.

**N. “Subsidized on-the-job training”** is participation in the programs set forth in this part that fund wages for hours worked using federal or state monies.

**O. “Supervisor”** is the individual designated by the host agency or the department to oversee the work of a participant.

**P. “Transition”** is the movement of a participant from on-the-job training to unsubsidized employment.

**Q. “Unsubsidized employment”** is work in the public or private sector not funded from one of the programs set forth in this part.

[9.2.13.7 NMAC - Rp, 9.2.13.7 NMAC, 09/23/2025]

#### **9.2.13.8 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP):**

**A. Position allocation.**

(1) The department will follow an equitable distribution plan pursuant to Section 507 of the Older Americans Act and 20 C.F.R. Sections 641.140, 641.360, 641.365 and 641.879 (as amended) and endeavor to allocate positions to each county in New Mexico based on the projected percentage of individuals meeting the eligibility requirements of this section.

(2) When allocating positions, the equitable distribution of all senior community service employment program resources available through federal contractors operating in New Mexico will be considered.

(3) When a participant exits subsidized on-the-job training and a vacancy occurs, the vacant position is removed from the host agency and will be placed in a statewide pool and reassigned as follows:

(a) any inequities in the equitable distribution plan will be noted and the most under-served counties will have priority to receive the position;

(b) applicants will be sought or taken from a waiting list, if one exists;

(c) federally-mandated priorities and preferences will be implemented in accordance with Section 518 of the Older Americans Act and 20 C.F.R. Sections 641.515 through 641.530 (as amended);

(d) chosen applicants will be assessed for their employment goals;

(e) host agencies that provide training which matches applicant goals will be chosen;

(f) in the event of more than one host agency that matches applicant goals, priority will be given to the host agency that demonstrates ability to provide training resulting in the unsubsidized employment of participants.

**B. Eligibility requirements are:**

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used;

(2) an applicant’s income shall meet the eligibility requirements specified in the Older Americans Act in order to be determined eligible;

(3) an applicant shall be a resident of New Mexico, unless a cross-border agreement with a neighboring state exists, in order to be determined eligible;

(4) any additional requirements of the Older Americans Act, such as that an applicant be unemployed, will be implemented; and

(5) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation

may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure); failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

**C.** An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

**D.** Senior community service employment program trainee participants are excluded from membership in the public employees retirement association.

**E.** Eligible participants shall be placed in on-the-job training positions that provide community service. Participants may not engage in political activities pursuant to Older Americans Act, Section 502(b)(1)(P) implemented at 20 C.F.R. Section 641.836 (as amended).

**F.** Wages shall be at least the prevailing federal, state or local minimum wage, whichever is higher.

**G.** In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

**H.** The department may transfer a participant from one host agency to another.

**I.** The department shall determine whether an agency or organization is eligible to be designated a host agency, pursuant to Older Americans Act Section 502(b)(1)(D) implemented at 20 C.F.R. Sections 641.140 and 641.844 (as amended). Before a position can be assigned to the host agency, a proper agreement shall be executed.

**J.** The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

**K.** Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

**L.** No waivers of the eligibility requirement under the senior community service employment program may be granted by the department.

[9.2.13.8 NMAC - Rp, 9.2.13.8 NMAC, 09/23/2025]

#### **9.2.13.9 NEW MEXICO SENIOR EMPLOYMENT PROGRAM:**

**A.** The department will work in collaboration with area agencies on aging and other aging network providers to allocate positions within each planning and service area.

**B.** Eligibility requirements are:

(1) an applicant shall be 55 years of age or older in order to be determined eligible, no applicant may be determined ineligible because of advanced age, and no upper age limitation may be used;

(2) an applicant's income shall meet the income eligibility requirements specified in the Older Americans Act Section 518 Paragraphs (3) and (4) as implemented at 20 C.F.R. Part 641 (as amended) in order to be determined eligible;

(3) an applicant shall be a resident of New Mexico in order to be determined eligible; and

(4) after completing an application, an applicant may need to disclose additional information or submit to additional screening in order to qualify for a specific placement at the discretion of the department and the host agency, including, but not limited to: background checks or proof of applicable licensure (for example, work with young children or vulnerable adults may require a criminal background check, large vehicle operation may require a special driver's license, operation of heavy equipment or lifting heavy loads may require additional medical disclosure); failure to fully disclose information relevant to meeting the qualifications for a position may result in termination, change, or lack of placement.

**C.** An eligible applicant who has been accepted as a participant shall be offered a physical examination at the time of enrollment and annually thereafter. The participant may waive this benefit and shall do so in writing.

**D.** New Mexico senior employment program trainee participants are excluded from membership in the public employees retirement association.

**E.** Eligible participants shall not be placed in on-the-job training positions in which they engage in political or religious activities.

**F.** Wages shall be at least the prevailing federal, state or local minimum wage, whichever is higher.

**G.** In compliance with the Fair Labor Standards Act of 1938, 29 U.S.C. Chapter 8 Section 201 et seq. (as amended), participants are not allowed to donate extra volunteer hours at work sites unless the volunteer work is substantially different than that required by their subsidized positions.

**H.** The department may transfer a participant from one host agency to another.

**I.** The department shall determine whether an agency or organization is eligible to be designated a host agency. Before a position can be assigned to the host agency, a proper agreement shall be executed.

**J.** The department shall develop and maintain policy and procedure manuals. Such manuals will designate participant benefits and other policies and procedures to enable the smooth operation of the program.

**K.** Participants shall be reimbursed mileage, per diem and other expenses only in accordance with policies and procedures developed by the department.

**L.** Waivers of age and income eligibility requirements may be granted by the department on a case-by-case basis.

[9.2.13.9 NMAC - Rp, 9.2.13.9 NMAC, 09/23/2025]

#### **9.2.13.10 [RESERVED]**

#### **9.2.13.11 GRIEVANCE PROCEDURE:**

**A.** An applicant who has been determined ineligible for enrollment or placement in the programs created under this part may:

(1) request a reconsideration regarding ineligibility from the employment programs bureau chief, either in person, by telephone, or in writing, within five calendar days of receipt of the notice of ineligibility determination;

(2) the bureau chief shall have 10 calendar days from receipt of the request for reconsideration to review the documentation and make a second determination of eligibility;

(3) if the applicant still believes that the determination is incorrect, the applicant's next step is to contact the aging network division director in writing within 10 calendar days of receipt of the bureau chief's ineligibility determination, challenging the reasons given for ineligibility, and providing accompanying documentation;

(4) after reviewing the challenge and accompanying documentation, the division director shall make a determination affirming or reversing the determination of eligibility by the bureau chief within 10 calendar days of receiving the challenge; the division director's determination shall be final.

**B.** Any participant who believes that he or she has been subject to unfair treatment, discrimination, or harassment by a supervisor, manager, co-worker or a host agency may proceed as follows:

(1) Step 1: The participant may discuss a problem or grievance with the participant's supervisor, either in person, by telephone, or in writing, within five calendar days of the occurrence of the problem. The supervisor shall then work with the participant to provide a solution or an explanation within 10 additional calendar days. If more time is required for the supervisor to provide a meaningful response, the participant will be notified of this fact and advised of the anticipated response date. In no event shall the supervisor extend the response date by more than 30 days from receipt of first notice. However, if the participant finds it difficult to discuss the problem with the supervisor, the participant may proceed directly to step 2.

(2) Step 2: If the problem or grievance remains unresolved to the participant's satisfaction after following Step 1, or if the participant found it difficult to discuss the problem with the supervisor, the participant may proceed to the host agency's next level of authority. The participant may discuss the problem with this level of authority, either in person, by telephone, or in writing, within five calendar days of the event giving rise to the grievance or the response of the supervisor in step 1. This level of authority shall then work with the participant to provide a solution and/or explanation within 10 additional calendar days. If the participant feels that the problem continues to remain unresolved, the participant may proceed to step 3.

(3) Step 3: If the participant is unable to receive a satisfactory answer or resolution to the problem from the host agency in step 2, the participant may then submit a written grievance to the employment programs bureau chief within five days after the participant receives the response from the host agency in step 2. This written grievance shall include the following: the nature of the grievance, relevant facts and specific actions, and the requested relief or course of action. The bureau chief shall contact the participant within 10 calendar days after receiving the written grievance, to obtain additional information relevant to the grievance. The bureau chief may investigate the grievance and shall provide a written determination. This shall be mailed to the participant within 20 calendar days after the bureau chief's receipt of the grievance unless additional time is required for investigation. If additional time is required, the participant will be notified of that fact and advised of the response date. In no event shall the bureau chief extend the response date by more than 30 days from receipt of first notice.

(4) If the problem or grievance remains unresolved to the participant's satisfaction following step 3, the participant may follow the appeal procedure outlined 9.2.13.12 NMAC.

[9.2.13.11 NMAC - Rp, 9.2.13.11 NMAC, 09/23/2025]

**9.2.13.12 RIGHT OF APPEAL OF PARTICIPANTS:**

**A.** Participants in programs created under this part have a right of appeal in the following circumstances:

- (1) when participation has been involuntarily terminated by written notification from the department; or
- (2) when deemed ineligible for continued enrollment by written notification from the department; or
- (3) when, after following the grievance procedure outlined in Subsection B of 9.2.13.11 NMAC, the problem or grievance remains unresolved.

**B.** Appeal procedures for program participants who meet the criteria set forth in Subsection A of this section:

- (1) An appeal, pursuant to Subsection A of this section, shall be submitted in writing to the director of the aging network division within five working days following receipt of the notice of action;
- (2) The aging network division director shall contact the participant within 10 calendar days after receiving the written appeal to confirm receipt of the appeal and provide an opportunity to obtain additional information relevant to the appeal;
- (3) After affording the applicant the opportunity to produce additional relevant information, the aging network division director shall provide a written decision in response to the appeal within 25 calendar days following contact with the participant;
- (4) The aging network division director's decision shall be final and binding;
- (5) Complaints of violations of federal law that cannot be resolved within 60 days as a result of this appeal procedure may be filed with the employment and training administration of the United States department of labor or other appropriate entities.

[9.2.13.12 NMAC - Rp, 9.2..13.12 NMAC, 09/23/2025]

**HISTORY OF 9.2.13 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives:

SAA Rule No. 95-13, Employment Programs for the Elderly, filed 4/13/95.

**History of Repealed Material:** SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) repealed 2/12/2010.

9.2.13 NMAC, Employment Programs for the Elderly, filed 6/17/2015 Repealed effective 09/23/2025.

**Other History:**

SAA Rule No. 95-13, Employment Programs for the Elderly (filed 4/13/95) was renumbered, reformatted and replaced by 9.2.13 NMAC, Employment Programs for Older Workers, effective 2/12/2010.

9.2.13 NMAC, Employment Programs for the Elderly, filed 6/17/2015 Replaced by 9.2.13 NMAC, Employment Programs for the Elderly, effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 14           STATE-FUNDED FOSTER GRANDPARENT PROGRAM**

**9.2.14.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.14.1 NMAC - Rp, 9.2.14.1 NMAC, 09/23/2025]

**9.2.14.2            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.  
[9.2.14.2 NMAC - Rp, 9.2.14.2 NMAC, 09/23/2025]

**9.2.14.3            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.  
[9.2.14.3 NMAC - Rp, 9.2.14.3 NMAC, 09/23/2025]

**9.2.14.4            DURATION:** Permanent.  
[9.2.14.4 NMAC - Rp, 9.2.14.4 NMAC, 09/23/2025]

**9.2.14.5            EFFECTIVE DATE:** xx/xx/2025, unless a later date is cited at the end of a section.  
[9.2.14.5 NMAC - Rp, 9.2.14.5 NMAC, 09/23/2025]

**9.2.14.6            OBJECTIVE:** The objective of this rule is to establish standards for the state-funded foster grandparent programs administered by the aging and long-term services department.  
[9.2.14.6 NMAC - Rp, 9.2.14.6 NMAC, 09/23/2025]

**9.2.14.7            DEFINITIONS:** The foster grandparent program provides contracts to qualified organizations for the dual purposes of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs and of providing high-quality experiences that will enrich the lives of the volunteers. Foster grandparents provide supportive, person-to-person services to children who have exceptional needs, or who are in circumstances that limit their academic, social, or emotional development. State-funded foster grandparents may receive stipends to support their volunteer work.  
[9.2.14.7 NMAC - Rp, 9.2.14.7 NMAC, 09/23/2025]

**9.2.14.8            LEGAL REFERENCES:** Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651, Foster Grandparent Program, 45 C.F.R Section 2552.  
[9.2.14.8 NMAC - Rp, 9.2.14.8 NMAC, 09/23/2025]

**9.2.14.9            CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:**  
**A.**        The department adopts the most current corporation for national and community service (CNCS) foster grandparent program handbook as the operating rules and procedures with which state-funded foster grandparent programs must comply.  
**B.**        Eligibility for state-funded foster grandparent programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.  
[9.2.14.9 NMAC - Rp, 9.2.14.9 NMAC, 09/23/2025]

**9.2.14.10           DEPARTMENT RESPONSIBILITIES:** The department shall:  
**A.**        allocate funds appropriated by the state legislature:  
            **(1)**        to current contractors to maintain or enhance levels of operation; and  
            **(2)**        expand services based on determined need;  
**B.**        contract with new organizations to the extent that funds are available;  
**C.**        conduct at least one assessment of each contractor every two years; and  
**D.**        provide training and technical assistance to volunteers and employees of contract organizations.  
[9.2.14.10 NMAC - Rp, 9.2.14.10 NMAC, 09/23/2025]

**9.2.14.11 CONTRACTOR RESPONSIBILITIES:** Contractors shall:

- A.** comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies;
- B.** submit an annual budget proposal and work plan in the format established by the department;
- C.** submit monthly financial expenditure reports and requests for reimbursement to the department, as requested;
- D.** submit reports to the department in the form and manner required and specified by the department in the contract scope of work;
- E.** submit an annual financial audit as requested by the department;
- F.** coordinate with other aging network providers, particularly in the areas of transportation, outreach, and supportive services;
- G.** attend required meetings and training sessions; and
- H.** budget sufficient state funds to allow at least one representative to attend the annual New Mexico conference on aging and one state aging network training session.

[9.2.14.11 NMAC - Rp, 9.2.14.11 NMAC, 09/23/2025]

**HISTORY OF 9.2.14 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-14, State Funded Foster Grandparent Program, filed 4/13/1995.

**History of Repealed Material:**

SAA Rule No. 95-14, (filed 4/13/1995) - Repealed 6/30/2015.

9.2.14 NMAC, State Funded Foster Grandparent Program filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.14 NMAC, State Funded Foster Grandparent Program filed 6/17/2015 Replaced by 9.2.14 NMAC, State Funded Foster Grandparent Program effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 15           STATE-FUNDED SENIOR COMPANION PROGRAM**

**9.2.15.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.15.1 NMAC - Rp, 9.2.15.1 NMAC, 09/23/2025]

**9.2.15.2            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.  
[9.2.15.2 NMAC - Rp, 9.2.15.2 NMAC, 09/23/2025]

**9.2.15.3            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.  
[9.2.15.3 NMAC - Rp, 9.2.15.3 NMAC, 09/23/2025]

**9.2.15.4            DURATION:** Permanent.  
[9.2.15.4 NMAC - Rp, 9.2.15.4 NMAC, 09/23/2025]

**9.2.15.5            EFFECTIVE DATE:** xx/xx/2025, unless a later date is cited at the end of a section.  
[9.2.15.5 NMAC - Rp, 9.2.15.5 NMAC, 09/23/2025]

**9.2.15.6            OBJECTIVE:** The objective of this rule is to establish standards for the state-funded senior companion programs administered by the aging and long-term services department.  
[9.2.15.6 NMAC - Rp, 9.2.15.6 NMAC, 09/23/2025]

**9.2.15.7            DEFINITIONS:** The senior companion program (SCP) provides contracts to qualified organizations for the dual purposes of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs and of providing high quality experiences that will enrich the lives of the volunteers. Senior companions provide supportive, individualized services to help older adults with special needs maintain their dignity and independence. State-funded senior companions may receive stipends to support their volunteer work.  
[9.2.15.7 NMAC - Rp, 9.2.15.7 NMAC, 09/23/2025]

**9.2.15.8            LEGAL REFERENCES:** Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651; Senior Companion Program, 45 C.F.R. Section 2551.  
[9.2.15.8 NMAC - Rp, 9.2.15.8 NMAC, 09/23/2025]

**9.2.15.9            CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:**  
**A.**        The department adopts the most current corporation for national and community service (CNCS) senior companion program handbook as the operating rules and procedures with which state-funded senior companion programs must comply.  
**B.**        Eligibility for state-funded senior companion programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.  
[9.2.15.9 NMAC - Rp, 9.2.15.9 NMAC, 09/23/2025]

**9.2.15.10           DEPARTMENT RESPONSIBILITIES:** The department shall:  
**A.**        allocate funds appropriated by the state legislature:  
            **(1)**        to current contractors to maintain or enhance levels of operation; and  
            **(2)**        to expand services based on determined need;  
**B.**        contract with new organizations to the extent that funds are available;  
**C.**        conduct at least one assessment of each contractor every two years; and  
**D.**        provide training and technical assistance to volunteers and staff of contract organizations.  
[9.2.15.10 NMAC - Rp, 9.2.15.10 NMAC, 09/23/2025]

**9.2.15.11 CONTRACTOR RESPONSIBILITIES:** Contractors shall:

- A.** comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies;
- B.** submit an annual budget proposal and work plan in the format established by the department;
- C.** submit monthly financial expenditure reports and requests for reimbursement to the department, as requested;
- D.** submit reports to the department in the form and manner required and specified by the department in the contract scope of work;
- E.** submit an annual financial audit as requested by the department;
- F.** coordinate with other aging network providers, particularly in the areas of transportation, outreach, and supportive services;
- G.** attend required meetings and training sessions; and
- H.** budget sufficient state funds to allow at least one representative to attend the annual New Mexico conference on aging and one state aging network training session.

[9.2.15.11 NMAC - Rp, 9.2.15.11 NMAC, 09/23/2025]

**HISTORY OF 9.2.15 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-15, State Funded Senior Companion Program, filed 4/13/1995.

**History of Repealed Material:**

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

9.2.15 NMAC, State Funded Senior Companion Program, filed 6/17/2025 Repealed effective 09/23/2025.

**Other:** 9.2.15 NMAC, State Funded Senior Companion Program, filed 6/17/2025 Replaced by 9.2.15 NMAC, State Funded Senior Companion Program effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 16           STATE-FUNDED RETIRED SENIOR VOLUNTEER PROGRAM**

**9.2.16.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.16.1 NMAC - Rp, 9.2.16.1 NMAC, 09/23/2025]

**9.2.16.2            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.  
[9.2.16.2 NMAC - Rp, 9.2.16.2 NMAC, 09/23/2025]

**9.2.16.3            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.  
[9.2.16.3 NMAC - Rp, 9.2.16.3 NMAC, 09/23/2025]

**9.2.16.4            DURATION:** Permanent.  
[9.2.16.4 NMAC - Rp, 9.2.16.4 NMAC, 09/23/2025]

**9.2.16.5            EFFECTIVE DATE:** xx/xx/2025, unless a later date is cited at the end of a section.  
[9.2.16.5 NMAC - Rp, 9.2.16.5 NMAC, 09/23/2025]

**9.2.16.6            OBJECTIVE:** The objective of this rule is to establish standards for the state-funded retired senior volunteer programs administered by the aging and long-term services department.  
[9.2.16.6 NMAC - Rp, 9.2.16.6 NMAC, 09/23/2025]

**9.2.16.7            DEFINITIONS:** The retired senior volunteer program (RSVP) provides contracts to qualified organizations and local and tribal governments for the dual purposes of engaging older individuals in volunteer service to meet critical community needs and of providing high quality experiences that will enrich the lives of the volunteers. RSVP matches older individuals with community projects and organizations needing volunteer talent, abilities and skills.  
[9.2.16.7 NMAC - Rp, 9.2.16.7 NMAC, 09/23/2025]

**9.2.16.8            LEGAL REFERENCES:** Domestic Volunteer Service Act of 1973, 42 U.S.C. Sections 4950 to 5085; 42 U.S.C. Section 12651; Senior Volunteer Program, 45 C.F.R. Section 2551.  
[9.2.16.8 NMAC - Rp, 9.2.16.8 NMAC, 09/23/2025]

**9.2.16.9            CORPORATION FOR NATIONAL AND COMMUNITY SERVICE HANDBOOK:**  
**A.**        The department adopts the most current corporation for national and community service (CNCS) retired senior volunteer program handbook as the operating rules and procedures with which state-funded retired senior volunteer programs must comply.  
**B.**        Eligibility for state-funded retired senior volunteer programs is the same as for the CNCS program. However, the department secretary may waive any provisions of the CNCS handbook except those which will jeopardize a program's continued federal sponsorship.  
[9.2.16.9 NMAC - Rp, 9.2.16.9 NMAC, 09/23/2025]

**9.2.16.10           DEPARTMENT RESPONSIBILITIES:** The department shall:  
**A.**        allocate funds appropriated by the state legislature;  
            **(1)**        to current contractors to maintain or enhance levels of operation; and  
            **(2)**        to expand services based on determined need;  
**B.**        contract with new organizations to the extent that funds are available;  
**C.**        conduct at least one assessment of each contractor every two years; and  
**D.**        provide training and technical assistance to volunteers and employees of contract organizations.  
[9.2.16.10 NMAC - Rp, 9.2.16.10 NMAC, 09/23/2025]

**9.2.16.11           CONTRACTOR RESPONSIBILITIES:** Contractors shall:

- A. comply with federal and state regulations and policies, except to the extent that the department has granted a waiver of any federal policies;
  - B. submit an annual budget proposal and work plan in the format established by the department;
  - C. submit monthly financial expenditure reports and requests for reimbursement to the department as requested;
  - D. submit reports to the department in the form and manner required and specified by the department in the contract scope of work;
  - E. submit an annual financial audit as requested by the department;
  - F. coordinate with other aging network providers, particularly in the areas of transportation, outreach and supportive services;
  - G. attend required meetings and training sessions; and
  - H. budget sufficient state funds to allow at least one representative to attend the annual New Mexico conference on aging and one state aging network training session.
- [9.2.16.11 NMAC - Rp, 9.2.16.11 NMAC, 09/23/2025]

**HISTORY OF 9.2.16 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SAA Rule No. 95-16, State Funded Retired and Senior Volunteer Program, filed 4/13/1995.

**History of Repealed Material:**

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

9.2.16 NMAC, State Funded Retired and Senior Volunteer Program filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.16 NMAC, State Funded Retired and Senior Volunteer Program filed 6/17/2015 Replaced by 9.2.16 NMAC, State Funded Retired and Senior Volunteer Program effective 09/23/2025.

**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, 9.2.17.1 NMAC, 09/23/2025]

**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, 9.2.17.2 NMAC, 09/23/2025]

**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, 9.2.17.3 NMAC, 09/23/2025]

**9.2.17.4            DURATION:** Permanent.  
[9.2.17.4 NMAC - Rp, 9.2.17.4 NMAC, 09/23/2025]

**9.2.17.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.17.5 NMAC - Rp, 9.2.17.5 NMAC, 09/23/2025]

**9.2.17.6            OBJECTIVE:** The objective of this rule is to establish the requirements for legal assistance services required under the Older Americans Act.  
[9.2.17.6 NMAC - Rp, 9.2.17.6 NMAC, 09/23/2025]

**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"** pursuant to the Older Americans Act and its implementing regulations means legal advice and representation provided by an attorney to older individuals with economic or social needs; and may include, 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"** means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

**E.**        **"Defense of Guardianship"** in this section means advice to and representation of older individuals at risk of and subject to guardianship as defined in 45 C.F.R. Section 1321.93(d).

[9.2.17.7 NMAC - Rp, 9.2.17.7 NMAC, 09/23/2025]

**9.2.17.8            LEGAL REFERENCES: [RESERVED]**

[9.2.17.8 NMAC - Rp, 9.2.17.8 NMAC, 09/23/2025]

**9.2.17.9            ALLOWABLE SERVICES:**

**A.**        Providers of legal assistance, funded by the department, must provide such services to New Mexicans age 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 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, 9.2.17.9 NMAC, 09/23/2025]

**9.2.17.10 STANDARDS AND REQUIREMENTS FOR LEGAL ASSISTANCE PROVIDERS:** The area agencies on aging shall award, through contract funds, only to legal assistance providers that meet the standards and requirements set forth in this section and in the implementing regulations of the Older Americans Act. Attorneys and personnel of legal assistance providers shall adhere to the applicable rules of professional conduct, including the obligation to preserve the attorney-client privilege, and selected legal assistance providers shall exhibit the capacity to:

- A.** demonstrate expertise and retain 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 guardianship, protective services, age discrimination, health care, long-term care, nutrition, housing, utilities, consumer law, and abuse and neglect;
- B.** develop and implement outreach efforts designed to identify and serve targeted populations that includes information about the availability of legal assistance;
- C.** provide administrative and judicial representation in the specific areas of law affecting older individuals in greatest economic and greatest social need;
- D.** provide legal services to older individuals residing in congregate residential long-term settings, or who are isolated, or who are restricted to the home due to cognitive or physical limitations;
- E.** 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.** provide support and advice to the long-term care ombudsman program, including requiring a memorandum of agreement between the state long-term care ombudsman program and the legal assistance provider(s) as required under the Older Americans Act;
- G.** provide support to aging network elder rights initiatives;
- H.** provide support to other advocacy efforts, adult protective services, and protection and advocacy and public guardianship programs; and
- I.** demonstrate 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, 9.2.17.10 NMAC, 09/23/2025]

**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, 9.2.17.11 NMAC, 09/23/2025]

**9.2.17.12 MEANS TEST AND TARGETING:**

- A.** Legal assistance providers shall 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 or 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.

**C.** Area agencies on aging are precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.  
[9.2.17.12 NMAC - Rp, 9.2.17.12 NMAC, 09/23/2025]

**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, 9.2.17.13 NMAC, 09/23/2025]

**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, 9.2.17.14 NMAC, 09/23/2025]

**9.2.17.15 DEPARTMENT RESPONSIBILITIES:** In addition to the requirements set forth in this section, the department shall adhere to the provisions and restrictions that apply to legal assistance funded by and provided pursuant to the Older Americans Act and its implementing regulations. The department shall publish policies and procedures in accordance with the requirements set forth in 45 C.F.R. Section 1321.93.

[9.2.17.15 NMAC - N, 09/23/2025]

**9.2.17.16 ADEQUATE PROPORTION FUNDING:** The area agencies on aging shall award at a minimum the required adequate proportion of Title III, part B funds designated by the department to procure legal assistance for older residents of the planning and service area as set forth in 45 C.F.R. Sections 1321.27 and 1321.65.

[9.2.17.16 NMAC - N, 09/23/2025]

**9.2.17.17 AREA AGENCY CONTRACTS FOR LEGAL ASSISTANCE:** The area agencies on aging shall enter into contract(s) with the selected legal assistance provider(s) in accordance with the department's policies and procedures and with the Older Americans Act and its implementing regulations.

[9.2.17.17 NMAC - N, 09/23/2025]

**9.2.17.18 LEGAL ASSISTANCE PROVIDER RESPONSIBILITIES AND REQUIREMENTS:** Contracted legal assistance providers shall adhere to the requirements, restrictions, use of funds, and prohibitions set forth in these rules and in 45 C.F.R. Section 1321.93.

[9.2.17.18 NMAC - N, 09/23/2025]

**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.

9.2.17 NMAC, Legal Assistance Services filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.17 NMAC, Legal Assistance Services filed 6/17/2015 Replaced by 9.2.17 NMAC, Legal Assistance Services effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 18           NUTRITION SERVICES**

**9.2.18.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.18.1 NMAC - Rp, 9.2.18.1 NMAC, 09/23/2025]

**9.2.18.2            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.  
[9.2.18.2 NMAC - Rp, 9.2.18.2 NMAC, 09/23/2025]

**9.2.18.3            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.  
[9.2.18.3 NMAC - Rp, 9.2.18.3 NMAC, 09/23/2025]

**9.2.18.4            DURATION:** Permanent.  
[9.2.18.4 NMAC - Rp, 9.2.18.4 NMAC, 09/23/2025]

**9.2.18.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited at the end of a section.  
[9.2.18.5 NMAC - Rp, 9.2.18.5 NMAC, 09/23/2025]

**9.2.18.6            OBJECTIVE:** The objective of this rule is to establish standards for the federal and state-funded programs administered by the aging and long term services department.  
[9.2.18.6 NMAC - Rp, 9.2.18.6 NMAC, 09/23/2025]

**9.2.18.7            DEFINITIONS:** See 9.2.1.7 NMAC and the department's policies and procedures for definitions.  
[9.2.18.7 NMAC - Rp, 9.2.18.7 NMAC, 09/23/2025]

**9.2.18.8            DEPARTMENT RESPONSIBILITIES:** The department shall:

- A.** establish policies and procedures in accordance with 45 C.F.R. Section 1321.87;
- B.** review and approve area plans, which contain plans for providing nutrition services;
- C.** monitor and assess area agencies on aging for compliance with these rules and with the requirements of the Older Americans Act and its implementing regulations;
- D.** provide technical assistance in the areas of nutrition, meal preparation, menu planning, and meal delivery;
- E.** conduct or coordinate training; and
- F.** review and grant or deny any waivers to this rule as requested by area agencies on aging. Such waivers shall not override applicable regulations issued by other state or local agencies that regulate food service and sanitation.

[9.2.18.8 NMAC - Rp, 9.2.18.8 NMAC, 09/23/2025]

**9.2.18.9            AREA AGENCY ON AGING RESPONSIBILITIES:** Area agencies on aging shall follow all departmental policies and procedures, requirements within the Older Americans Act, and all implementing regulations.  
[9.2.18.9 NMAC - Rp, 9.2.18.9 NMAC, 09/23/2025]

**9.2.18.10           [RESERVED]**  
[9.2.17.10 NMAC - Repealed, 09/23/2025]

**9.2.18.11           [RESERVED]**  
[9.2.18.11 NMAC - Repealed, 09/23/2025]

**9.2.18.12           [RESERVED]**  
[9.2.18.12 NMAC - Repealed, 09/23/2025]

**9.2.18.13 [RESERVED]**  
[9.2.18.13 NMAC - Repealed, 09/23/2025]

**9.2.18.14 [RESERVED]**  
[9.2.18.14 NMAC - Repealed, 09/23/2025]

**9.2.18.15 [RESERVED]**  
[9.2.18.15 NMAC - Repealed, 09/23/2025]

**9.2.18.16 NUTRITION SERVICES INCENTIVE PROGRAM (NSIP):**

**A.** The Older Americans Act, Section 311, rewards federally funded nutrition programs.  
**B.** Any meal served by a provider to eligible individuals which meets the requirements set forth in 45 C.F.R. Section 1321.87(d) shall be reported for NSIP assistance. The meal must also meet the other requirements of the Older Americans Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in Section 339 of such act. However, only programs funded with Title III federal funds are eligible to receive assistance.

**C.** NSIP funding must only be used to purchase food which is grown or processed in the United States. Coffee, tea, cocoa, decaffeinated beverages, fruits, and vegetables grown outside of the U.S. are not reimbursable.

[9.2.18.16 NMAC - Rp, 9.2.18.17 NMAC, 9.2.18.16, 09/23/2025]

**HISTORY OF 9.2.18 NMAC:**

Pre-NMAC History: SAA Rule 95-18, Nutrition Services Standards, filed 4/13/1995. 9.2.18 NMAC, Nutrition Services Standards, effective 5/31/2001- replaced SAA Rule 95-18, filed 4/13/1995.

**History of Repealed Material:**

9.2.18 NMAC, filed 5/10/2001 - Repealed 6/30/2015.

9.2.18 NMAC, Nutrition Services filed 6/17/2015 Repealed effective 09/23/2025.

**Other:** 9.2.18 NMAC, Nutrition Services filed 6/17/2015 Replaced by 9.2.18 NMAC, Nutrition Services effective 09/23/2025.

**TITLE 9           HUMAN RIGHTS**  
**CHAPTER 2       AGING**  
**PART 19          LONG-TERM CARE OMBUDSMAN**

**9.2.19.1           ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department.  
[9.2.19.1 NMAC - Rp, 9.2.19.1 NMAC, 09/23/2025]

**9.2.19.2           SCOPE:** These rules apply to the department, its office of the state long-term care ombudsman (the office), ombudsmen, including the state long-term care ombudsman (state ombudsman) certified staff and volunteers, provider agencies, private nonprofit organizations and area agencies on aging.  
[9.2.19.2 NMAC - Rp, 9.2.19.2 NMAC, 09/23/2025]

**9.2.19.3           STATUTORY AUTHORITY:** Older Americans Act of 1965 (OAA), 42 U.S.C. Section 3001, *et seq.*, as amended, and implementing regulations 45 C.F.R. Sections 1321 and 1324; New Mexico Long-Term Care Ombudsman Act, Section 28-17-1 *et seq.* NMSA 1978.  
[9.2.19.3 NMAC - Rp, 9.2.19.3 NMAC, 09/23/2025]

**9.2.19.4           DURATION:** Permanent.  
[9.2.19.4 NMAC - Rp, 9.2.19.4 NMAC, 09/23/2025]

**9.2.19.5           EFFECTIVE DATE:** 09/23/2025 unless a later date is stated at the end of a section.  
[9.2.19.5 NMAC - Rp, 9.2.19.5 NMAC, 09/23/2025]

**9.2.19.6           OBJECTIVE:** These rules govern the conduct of the office in fulfilling its duties under the OAA and the New Mexico Long-Term Care Ombudsman Act by protecting the health, safety, welfare and rights of residents of long-term care facilities in this state, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities. The department shall establish and operate the office either directly or by contract or other arrangement with a public agency or non-profit private organization. The office is a distinct entity, separately identifiable, located within or connected to the department, and, in the event the department enters into contract or other arrangement with a public agency or non-profit organization, that agency or organization shall establish a separately identifiable, distinct entity as the office.  
[9.2.19.6 NMAC - Rp, 9.2.19.6 NMAC, 09/23/2025]

**9.2.19.7           DEFINITIONS:** All definitions not included below can be found in 42 U.S.C. Section 3002, 45 C.F.R. Section 1321.1, and Section 28-17-3 NMAC 1978.

**A.           "Certification"** means the authority given to the state long-term care ombudsman to appoint or select (i.e., designate) and refuse, suspend, or remove designation of local ombudsman entities and certification of representatives of the Office pursuant to section 712(a)(5) of the Older Americans Act and its implementing regulations set forth in 45 C.F.R. Section 1324.11(e)(6).

**B.           "Complaint"** means information regarding action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents which is raised by or brought to the attention of an ombudsman.

**C.           "Guardian"** means the person or entity appointed by a court to exercise the legal rights and powers of another individual.

**D.           "Immediate family"** means those persons related to an individual as a spouse, child, sibling, or parent.

**E.           "Immediate family pertaining to conflicts of interest"** means a member of the household or a relative with whom there is a close personal or significant financial relationship.

**F.           "Informed consent"** means an agreement by a resident or a resident's surrogate decision-maker to allow a disclosure of information, made with full knowledge of the risks involved and the available alternatives, that is made in writing or through the use of auxiliary aids and services or communicated by a resident or a resident's surrogate decision-maker orally, visually or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office.

**G.           "Long term care facility"** means any residential facility that provides care services to one or more persons unrelated to the owner or operator of the facility, including, but not limited to, those facilities enumerated in Subsection F of Section 28-17-3 NMSA 1978.

**H. "Long-term care ombudsman program (LTCO)"** means the program through which functions and duties of the office are carried out, consisting of the state ombudsman, the office headed by the state ombudsman and the representatives of the office.

**I. "Office of the state long-term care ombudsman"** means the organizational unit in a state or territory which is headed by a state long-term care ombudsman.

**J. "Official duties"** as used with respect to representatives of the long-term care ombudsman program means work pursuant to the long-term care ombudsman program authorized by the Act or state law and carried out under the auspices and general direction of, or by direct delegation from, the state long-term care ombudsman.

**K. "Provider agency"** means the entity designated by the state ombudsman to provide ombudsman services in a particular service area.

**L. "Representatives of the office of the state long-term care ombudsman ("ombudsman" or "ombudsmen)"** means the employees or volunteers designated by the state ombudsman to fulfill the duties set forth in 45 C.F.R. Section 1324.19(a), whether personnel supervision is provided by the state ombudsman or his or her designee or by an agency hosting a local ombudsman entity designated by the ombudsman pursuant to Section 712(a)(5) of the Act (42 U.S.C. Section 3058g(a)(5)).

**M. "State long-term care ombudsman (state ombudsman)"** means the individual who heads the office and is responsible to personally, or through representatives of the office, fulfill the functions, responsibilities and duties as set forth in 45 C.F.R Sections 1324.13 and 1324.19.

**N. "Surrogate decision maker"** (sometimes referred to as "resident representative") means a legally appointed agent, guardian or surrogate who is authorized to act on behalf of a resident to include the duties enumerated in Subsection O of Section 28-17-3 NMSA 1978.

**O. "Willful interference"** means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the ombudsman from performing any of the functions or responsibilities set forth in 45 C.F.R. Section 1324.13, or the ombudsman or a representative of the office from performing any of the duties set forth in 45 C.F.R. Section 1324.19.  
[9.2.19.7 NMAC - Rp, 9.2.19.7 NMAC, 09/23/2025]

**9.2.19.8 PHILOSOPHY:** The program is a resident-centered advocacy program. The long-term care facility resident or applicant for residency is the client, regardless of the source of the complaint or request for service. The office shall assist residents by protecting their health, safety, welfare and rights, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities.  
[9.2.19.8 NMAC - Rp, 9.2.19.8 NMAC, 09/23/2025]

**9.2.19.9 OFFICE RULE:** The state ombudsman shall assure that all residents of long-term care facilities in the state have access to program services. The state ombudsman may fulfill its responsibilities through the department either directly or by a department contract or other arrangement with a public agency or non-profit private organization. Any such agency or non-profit entity that contracts with the department to provide ombudsman services must employ a full-time state ombudsman.  
[9.2.19.9 NMAC - Rp, 9.2.19.9 NMAC, 09/23/2025]

**9.2.19.10 [RESERVED]**

**9.2.19.11 [RESERVED]**

**9.2.19.12 QUALIFICATION AND CERTIFICATION OF THE STATE OMBUDSMAN:**

**A.** Under the OAA, the department's cabinet secretary is mandated to select the state ombudsman. In upholding this responsibility, he or she shall ensure that the state ombudsman meets minimum qualifications, which shall include, but not be limited to, demonstrated expertise in:

(1) long-term services and supports or other direct services for older adults or individuals with disabilities;

(2) consumer-oriented public policy advocacy;

(3) leadership and program management skills; and

(4) negotiation and problem resolution skills.

[9.2.19.12 NMAC - Rp, 9.2.19.12 NMAC, 09/23/2025]

**9.2.19.13 QUALIFICATION AND CERTIFICATION OF OMBUDSMEN:**

**A.** To be qualified to act as ombudsmen, individuals must:

- (1) demonstrate the capability to carry out the responsibilities of ombudsmen;
- (2) participate in and complete all sections of the standard new volunteer training, as prescribed by the SLTCO;
- (3) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the ombudsman serves;
- (4) possess negotiation and problem resolution skills; and
- (5) possess any other qualifications that the ombudsman deems necessary for the ombudsmen to fulfill their responsibility to assist residents of long-term care facilities in the assertion of their civil and human rights.

**B.** In order to be certified as ombudsmen, individuals must (in addition to meeting the qualifications set forth in Subsection A of 9.2.13 NMAC) complete an evaluation period of between three and six months after placement in a facility, during which the individuals:

1. visit an assigned facility or facilities regularly;
2. submit regular monthly reports;
3. submit appropriately written complaints;
4. are responsive to the needs and concerns of long-term care facility residents; and
5. are evaluated in the field by the supervising regional coordinator.

[9.2.19.13 NMAC - Rp, 9.2.19.13 NMAC, 09/23/2025]

**9.2.19.14 [RESERVED]**

[9.2.19.14 NMAC - Repealed, 09/23/2025]

**9.2.19.15 NOTIFICATION OF CERTIFICATION:** The state ombudsman shall send written notification of an individual's certification as an ombudsman to the individual being certified, the area agency on aging (AAA), applicable provider agency or the private non-profit organization, within 30 days of the determination.

[9.2.19.15 NMAC - Rp, 9.2.19.15 NMAC, 09/23/2025]

**9.2.19.16 RECERTIFICATION:** Ombudsmen must be recertified each calendar year. The state ombudsman shall determine recertification requirements. As part of the recertification, the state ombudsman shall verify that the ombudsman seeking recertification has successfully:

- A.** visited his or her assigned facility or facilities regularly;
- B.** submitted regular monthly reports;
- C.** submitted appropriately written complaints;
- D.** demonstrated responsiveness to the needs and concerns of long-term care facility residents; and
- E.** demonstrated evidence of receiving appropriate continuing education.

[9.2.19.16 NMAC - Rp, 9.2.19.16 NMAC, 09/23/2025]

**9.2.19.17 NON-CERTIFICATION AND DECERTIFICATION:** The state ombudsman may refuse to certify or may de-certify an individual as an ombudsman for any of the following reasons:

**A.** failure of the individual to meet or maintain the criteria for certification set forth in 9.2.19.13 NMAC;

- B.** existence of an un-remedied conflict of interest;
- C.** deliberate failure of the individual to disclose any conflict of interest;
- D.** violation of the confidentiality requirements of these regulations, the OAA, or the act;
- E.** failure to provide adequate and appropriate services to long-term care residents;
- F.** falsifying records;
- G.** change in employment duties which is incompatible with those of an ombudsman;
- H.** separation from the program, to include, for example, removal from employment by the

department or other provider agency or an extended absence not protected by state or federal law that prevents the ombudsman from fulfilling his or her job responsibilities;

- I.** failure to act in accordance with applicable federal and state laws, rules, regulations, and policies;

or

**J.** such other cause that the state ombudsman may determine would render the individual unsuitable for service as an ombudsman.

[9.2.19.17 NMAC - Rp, 9.2.19.17 NMAC, 09/23/2025]

**9.2.19.18 NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT  
RESPONSIBILITIES:**

- A.** establish and operate the office either directly or by contract or other arrangement with a public agency or non-profit private organization, consistent with the options provided under state and federal law;
- B.** the cabinet secretary of the department shall designate who shall serve as the full-time state ombudsman;
- C.** provide for adequate legal counsel for the office (which may be through the office of the New Mexico attorney general) on behalf of the office or any representative of the office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the office or of such representative;
- D.** provide support to the state ombudsman to enable him or her to fulfill responsibilities consistent with all applicable federal and state laws, regulations, and policies;
- E.** administer any program service contracts between the department, AAAs, provider agencies or private non-profit organizations;
- F.** administer the program in accordance with all applicable federal and state laws, regulations, and policies;
- G.** ensure that the agency has mechanisms to prohibit, investigate, and sanction allegations of interference, retaliation, and reprisals by a long-term care facility, other entity, or individual:
  - (1)** with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any ombudsman, or
  - (2)** against the state ombudsman or ombudsmen for fulfillment of the functions, responsibilities, or duties enumerated in 45 C.F.R. Sections 1324.13 and 1324.19;
- H.** the department shall require the Office to develop and provide final approval of an annual report as set forth in Section 712(h)(1) of the OAA. Such report shall:
  - (1)** describe the activities carried out by the office in the year for which the report is prepared;
  - (2)** contain analysis of program data;
  - (3)** describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
  - (4)** contain policy, regulatory and legislative recommendations for improving the quality of care and life of the residents; protecting the health, safety, welfare and rights of the residents; and resolving resident complaints and identified problems or barriers;
  - (5)** contain analysis of the success of the program, including success in providing services to residents of assisted living, board and care facilities and other similar adult care facilities; and
  - (6)** describe barriers that prevent the optimal operation of the program.
- I.** establish mechanisms to ensure the program is performing all of the functions, responsibilities and duties set forth in Section 9.2.19.22 NMAC, as well as action steps as required in the event these functions are not performed. Although the program is both independent and autonomous, 45 C.F.R. Section 1324.15 specifically grants the department the responsibility to monitor the performance of all programs and activities of the office for quality and effectiveness;
- J.** pursuant to 45 C.F.R. Section 1324.15, provide personnel supervision and management for the state ombudsman and representatives of the office who are employees of the department. Such management shall include an assessment of whether the office is performing all of its functions under the OAA and the act;
- K.** provide monitoring, as required by 45 C.F.R. Section 1324.15(e), including but not limited to fiscal monitoring, where the office or local ombudsman entity is located within an agency or private non-profit organization with the department. Such monitoring shall include an assessment of whether the program is performing all of the functions, responsibilities and duties set forth in 45 C.F.R. Sections 1324.13 and 1324.19. Further, the department shall make reasonable requests of reports, including aggregated data regarding program activities, to meet the requirements of these provisions;
- L.** ensure that any review of files, records or other information maintained by the program is consistent with the disclosure limitations set forth in 45 C.F.R. Sections 1324.11(e)(3) and 1324.13(e) as well as state law;
- M.** ensure that the state ombudsman receives notification of and exercises full authority over all sources of funds received by the state agency and complies with 45 C.F.R. Section 1324.15(k);
- N.** the agency shall require the office to:

- (1) develop and provide final approval of an annual report as set forth in 42 U.S.C. Section 3058g(h)(1) and 45 C.F.R. Section 1324.13(g) and as otherwise required by the assistant secretary for aging;
  - (2) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the state, and recommend any changes in such laws, regulations, and policies as the office determines to be appropriate;
  - (3) provide such information as the office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;
  - (4) establish procedures for the training of the representatives of the office, as set forth in 45 C.F.R. Section 1324.13(c)(2); and
  - (5) coordinate ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in 45 C.F.R. Section 1324.13(h).
- [9.2.19.18 NMAC - Rp, 9.2.19.18 NMAC, 09/23/2025]

**9.2.19.19 - 21 [RESERVED]**

**9.2.19.22 STATE LONG-TERM CARE OMBUDSMAN RESPONSIBILITIES:**

- A.** Adhere to the rules of confidentiality and propriety set forth in these regulations and in the resource manual for new volunteer training, if applicable.
- B.** Protect access to ombudsman records, in accordance with 9.2.19.36 NMAC through 9.2.19.38 NMAC of this rule.
- C.** Carry out other activities that the state ombudsman reasonably deems appropriate to the certification of ombudsmen.
- D.** Perform each responsibility in accordance with all applicable federal and state law, rules, regulations, and policies.
- E.** Analyze, comment on, and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions that pertain to the health, safety, welfare and rights of residents with respect to the adequacy of long-term care facilities and seniors in the state.
- F.** Recommend any changes in such laws, regulations, policies, and actions as the office determines to be appropriate.
- G.** Facilitate public comment on the laws, regulations, policies, and actions.
- H.** Provide leadership to statewide systems advocacy efforts of the office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the office.
- I.** Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.
- J.** Establish policies and procedures for the office, in consultation with the department, to carry out the program in accordance with the OAA. In accordance with 45 C.F.R. Section 1324.11 (e), such policies and procedures regarding program administration must include, but not be limited to:
  - (1) a requirement that the department or any agency or private non-profit organization provide specific exemptions to ombudsmen, staff and volunteers from any requirements that prohibit ombudsmen from performing functions and responsibilities of the ombudsmen, as set forth in 45 C.F.R. Section 1324.13 or from adhering to the requirements of Section 712 of the OAA, including that:
    - (a) the department or any agency or non-profit organization provide exemptions to its internal policies and procedures which prohibit any ombudsman from performing the functions and responsibilities of an ombudsman; provided, however, that nothing in this provision shall prohibit the department from requiring that the state ombudsman, or other employees or volunteers of the office, adhere to all other policies and procedures of the department;
    - (b) the state ombudsman monitor the performance of local ombudsman entities which the state ombudsman has designated to carry out the duties of the office; and
    - (c) the process by which the agencies hosting local ombudsman entities will coordinate with the state ombudsman in the employment or appointment of representatives of the office;
  - (2) standards to assure prompt response to complaints by the office which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the

imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through the provision of program services;

**(3)** procedures for access to facilities, residents, and appropriate records, to include:

**(a)** access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

**(b)** access to all residents to perform the functions and duties set forth in 45 C.F.R. Sections 1324.13 and 1324.19;

**(c)** access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties as set forth in 45 C.F.R. Sections 1324.13 and 1324.19;

**(d)** access to review resident records provided:

**(i)** the resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

**(ii)** the resident or resident representative communicates informed consent orally, visually or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the office in accordance with program procedures; and

**(iii)** access is necessary in order to investigate a complaint, including one of abuse, neglect or exploitation, the resident representative refuses to consent to the access, a representative of the office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the office obtains approval of the state ombudsman; and

**(e)** access to the administrative records, policies and documents, to which the residents have, or the general public has access, of long-term care facilities;

**(f)** access of the state ombudsman to, upon request, copies of all licensing and certification records maintained by the state with respect to long-term care facilities;

**(4)** reaffirmation that the Health Insurance Portability and Accountability Act of 1996 Privacy Rule, 45 C.F.R. Section 160 and 45 C.F.R. Section 164(A) and (E), does not preclude release by long-term care facilities of resident private health information or other resident identifying information to the office or any representative of the office, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a state or federal survey or inspection process;

**(5)** policies and procedures regarding disclosure of files, records and other information maintained by the program must include, but not be limited to:

**(a)** provision that the files, records and information maintained by the program may be disclosed only at the discretion of the state ombudsman or designee for such purpose and in accordance with the criteria developed by the program, as required by 45 C.F.R. Section 1324.13(e);

**(b)** prohibition of the disclosure of identifying information of any resident with respect to whom the program maintains files, records or information except as otherwise provided by 45 C.F.R. Section 1324.19(b)(5) through (8), unless:

**(i)** the resident or resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aides and services;

**(ii)** the resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office in accordance with such procedures; or

**(iii)** the disclosure is required by court order;

**(c)** prohibition of the disclosure of identifying information of any complainant with respect to whom the program maintains files, records or information, unless:

**(i)** the complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

**(ii)** the complainant communicates informed consent orally, visually or through the use of auxiliary aides and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

**(iii)** the disclosure is required by court order;

**(d)** exclusion of the ombudsman and representatives of the office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in 45 C.F.R. Section 1324.19(b)(5) through (8);

- (e) policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in 45 C.F.R Section 1324.21;
- (f) requiring that other agencies in which the office or local ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an ombudsman or representatives of the office with a conflict that cannot be adequately removed or remedied;
- (i) requiring that the state ombudsman take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, which cannot be adequately removed or remedied;
- (ii) establishing the methods by which the office and the department periodically review and identify conflicts of the state ombudsman and representatives of the office;
- (iii) establishing the actions the office and state agency will require the ombudsman or representatives of the office to take in order to remedy or remove such conflicts;
- (iv) ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the state ombudsman is subject to a conflict of interest;
- (v) policies and procedures related to systems advocacy must assure that the office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the office determines to be appropriate;
- (vi) such procedures must exclude the state ombudsman and representatives of the office from any state lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the OAA;
- (vii) nothing in this section shall prohibit the state ombudsman or the department or other agency or private non-profit organization in which the office is organizationally located from establishing policies which promote consultation regarding the determinations of the office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the office. That being said, such communication is strongly encouraged as per the OAA;
- (viii) policies and procedures related to designation must establish the criteria and process by which the state ombudsman shall designate and refuse, suspend or remove designation of local ombudsman entities and representatives of the office;
- (ix) such criteria should include, but not be limited to, the authority to refuse, suspend or remove designation of a local ombudsman entity or representative of the office in situations in which an identified conflict of interest cannot be adequately removed or remedied as set forth in 45 C.F.R Section 1324.21;
- (x) policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the state ombudsman and representatives of the office. Such process shall include an opportunity for reconsideration of the state ombudsman decision to refuse, suspend, or remove designation of a local ombudsman entity or representative of the office. Notwithstanding the grievance process, the state ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local ombudsman entity or representative of the office;
- (xi) policies and procedures related to the determinations of the office must ensure that the state ombudsman, as head of the office, shall be able to independently make determinations and establish positions of the office, without necessarily representing the determinations or positions of the department or other agency or private non-profit organization in which the office is organizationally located;
- (xii) disclosure of information maintained by the program within the limitations set forth in Section 712(d) of the OAA;
- (xiii) recommendations to changes in federal, state and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents; and
- (xiv) provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

**K.** Pursuant to 45 C.F.R Section 1324.13(h), through the adoption of memoranda of understanding and other means, the state ombudsman shall lead state-level coordination and support appropriate local ombudsman entity coordination, between the program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:

(1) AAA programs;  
(2) aging and disability resource centers;  
(3) adult protective services programs;  
(4) protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Section 15001 et seq.);  
(5) facility and long-term care licensure and certification programs;  
(6) the state medicaid fraud control unit, as defined in Section 1903(q) of the Social Security Act (42 U.S.C. Section 1396b(q));  
(7) victim assistance programs;  
(8) state and local law enforcement agencies;  
(9) courts of competent jurisdiction; and  
(10) the state legal assistance developer and legal assistance programs, including those provided under Section 306(a)(2)(C) of the OAA.

**L.** The state ombudsman and representatives of the office assist residents in seeking administrative, legal and other appropriate remedies. In so doing, the state ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

**M.** Pursuant to 45 C.F.R. Section 1324.13, determine the use of fiscal resources appropriated or otherwise available for the operation of the office. The state ombudsman shall determine that program budgets and expenditures of the office and local ombudsman entities are consistent with laws, policies and procedures governing the program.

[9.2.19.22 NMAC - Rp, 9.2.19.22 NMAC, 12/29/2017; Rp, 9.2.19.22 NMAC, 09/23/2025]

**9.2.19.23 [REPEALED]**

[9.2.19.23 NMAC - Rp, 9.2.19.23 NMAC, 12/29/2017; Repealed, 09/23/2025]

**9.2.19.24 [REPEALED]**

[9.2.19.24 NMAC - Repealed, 09/23/2025]

**9.2.19.25 [REPEALED]**

[9.2.19.25 NMAC - Repealed, 09/23/2025]

**9.2.19.26 CONFLICTS OF INTEREST POLICY:** The organizational placement of the program and the individuals who carry out the duties of the program must be free from conflicts of interest.

[9.2.19.26 NMAC - Rp, 9.2.19.26 NMAC, 09/23/2025]

**9.2.19.27 CONFLICT OF INTEREST IDENTIFICATION:** A conflict of interest exists in the program or with respect to an individual providing program services when other interests intrude upon, interfere with, or threaten to negate the ability of the program to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include: conflicts of loyalty where incentives, often related to financial or employment considerations, shape one's judgment or behavior in ways that are contrary to the interest of residents; conflicts of commitment where goals or obligations that direct one's time or attention away from the interest of residents; and conflicts of control where limitations or restrictions are imposed that effectively foreclose one's ability to take actions to advocate for the interest of residents.

[9.2.19.27 NMAC - Rp, 9.2.19.27 NMAC, 09/23/2025]

**9.2.19.28 ORGANIZATIONAL CONFLICTS:** An organizational conflict may arise when program placement is made in an agency which has not identified and taken steps to remove or remedy conflicts of interest between the office and the state agency and notified the assistant secretary of the federal health and human services department of its plan for removing the conflict, pursuant to 45 C.F.R. Section 1324.21(b)(1). An organizational conflict of interest exists where the office:

**A.** has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

**B.** provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs that control services for or residents' access to long-term care facilities;

**C.** has governing board members with ownership, investment or employment interest in long-term

care facilities; or

**D.** has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

[9.2.19.28 NMAC - Rp, 9.2.19.28 NMAC, 09/23/2025]

**9.2.19.29 INDIVIDUAL OMBUDSMAN CONFLICTS:** Conflicts for any ombudsman, including the state ombudsman, staff and volunteers, include, but are not limited to, the following:

**A.** employment of the individual by a long-term care facility in the state or by the owner or operator of any long-term care facility in the state within one year before the date the determination is being made;

**B.** participation in the management of a long-term care facility by the individual or a member of his or her immediate family or household within one year before the date the determination is being made. For purposes of this paragraph, “household” means all persons residing at a single dwelling and contributing to the household income;

**C.** ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the individual or a member of his or her immediate family;

**D.** involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the individual or a member of his or her immediate family;

**E.** receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the individual or to the individual through a member of his or her immediate family;

**F.** accepting any gifts or gratuities from a long-term care facility or resident or resident representative; an ombudsman must adequately compensate a facility for food provided by the facility with the exception of courtesy beverages and sample portions of food tested as part of an investigative process;

**G.** accepting money or any other consideration from anyone other than the provider agency or other entity designated by the office for the performance of an act in the regular course of an ombudsman’s duties;

**H.** having management responsibility for, or operating under the supervision of an individual with management responsibility for, adult protective services;

**I.** serving as a surrogate decision maker or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity);

**J.** provision of services with conflicting responsibilities while serving as an ombudsman; or

**K.** otherwise participating in activities which negatively impact on the ability of the ombudsman to serve residents, or are likely to create a perception that the ombudsman’s primary interest is other than as a resident advocate.

[9.2.19.29 NMAC - Rp, 9.2.19.29 NMAC, 09/23/2025]

**9.2.19.30 EXCEPTION FOR PUBLICLY TRADED POOLED INVESTMENTS:** Notwithstanding the foregoing provisions of 9.2.19.31 NMAC, ownership of shares in a mutual fund or other publicly traded pooled investment fund whose assets may include publicly traded securities of long-term care facilities or service organizations shall not generally constitute a conflict of interest, unless the investments of such fund is limited to such facilities or service organizations, or such investments normally form a large percentage of such fund.

[9.2.19.30 NMAC - Rp, 9.2.19.30 NMAC 09/23/2025]

**9.2.19.31 REPORTING POTENTIAL CONFLICT:**

**A.** All ombudsmen and agents of the AAAs, provider agencies and private non-profit organizations shall notify the department’s cabinet secretary of any actual or potential conflict of interest within the program of which they have knowledge.

**B.** The state ombudsman shall determine whether the situation rises to the level of a conflict and, if so, whether appropriate actions must be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the program, and where the conflict is not likely to alter the perception of the program as an independent advocate for residents.

[9.2.19.31 NMAC - Rp, 9.2.19.31 NMAC, 09/23/2025]

**9.2.19.32 REMEDYING ORGANIZATIONAL CONFLICT:**

**A.** An organization (with the exception of the department, which steps for remedying any perceived

conflict are set forth in 9.2.19.28 NMAC) within which the conflict has been identified shall submit to the state ombudsman a written remedial plan within 30 calendar days of identification of the conflict to the office. The remedial plan must identify the conflict and provide assurances that minimize to the greatest extent possible the negative impact of the conflict on the program. Examples of such assurances may include:

- (1) the program will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution;
- (2) no provider agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of an ombudsman;
- (3) governing board members of the provider agency, AAA or private non-profit entity who have a conflict of interest:

- (a) must disclose the conflict to the governing board and to the state ombudsman;
- (b) may have no involvement with ombudsman activities concerning the entity which is the source of the conflict; and
- (c) must abstain from voting on issues related to the operation of the program;
- (4) the provider agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the ombudsmen fulfill their duties without interference; or
- (5) a memorandum of agreement exists between the program and another program which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.

[9.2.19.32 NMAC - Rp, 9.2.19.32 NMAC, 09/23/2025]

**9.2.19.33 REMEDYING INDIVIDUAL OMBUDSMAN CONFLICTS:** Where individual conflicts have been identified, the following steps shall be taken where the conflict may be sufficiently remedied:

- A. where the individual is an applicant for certification as an ombudsman, a written plan shall be developed, submitted to the state ombudsman and agreed upon before the individual takes any actions on behalf of the program;
- B. where the individual is already an ombudsman, a written plan shall be developed, submitted to the state ombudsman and agreed upon within 30 calendar days of identification of the conflict to the state ombudsman;
- C. the remedial plan must identify the conflict and provide assurances to minimize to the greatest extent possible the negative impact of the conflict on the program, which may include a prohibition of the ombudsman with a conflict of interest from serving the residents of the facility with which he or she has a conflict and arranging for another ombudsman to serve those residents. Where appropriate, this arrangement may be time-limited; and
- D. the remedial plan must be mutually agreed upon and signed by the ombudsman or applicant with the conflict of interest, and the state ombudsman.

[9.2.19.33 NMAC - Rp, 9.2.19.3 NMAC, 09/23/2025]

**9.2.19.34 PROCEDURES TO AVOID CONFLICTS OF INTEREST:**

- A. All persons seeking certification as ombudsman shall disclose to state ombudsman all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of an ombudsman without conflicting interest.
- B. In order to avoid confusion and possible conflicts between the program and other department personnel in communicating with the press, broadcast media and other public media, the state ombudsman or his or her representative are encouraged to apprise and summarize the intended communication for the cabinet secretary or public information officer prior to any such communication or other dissemination or release of public information from or concerning the program, provided that neither the cabinet secretary nor public information officer has an individual conflict, as set forth, above.

[9.2.19.34 NMAC - Rp, 9.2.19.34 NMAC, 09/23/2025]

**9.2.19.35 FAILURE TO IDENTIFY OR REMEDY A CONFLICT OF INTEREST:**

- A. Failure on the part of an ombudsman or provider agency to identify and report to the state ombudsman a known conflict of interest shall be sufficient grounds for refusal to designate or for de-designation of the provider agency or for refusal to certify or for de-certification of the ombudsman.
- B. Existence of an un-remedied conflict of interest shall be sufficient grounds for the de-designation of a provider agency or de-certification of an ombudsman.
- C. Failure on the part of an ombudsman to identify and report to the state ombudsman a known

conflict of interest shall be sufficient grounds for the de-certification of the ombudsman.  
[9.2.19.35 NMAC - Rp, 9.2.19.35 NMAC, 09/23/2025]

**9.2.19.36 LONG-TERM CARE OMBUDSMAN RECORDS POLICY:** Records of the program shall be confidential and may be disclosed only in limited circumstances specifically provided by applicable law and these regulations (9.2.19.37 NMAC) and only as approved by the state ombudsman or his or her designee.  
[9.2.19.36 NMAC - Rp, 9.2.19.36 NMAC, 09/23/2025]

**9.2.19.37 ACCESS TO LONG-TERM CARE OMBUDSMAN RECORDS:**

**A.** All program client records are the property of the office. The state ombudsman or designee shall have access to all program records at all times for any lawful purpose.

**B.** Ombudsmen are permitted access to such records as may be necessary to discharge their responsibilities in complaint processing or other responsibilities under these regulations.

**C.** All records of another agency participating in the joint protocol established under the provisions of Subsection L of Section 24-1-5 NMSA 1978 that may come into the possession of the program and that include identifying or otherwise confidential resident or complainant information shall be held and disclosed in the same manner as program records hereunder, except to the extent that such other agency imposes stricter requirements or restrictions for disclosure, to which extent the rules of such other agency shall be observed to the extent permitted by law.

**D.** All information concerning residents or complainants shall be handled with the utmost care and discretion. No ombudsman shall disclose any information or record that includes, implies or describes the identity of any complainant or resident about whom the office maintains files or records unless:

(1) the complainant or resident or his or her surrogate decision maker consent in writing to the disclosure;

(2) the complainant or resident gives informed consent, which is documented immediately in writing by an ombudsman;

(3) disclosure is necessary for the provision of services to the resident or the resident is unable to provide informed consent; or

(4) disclosure is ordered by a court of competent jurisdiction.

[9.2.19.37 NMAC - Rp, 9.2.19.37 NMAC, 09/23/2025]

**9.2.19.38 PROCEDURE FOR RELEASE:**

**A.** Records maintained by the program may not be released, disclosed, duplicated, or removed to anyone who is not an ombudsman without the written permission of the state ombudsman. All requests made for ombudsman records shall be referred to the state ombudsman or designee.

**B.** The state ombudsman or designee shall determine whether to disclose all or part of the records as follows:

(1) The state ombudsman shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or surrogate decision maker of the resident or complainant, the request must be documented immediately and filed as an ombudsman record by the ombudsman to whom informed consent was communicated in order to meet this requirement.

(2) The state ombudsman shall review the request to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).

(3) The state ombudsman shall notify the department's cabinet secretary and the state ombudsman's immediate supervisor (if the immediate supervisor is someone other than the cabinet secretary) of any public media request for records within 24 hours of the request.

(4) The state ombudsman or designee shall refer any request made by formal legal process to the program's legal counsel. The state ombudsman shall be responsible to ensure that a response is timely filed and endeavor to prevent any release that would be inconsistent with the interests of the resident(s).

(5) Any request for information made under the state Inspection of Public Records Act (IPRA) directly to the program shall be forwarded to the department's records custodian within 24 hours. The department's records custodian shall respond in writing within 15 days to the requestor after consulting with the state ombudsman and the department's general counsel or designee. The ombudsman shall make the final decision whether to disclose records in response to an IPRA request, keeping in mind that program records are not public records and are therefore exempt from IPRA. Notwithstanding the foregoing, the state ombudsman may release

records provided they do not name or provide personally identifying information of residents or complainants as it deems appropriate, provided such disclosure is not made pursuant to an IPRA request.  
[9.2.19.38 NMAC - Rp, 9.2.19.38 NMAC, 09/23/2025]

**2.9.19.39 [RESERVED]**

**2.9.19.40 LEGAL COUNSEL:**

- A.** Pursuant to 45 C.F.R Section 1324.15 (j), the department shall ensure that:
- (1)** legal counsel for the program is adequate, available, has competencies relevant to the legal needs of the program and of the residents, and is without conflict of interest, in order to:
    - (a)** provide consultation and representation as needed in order for the program to protect the health, safety, welfare and rights of residents; and
    - (b)** provide consultation or representation as needed to assist the state ombudsman and representatives of the office in the performance of their official functions, responsibilities and duties, including complaint resolution and advocacy;
  - (2)** legal representation, arranged by or with the approval of the state ombudsman, is provided to the state ombudsman or any representative of the office against whom suit or other legal action is brought or threatened to be brought in connect with the performance of the official duties;
  - (3)** legal representation of the program by the state ombudsman or representative of the office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel; and
  - (4)** the communications between the state ombudsman and legal counsel are subject to attorney-client privilege.

[9.2.19.40 NMAC - Rp, 9.2.19.40 NMAC, 09/23/2025]

**9.2.19.41 ANONYMOUS EVALUATIONS:**

- A.** Chapter 28, Articles 7 and 17 of the NMSA 1978 authorize and direct the department and the office to protect the health, safety, welfare and rights of the aged and other residents of long-term care facilities in this state, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities. Subsection C of Section 28-4-6 NMSA 1978 specifically provides that the department may conduct unannounced evaluations of long-term care facilities by the use of undercover residents or employees. Pursuant to its authority as the parent agency of the office, the department may carry out such evaluations by and through the office; however, under no circumstances shall federal funding be used for such anonymous evaluations.
- B.** The department shall conduct all undercover evaluations authorized by Subsection C of 28-4-6 NMSA 1978 in accordance with its procedures for the conduct of anonymous evaluations of long-term care facilities adopted pursuant to such authority and in consultation with the department's cabinet secretary.

[9.2.19.41 NMAC - Rp, 9.2.19.41 NMAC, 09/23/2025]

**HISTORY OF 9.2.19 NMAC:**

**History of Repealed Material:**

9.2.19 NMAC, Aging – Long-Term Care Ombudsman, filed 1/16/2001 - Repealed effective 12/29/2017.

9.2.19 NMAC, Aging – Long-Term Care Ombudsman, filed 12/13/2017 - Repealed effective 09/23/2025.

**Other History:**

9.2.19 NMAC, Aging - Long-Term Care Ombudsman (filed 1/16/2001) was replaced by 9.2.19 NMAC, Aging - Long-Term Care Ombudsman, effective 12/29/2017.

9.2.19 NMAC, Aging - Long-Term Care Ombudsman (filed 12/13/2017) was replaced by 9.2.19 NMAC, Aging - Long-Term Care Ombudsman, effective 09/23/2025.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 20           CAPS ON REIMBURSEMENT FOR INDIRECT COSTS TO INDIAN TRIBAL ORGANIZATIONS IN INTERGOVERNMENTAL AGREEMENTS**

**9.2.20.1            ISSUING AGENCY:** New Mexico Aging and Long-Term Services Department (NMALTSB).  
[9.2.20.1 NMAC -Rp, 9.2.20.1 NMAC, 6/30/2015]

**9.2.20.2            SCOPE:** This part applies only to intergovernmental agreements with Indian tribal organizations.  
[9.2.20.2 NMAC -Rp, 9.2.20.2 NMAC, 6/30/2015]

**9.2.20.3            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.  
[9.2.20.3 NMAC -Rp, 9.2.20.3 NMAC, 6/30/2015]

**9.2.20.4            DURATION:** Permanent.  
[9.2.20.4 NMAC -Rp, 9.2.20.4 NMAC, 6/30/2015]

**9.2.20.5            EFFECTIVE DATE:** June 30, 2015, unless a later date is cited at the end of a section.  
[9.2.20.5 NMAC -Rp, 9.2.20.5 NMAC, 6/30/2015]

**9.2.20.6            OBJECTIVE:** The purpose of this rule is to establish the extent to which the department will reimburse Indian tribal organizations for indirect costs incurred in the performance of intergovernmental agreements.  
[9.2.20.6 NMAC -Rp, 9.2.20.6 NMAC, 6/30/2015]

**9.2.20.7            DEFINITIONS:** As used in this part, “indirect cost” means a cost that has been incurred for common or joint purposes and benefits more than one activity, such as an intergovernmental agreement or grant. Indirect costs cannot be readily identified with a particular activity without effort disproportionate to the results achieved.  
[9.2.20.7 NMAC -Rp, 9.2.20.7 NMAC, 6/30/2015; A, 09/23/2025]

**9.2.20.8            INDIRECT COSTS:** The department shall allow for indirect costs in intergovernmental agreements for services with any Indian tribal organization of up to ten percent of the total agreement amount, as requested and as determined on a specific basis, provided that the Indian tribal organization has a federally approved indirect cost rate. No indirect costs shall be allowed for capital projects.  
[9.2.20.6 NMAC -Rp, 9.2.20.8 NMAC, 6/30/2015; A, 09/23/2025]

**HISTORY OF 9.2.20 NMAC:**

**History of the Repealed Material:**  
9.2.20 NMAC, filed 5/10/2001 - Repealed 6/30/2015.

**TITLE 9            HUMAN RIGHTS**  
**CHAPTER 2        AGE**  
**PART 21           CIVIL PENALTY ASSESSMENTS BY THE STATE LONG-TERM CARE OMBUDSMAN**

**9.2.21.1            ISSUING AGENCY:** Aging and Long-Term Services Department.  
[9.2.21.1 NMAC - Rp, 9.2.21.1 NMAC, 09/23/2025]

**9.2.21.2            SCOPE:** This rule applies to the general public.  
[9.2.21.2 NMAC - Rp, 9.2.21.2 NMAC, 09/23/2025]

**9.2.21.3            STATUTORY AUTHORITY:** This rule is adopted pursuant to the terms of 42 U.S.C. Section 3058g(j), Sections 28-4-6(B), 28-17-5 and 28-17-19 NMSA 1978 and Laws 2004, Ch. 23, Sec. 6(E).  
[9.2.21.3 NMAC - Rp, 9.2.21.3 NMAC, 09/23/2025]

**9.2.21.4            DURATION:** Permanent.  
[9.2.21.4 NMAC - Rp, 9.2.21.4 NMAC, 09/23/2025]

**9.2.21.5            EFFECTIVE DATE:** 09/23/2025, unless a later date is cited in the history note at the end of a section.  
[9.2.21.5 NMAC - Rp, 9.2.21.5 NMAC, 09/23/2025]

**9.2.21.6            OBJECTIVE:** This rule establishes a schedule of civil penalties that will be imposed on persons or entities that violate Section 28-17-19 NMSA 1978.  
[9.2.21.6 NMAC - Rp, 9.2.21.6 NMAC, 09/23/2025]

**9.2.21.7            DEFINITIONS:** The following terms are used in this rule:

**A.            “Civil penalty assessment”** means a civil monetary penalty imposed on a person or entity by the state long-term care ombudsman pursuant to the terms of Section 28-17-19 NMSA 1978 and this rule.

**B.            “Department”** means the aging and long-term services department. It is the state department charged, among other things, with implementing the requirements of the federal Older Americans Act of 1965, as amended (42 U.S.C. Section 3001, et seq.).

**C.            “Long-term care ombudsman program”** means the program administered by the state long-term care ombudsman.

**D.            “State long-term care ombudsman”** means the office established pursuant to the terms of 42 U.S.C. Section 3058g and Section 28-17-4 NMSA 1978 to, among other things, identify, investigate and resolve complaints that are made by, or on behalf of, residents of long-term care facilities and that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents.  
[9.2.21.7 NMAC - Rp, 9.2.21.7 NMAC, 09/23/2025]

**9.2.21.8            WILLFUL INTERFERENCE WITH LONG-TERM CARE OMBUDSMAN PROGRAM:**

**A.** Any person or entity committing willful interference, as defined in 45 C.F.R. Section 1324 and Section 9.2.19 NMAC, with the lawful actions of the long-term care ombudsman program shall be subjected to civil penalties up to a maximum of \$5,000 per occurrence as follows:

**(1)** failing to allow an ombudsman immediate entry into a long-term care facility: \$500 minimum per occurrence;

**(2)** imposing unreasonable time limits or constraints on visiting a long-term care facility or its residents or employees: \$500 minimum per occurrence;

**(3)** failing to provide an ombudsman, upon proper written request, immediate access to readily available medical, personal, financial or other nonmedical records, including administrative records, policies, procedures or documents that concern, involve or pertain to a resident’s diet, comfort, health, safety or welfare, but not including internal quality assurance or risk management reports: \$500 minimum per occurrence;

**(4)** failing to provide an ombudsman, upon proper written request, access within twenty-four hours to nonreadily available medical, personal, financial or other nonmedical records, including administrative records, policies, procedures or documents that concern, involve or pertain to a resident’s diet, comfort, health, safety or welfare, but not including internal quality assurance or risk management reports: \$500 minimum per occurrence;

(5) failing to honor a legally-executed HIPAA-compliant authorization form from a resident or a resident's surrogate decision maker for release of records, or failing to honor a written authorization form signed by the state long-term care ombudsman or an ombudsman coordinator in accordance with Section 28-17-13(B) NMSA 1978, or requiring redundant or legally-unnecessary forms to be completed: \$500 minimum per occurrence;

(6) eavesdropping on any private conversation between an ombudsman and a resident or any other person: \$500 minimum per occurrence;

(7) failing to provide a quiet private place for an ombudsman to meet with a resident or any other person: \$500 minimum per occurrence;

(8) instructing a resident, employee or any other person not to file a complaint with the long-term care ombudsman program, or not to provide information to, or otherwise cooperate with, the long-term care ombudsman program: \$2,500 minimum per occurrence;

(9) willfully concealing facts from, or misrepresenting facts to, an ombudsman: \$2,500 minimum per occurrence;

(10) failing to acknowledge and act timely upon communications with an ombudsman relating to an investigation: \$500 minimum per occurrence; and

(11) any other willful action that interferes with the lawful actions of the long-term care ombudsman program: \$250 minimum per occurrence.

**B.** Factors that will be considered in imposing civil penalties greater than the minimum amounts include, but are not limited to, the following:

(1) whether the interference with the long-term care ombudsman program caused actual harm to any resident of the facility;

(2) the number and amounts of civil penalties that have been assessed against a facility or its owners previously; and

(3) whether the interference with the long-term care ombudsman program was based on a facility policy or a policy of its owners (as opposed, for example, to an isolated incident caused by a lower-level employee).

[9.2.21.8 NMAC - Rp, 9.2.21.8 NMAC, 09/23/2025]

#### **9.2.21.9 RETALIATION:**

**A.** Any person or entity that discriminates against, disciplines, or retaliates against any resident, employee, or other person for filing a complaint with the long-term care ombudsman program, or for providing information to, or otherwise cooperating with, the long-term care ombudsman program shall be subjected to civil penalties up to a maximum of \$10,000 per occurrence as required pursuant to 45 C.F.R. Sections 1324.13 and 1324.15 as follows:

(1) discharging a resident: \$10,000 per occurrence;

(2) withholding treatment to, or medication from, a resident: \$2,500 minimum per occurrence;

(3) isolating a resident or changing a resident's room: \$1,000 minimum per occurrence;

(4) restricting a resident's ability to communicate with others: \$1,000 minimum per occurrence;

(5) ignoring a resident's request for assistance or delaying response to a request: \$1,000 minimum per occurrence;

(6) taking a resident's property, even if the property has no value: \$1,000 minimum per occurrence;

(7) terminating an employee of a long-term care facility: \$10,000 per occurrence;

(8) suspending, demoting or taking any other action with monetary consequences against an employee of a long-term care facility: \$2,500 minimum per occurrence;

(9) barring a person from a facility: \$1,000 minimum per occurrence; and

(10) instituting any other discriminatory, disciplinary or retaliatory action against a resident, a resident's family member or other representative, an employee, or any other person: \$500 minimum per occurrence.

**B.** Factors that will be considered in imposing civil penalties greater than the minimum amounts include, but are not limited to, the following:

(1) whether the discrimination, discipline or retaliation caused actual harm to any resident of the facility;

(2) the number and amounts of civil penalties that have been assessed against a facility or its owners previously; and

(3) whether the discrimination, discipline or retaliation was based on a facility policy or a policy of its owners (as opposed, for example, to an isolated incident caused by a lower-level employee).

[9.2.21.9 NMAC - Rp, 9.2.21.9 NMAC, 09/23/2025]

**9.2.21.10 CIVIL PENALTY ASSESSMENT:**

**A.** Upon determining that there has been a violation of Section 28-17-19 NMSA 1978 and this rule, the state long-term care ombudsman may deliver to the person or entity charged with the violation a notice of civil penalty assessment. The notice shall be delivered in person or by certified mail, return receipt requested. The notice shall include:

(1) the name and address of the person or entity to whom the civil penalty assessment is directed;

(2) the date of the civil penalty assessment;

(3) the basis for the civil penalty assessment;

(4) the amount of the civil penalty assessment;

(5) the date the civil penalty assessment is due for payment; and

(6) notice of the right to request a hearing before the department to challenge the civil penalty assessment.

**B.** Unless a hearing is requested, the civil penalty assessment shall be paid to the department within 30 calendar days from the date of the assessment. Payment shall be in the form of cash, cashier's check or money order.

[9.2.21.10 NMAC - Rp, 9.2.21.10 NMAC, 09/23/2025]

**9.2.21.11 RECOVERY PROHIBITED:** No person or entity that has been issued a civil penalty assessment shall recover or attempt to recover the assessment or any portion of it, directly or indirectly, from any resident of a long-term care facility or from any person, insurer, governmental agency or other entity that may be responsible for paying for the services rendered to a resident of a facility.

[9.2.21.11 NMAC - Rp, 9.2.21.11 NMAC, 09/23/2025]

**History of 9.2.21 NMAC: [RESERVED]**

**History of Repealed Material:** 9.2.21 NMAC, Civil Penalty Assessments By The State Long Term Care Ombudsman filed 3/8/2004 Repealed effective 09/23/2025.

**Other:** 9.2.21 NMAC, Civil Penalty Assessments By The State Long Term Care Ombudsman filed 3/8/2004 Replaced by 9.2.21 NMAC, Civil Penalty Assessments By The State Long Term Care Ombudsman effective 09/23/2025.

**TITLE 9 HUMAN RIGHTS**  
**CHAPTER 2 AGE**  
**PART 22 HEARINGS TO CHALLENGE CIVIL PENALTY ASSESSMENTS BY THE STATE**  
**LONG-TERM CARE OMBUDSMAN**

**9.2.22.1 ISSUING AGENCY:** Aging and Long-Term Services Department.  
[9.2.22.1 NMAC - Rp, 9.2.22.1 NMAC, 09/23/2025]

**9.2.22.2 SCOPE:** This rule applies to the general public and governs the hearings conducted by the aging and long-term services department to address civil penalties that have been assessed on persons or entities by the state long-term care ombudsman. It does not govern other hearings conducted by the department.  
[9.2.22.2 NMAC - Rp, 9.2.22.2 NMAC, 09/23/2025]

**9.2.22.3 STATUTORY AUTHORITY:** This rule is adopted pursuant to the terms of 42 U.S.C. Section 3058g(j), Subsection B of Section 28-4-6, 28-17-5 and 28-17-19 NMSA 1978 and Subsection (E) of Section 6 of Chapter 23 Laws 2004.  
[9.2.22.3 NMAC - Rp, 9.2.22.3 NMAC, 09/23/2025]

**9.2.22.4 DURATION:** Permanent.  
[9.2.22.4 NMAC - Rp, 9.2.22.4 NMAC, 09/23/2025]

**9.2.22.5 EFFECTIVE DATE:** 09/23/2025, unless a later date is cited in the history note at the end of a section.  
[9.2.22.5 NMAC - Rp, 9.2.22.5 NMAC, 09/23/2025]

**9.2.22.6 OBJECTIVE:** This rule establishes a hearing procedure for a person or entity to challenge a civil penalty assessment that has been issued to it by the state long-term care ombudsman pursuant to the terms of Section 28-17-19 NMSA 1978 and applicable department regulations.  
[9.2.22.6 NMAC - Rp, 9.2.22.6 NMAC, 09/23/2025]

**9.2.22.7 DEFINITIONS:** The following terms are used in this rule:

**A. “Assessed party”** means a person or entity that has been issued a civil penalty assessment by the state long-term care ombudsman.

**B. “Civil penalty assessment”** means a civil monetary penalty imposed on a person or entity by the state long-term care ombudsman pursuant to the terms of Section 28-17-19 NMSA 1978 and applicable department regulations.

**C. “Department”** means the aging and long-term services department. It is the state department charged, among other things, with implementing the requirements of the federal Older Americans Act of 1965, as amended (42 U.S.C. Section 3001, et seq.).

**D. “Hearing officer”** means an impartial person designated by the secretary to preside over proceedings under this rule. A hearing officer may be an employee of the department (except for an employee of the long-term care ombudsman program), a policy advisory committee member, or any other impartial person. A hearing officer may be, but is not required to be, an attorney at law.

**E. “Long-term care ombudsman program”** means the program administered by the state long-term care ombudsman.

**F. “Parties”** mean the assessed party and the state long-term care ombudsman.

**G. “Secretary”** means the secretary of the department.

**H. “State long-term care ombudsman”** means the office established pursuant to the terms of 42 U.S.C. Section 3058g and Section 28-17-4 NMSA 1978 to, among other things, identify, investigate and resolve complaints that are made by, or on behalf of, residents of long-term care facilities and that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents.

[9.2.22.7 NMAC - Rp, 9.2.22.7 NMAC, 09/23/2025]

**9.2.22.8 REPRESENTATION:**

**A.** A natural person may appear as a party on his or her own behalf or by an attorney licensed to practice law in New Mexico.

**B.** The state long-term care ombudsman, corporations and other legal entities may be represented by a duly authorized officer or employee of the entity or by an attorney licensed to practice law in New Mexico.

**C.** An attorney for a party must file an entry of appearance at least 10 working days before the commencement of any hearing. The attorney of record for a party shall be deemed to continue to be the attorney of record until written notice of withdrawal of representation is provided to the hearing officer and the parties.  
[9.2.22.8 NMAC - Rp, 9.2.22.8 NMAC, 09/23/2025]

**9.2.22.9 REQUEST FOR HEARING:**

**A.** An assessed party may request a hearing before the department. The request for hearing shall be in writing and received by the secretary no later than 10 working days from the date that the assessed party receives the civil penalty assessment. The request for hearing shall include:

- (1) the name and address of the assessed party;
- (2) a copy of the civil penalty assessment;
- (3) a brief statement of the factual or legal bases upon which the assessed party challenges the civil penalty assessment; and
- (4) a statement of the relief requested.

**B.** The assessed party shall send a copy of the request for hearing to the state long-term care ombudsman.

**C.** The department shall dismiss any request for hearing that is untimely or fails to substantially comply with the terms of this rule.

[9.2.22.9 NMAC - Rp, 9.2.22.9 NMAC, 09/23/2025]

**9.2.22.10 APPOINTMENT OF HEARING OFFICER:** Within five working days of receipt of a timely request for hearing, the secretary will appoint a hearing officer and will send written notice of the appointment to the parties.

[9.2.22.10 NMAC - Rp, 9.2.22.10 NMAC, 09/23/2025]

**9.2.22.11 NOTICE OF HEARING AND TIME LIMITS FOR HOLDING HEARING:**

**A.** Within 10 working days of appointment, the hearing officer will establish the date, time and place of the hearing. The hearing will be no more than 120 calendar days from the date of the civil penalty assessment unless the parties agree otherwise.

**B.** The hearing officer will issue a notice of hearing at least 30 calendar days before the hearing date, unless the parties agree to a shorter timeframe. The notice will be served on the parties by certified mail, return receipt requested. At the discretion of the hearing officer, the notice may be served by regular mail or other appropriate means on any other persons or entities that may have an interest in the proceedings.

**C.** The notice of hearing shall include:

- (1) the name of the assessed party;
- (2) the name and address of the state long-term care ombudsman;
- (3) the time, date, place, and nature of the hearing; and
- (4) a statement of the legal authority under which the hearing is to be held.

[9.2.22.11 NMAC - Rp, 9.2.22.11 NMAC, 09/23/2025]

**9.2.22.12 VENUE:** Unless the parties agree otherwise, the hearing will be held in the county where the events allegedly occurred that gave rise to the civil penalty assessment or where the long-term care facility in question is located.

[9.2.22.12 NMAC - Rp, 9.2.22.12 NMAC, 09/23/2025]

**9.2.22.13 POWERS AND DUTIES OF THE HEARING OFFICER:** The hearing officer shall have the authority to:

- A.** preside over hearings;
- B.** assure that hearings are properly recorded;
- C.** administer oaths and affirmations to the witnesses;
- D.** issue subpoenas and subpoenas *duces tecum*;
- E.** establish procedural schedules;
- F.** rule on motions and procedural requests;
- G.** require parties to attend hearings, pre-hearing conferences and settlement conferences;

- H. require parties to produce for examination information or witnesses under their control;
- I. require parties to express their positions on any issues in the proceedings;
- J. require parties to submit legal briefs on any issues in the proceedings;
- K. examine witnesses, and permit parties to examine witnesses;
- L. determine the admissibility of evidence;
- M. take official notice of any matter that is among the traditional matters of official or administrative notice in accordance with the terms of this rule;
- N. recess any hearing from time to time;
- O. regulate the course of the proceedings and the conduct of any participants;
- P. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses;
- Q. issue a recommended decision on the merits of a case, including findings of fact and conclusions of law;
- R. approve settlements or other pre-hearing or post-hearing dispositions of cases by the parties, subject to final approval by the secretary; and
- S. take any other action reasonably necessary to conclude the proceedings in a timely and fair manner.

[9.2.22.13 NMAC - Rp, 9.2.22.13 NMAC, 09/23/2025]

**9.2.22.14 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE:**

Although formal rules of civil procedure and evidence do not apply, the hearing officer may look to the New Mexico rules of civil procedure and the New Mexico rules of evidence for guidance during the course of the proceedings. In addition, the hearing officer's recommended decision and the secretary's final decision must be supported by a residuum of legally competent evidence as would support a verdict in a court of law.

[9.2.22.14 NMAC - Rp, 9.2.22.14 NMAC, 09/23/2025]

**9.2.22.15 COMMUNICATIONS WITH SECRETARY AND HEARING OFFICER:**

A. No party, representative of a party, or other person shall communicate off the record about the merits of a case with the secretary or the hearing officer unless the communication is in writing and a copy is provided to all parties to the proceedings.

B. The secretary and the hearing officer shall not communicate off the record about the merits of a case with any party, representative of a party, or other person unless the communication is in writing and a copy is sent to all parties to the proceedings.

[9.2.22.15 NMAC - Rp, 9.2.22.15 NMAC, 09/23/2025]

**9.2.22.16 PRE-HEARING DISCLOSURES AND DISCOVERY:**

A. Upon written request of any party, the hearing officer may require parties to comply with reasonable discovery requests. Oral and written depositions are prohibited except to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing.

B. At least 15 calendar days before the hearing, each party shall file the following information with the hearing officer and send copies to the other parties:

- (1) the name of each witness that the party will or may call at the hearing;
- (2) a summary of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the bases for those opinions;
- (3) an estimate of the length of time for the direct testimony of each witness; and
- (4) a list of exhibits that will or may be offered into evidence at the hearing. In addition, each party shall provide the other parties, but not the hearing officer, with copies of all exhibits that are identified on the exhibit list but have not been provided previously.

C. Parties are encouraged to enter into stipulations of fact to expedite the hearing process. Any stipulations must be filed jointly with the hearing officer at least 10 working days before the hearing.

[9.2.22.16 NMAC - Rp, 9.2.22.16 NMAC, 09/23/2025]

**9.2.22.17 SUBPOENAS:**

A. Pursuant to Subsection C of Section 28-17-19 NMSA 1978, upon the written request of a party, the hearing officer may issue subpoenas to compel attendance of witnesses or production of records in connection with proceedings before the department.

**B.** In order to subpoena a person who is not a party to the proceedings, or an agent or representative of a party, the party requesting the subpoena shall tender witness fees and mileage to the person subpoenaed in accordance with the terms of Rule 1-045 NMRA.

**C.** The hearing officer may condition a subpoena to permit the inspection and copying of records upon the party requesting the subpoena paying the person subpoenaed the reasonable cost of inspection and copying in advance.

[9.2.22.17 NMAC - Rp, 9.2.22.17 NMAC, 09/23/2025]

**9.2.22.18 EVIDENCE AND CONDUCT OF HEARING:**

**A.** Hearings will be conducted as follows:

(1) all hearings will be open to the public, unless closing a hearing is necessary to protect the privacy of any person who is entitled to privacy protection under federal or state law;

(2) only relevant and material evidence is admissible at hearings. Evidence will be allowed if it is of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs;

(3) redundant evidence will be excluded;

(4) witnesses shall be examined orally, under oath or affirmation. The parties and the hearing officer shall have the right to cross-examine witnesses; and

(5) the hearing officer may take official notice of any matter that is among the traditional matters of official or administrative notice, and may take official notice of any matter that is within the department's specialized knowledge. The hearing officer shall inform the parties of any matters officially noticed, and shall afford the parties an opportunity to contest any such matters.

**B.** The burden of persuasion at the hearing shall be on the state long-term care ombudsman, which must prove its case by a preponderance of the evidence unless the case involves allegations of fraud. In cases involving allegations of fraud, the state long-term care ombudsman must prove its case by clear and convincing evidence.

**C.** At the hearing, the state long-term care ombudsman shall present its evidence first. If the assessed party wishes to present evidence, it shall proceed second. Thereafter, only the state long-term care ombudsman may present rebuttal evidence. Rebuttal evidence shall be confined to the issues raised in the assessed party's presentation of evidence. Each party will be given an opportunity to offer a final oral or written argument without additional presentation of evidence.

[9.2.22.18 NMAC - Rp, 9.2.22.18 NMAC, 09/23/2025]

**9.2.22.19 RECORD OF HEARING:**

**A.** Unless a hearing is stenographically recorded and the hearing officer orders otherwise, all hearings shall be recorded electronically by audio or audio-video. Any party desiring a copy of the audio or audio-video shall make a written request to the hearing officer and shall pay the cost of preparing a copy.

**B.** No later than five working days before a hearing, a party may request that the hearing be stenographically recorded at the cost of the requesting party. The request shall be in writing to the hearing officer and shall certify that the party has hired a certified court reporter and made all necessary arrangements for the court reporter to perform his or her job. In addition, the requesting party shall arrange for the court reporter to deliver two copies of the completed hearing transcript to the hearing officer. A court reporter's transcription becomes official when certified by the hearing officer. The requesting party shall pay the court reporter's fees, including any costs associated with providing the copies of the completed hearing transcript to the hearing officer.

**C.** Record. The record in a hearing shall consist of the following:

(1) the civil penalty assessment;

(2) the assessed party's request for hearing;

(3) the notice of appointment of the hearing officer;

(4) the notice of hearing;

(5) all pleadings and orders;

(6) any written information requested by the hearing officer and provided to him or her by the parties before the hearing;

(7) all exhibits;

(8) all stipulations;

(9) all statement of matters officially noticed by the hearing officer;

(10) the electronic audio or audio-video recording, or the court reporter's written transcription of the hearing prepared in accordance with this rule;

- (11) the hearing officer's recommended decision;
- (12) any motions for reconsideration and rulings thereon; and
- (13) the secretary's final decision.

[9.2.22.19 NMAC - Rp, 9.2.22.19 NMAC, 09/23/2025]

**9.2.22.20 HEARING OFFICER'S RECOMMENDED DECISION:**

**A.** The hearing officer shall present a written recommended decision to the secretary after the close of the hearing, and shall send copies to the parties. The recommended decision shall be based solely on the record and shall include proposed findings of fact and conclusions of law.

**B.** Any motions for reconsideration shall be submitted to the hearing officer within five working days from the date of service of the hearing officer's recommended decision. Such motions shall be decided without a hearing unless the hearing officer orders otherwise.

[9.2.22.20 NMAC - Rp, 9.2.22.20 NMAC, 09/23/2025]

**9.2.22.21 SECRETARY'S FINAL DECISION:**

**A.** The secretary shall issue a final written decision within 10 working days of the receipt of the hearing officer's recommended decision or ruling on a motion for reconsideration. Based upon the evidence in the record, the secretary may affirm, reverse or modify the hearing officer's recommended decision as modified by any subsequent rulings of the hearing officer. The secretary's final decision shall inform the parties of their right to seek judicial review.

**B.** The secretary shall send copies of the final decision to the parties by certified mail, return receipt requested.

**C.** When the secretary's final decision affirms a civil penalty assessment by the state long-term care ombudsman, the assessed party shall pay the civil penalty to the department within 30 calendar days from the date of the decision. Payment shall be in the form of cash, cashier's check or money order.

[9.2.22.21 NMAC - Rp, 9.2.22.21 NMAC, 09/23/2025]

**9.2.22.22 APPEAL:** A person who is aggrieved by the secretary's final decision may appeal to the district court in accordance with the provisions of Section 39-3-1.1 NMSA 1978 and Rule 1-074 NMRA. The date of filing of the secretary's final decision starts the time limit for appeal.

[9.2.22.22 NMAC - Rp, 9.2.22.22 NMAC, 09/23/2025]

**9.2.22.23 NO AUTOMATIC STAY PENDING JUDICIAL REVIEW:** The filing of a notice of appeal shall not stay the enforcement of the secretary's final decision. Upon a showing of substantial hardship and irreparable harm, the secretary may grant a stay of the final decision pending appeal. The district court may also grant a stay in accordance with the provisions of Rule 1-074 NMRA.

[9.2.22.23 NMAC - Rp, 9.2.22.23 NMAC, 09/23/2025]

**9.2.22.24 ENFORCEMENT OF ORDERS AND PAYMENT IN DEFAULT:** Whenever an assessed party is in default of a civil penalty assessment, the state long-term care ombudsman may file an action in district court solely for the purpose of entry of judgment and enforcement of the civil penalty. The district court shall accept the civil penalty assessment without reviewing the basis for it and shall enter an appropriate judgment or order to enforce the civil penalty assessment.

[9.2.22.24 NMAC - Rp, 9.2.22.24 NMAC, 09/23/2025]

**History of 9.2.22 NMAC: [RESERVED]**

**History of Repealed Material:**

9.2.22 NMAC, Hearings to Challenge Civil Penalty Assessments By The State Long - Term Care Ombudsman filed 3/8/2004 Repealed effective 09/23/2025.

**Other:** 9.2.22 NMAC, Hearings to Challenge Civil Penalty Assessments By The State Long - Term Care Ombudsman filed 3/8/2004 Replaced by 9.2.22 NMAC, Hearings to Challenge Civil Penalty Assessments By The State Long - Term Care Ombudsman effective 09/23/2025.

**TITLE 9 HUMAN RIGHTS**  
**CHAPTER 2 AGE**  
**PART 23 PATIENT CARE MONITORING IN LONG-TERM CARE FACILITIES**

**9.2.23.1 ISSUING AGENCY:** Aging and Long-Term Services Department.  
[9.2.23.1 NMAC - Rp, 9.2.23.1 NMAC, 09/23/2025]

**9.2.23.2 SCOPE:** This rule applies to the general public.  
[9.2.23.2 NMAC - Rp, 9.2.23.2 NMAC, 09/23/2025]

**9.2.23.3 STATUTORY AUTHORITY:** This rule is adopted pursuant to the terms of Subsection (B) of Section 28-4-6, Section 28-17-5, and Section 28-17-19 NMSA 1978; Subsection (E) of Section 6 of Chapter 23 Laws 2004; and Section 10 of Chapter 53 Laws 2004.  
[9.2.23.3 NMAC - Rp, 9.2.23.3 NMAC, 09/23/2025]

**9.2.23.4 DURATION:** Permanent.  
[9.2.23.4 NMAC - Rp, 9.2.23.4 NMAC, 09/23/2025]

**9.2.23.5 EFFECTIVE DATE:** 09/23/2025, unless a later date is cited in the history note at the end of a section.  
[9.2.23.5 NMAC - Rp, 9.2.23.5 NMAC, 09/23/2025]

**9.2.23.6 OBJECTIVE:** This rule implements the provisions of the Patient Care Monitoring Act, Chapter 53 Laws 2004.  
[9.2.23.6 NMAC - Rp, 9.2.23.6 NMAC, 09/23/2025]

**9.2.23.7 DEFINITIONS:** The following terms are used in this rule:

- A. "Department"** means the aging and long-term services department.
- B. "Facility"** means a long-term care facility licensed pursuant to the provisions of Section 24-1-5 NMSA 1978, other than an intermediate care facility for the mentally retarded, and may also include:
- (1) a skilled nursing facility;
  - (2) an intermediate care nursing facility;
  - (3) a nursing facility;
  - (4) an adult residential shelter care home;
  - (5) a boarding home;
  - (6) any adult care home or adult residential care facility; and
  - (7) any swing bed in an acute care facility or extended care facility.
- C. "Monitoring device"** means a surveillance instrument that broadcasts or records activity, but does not include a still camera.
- D. "Patient"** means a person who is a resident of a facility.
- E. "Program"** means the New Mexico long-term care ombudsman program.
- F. "Roommate"** means a patient who shares a room in a facility with a patient who has chosen, or whose surrogate has chosen, to install and use a monitoring device.
- G. "Surrogate"** means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a patient.
- [9.2.23.7 NMAC - Rp, 9.2.23.7 NMAC, 09/23/2025]

**9.2.23.8 AUTHORIZATION AND USE OF A MONITORING DEVICE:**

- A.** A patient or surrogate may authorize installation and use of a monitoring device in a facility provided that:
- (1) the facility is given notice of the installation on a form prescribed by the department;
  - (2) if the monitoring device records activity visually, such recording shall include a record of the date and time;
  - (3) the monitoring device and all installation and maintenance costs are paid for by the patient or surrogate;
  - (4) written consent is given by each roommate or each roommate's surrogate on a form

prescribed by the department;

(5) the monitoring is conducted in accordance with any limitation placed on it as a condition of consent by a roommate or the roommate's surrogate; and

(6) if a roommate or the roommate's surrogate also wishes to install and use a monitoring device, the patient or surrogate consents to the installation and use on terms that are no more restrictive than any that have been placed on the patient's or surrogate's installation and use.

**B.** A patient or surrogate may establish and a facility shall accommodate limits on the use, including the time of operation, direction, focus or volume, of a monitoring device.

[9.2.23.8 NMAC - Rp, 9.2.23.8 NMAC, 09/23/2025]

#### **9.2.23.9 INSTALLATION AND USE OF A MONITORING DEVICE:**

**A.** At the time of admission to a facility, a patient shall be offered the option to have a monitoring device, and a record of the patient's authorization or choice not to have a monitoring device shall be kept by the facility and shall be made accessible to the program.

**B.** After authorization, consent and notice, a patient or surrogate may install, operate and maintain a monitoring device in the patient's room at the patient's or surrogate's expense. The patient or surrogate is responsible for all costs associated with installing, operating and maintaining the monitoring device, except the cost of electricity.

**C.** A patient or surrogate is responsible for selecting the type of monitoring device that will be used in the patient's room. If the patient or surrogate chooses to install a monitoring device that uses Internet technology, the monitoring device must have at least 128-bit encryption and enable a secure socket layer ("SSL").

[9.2.23.9 NMAC - Rp, 9.2.23.9 NMAC, 09/23/2025]

**9.2.23.10 ACCOMMODATION BY FACILITY:** A facility shall cooperate to accommodate the installation of a monitoring device, provided the installation does not place undue burden on the facility.

**A.** Reasonable accommodation includes, but is not limited to, the following:

(1) providing a reasonably secure place to mount a monitoring device;

(2) providing access to power sources, if feasible;

(3) rearranging a room, if feasible;

(4) accommodating the limits a patient or roommate, or a surrogate of either, may place on the use of a monitoring device, if feasible;

(5) referring a patient or surrogate to potential roommates or surrogates of roommates who have indicated on a current patient authorization form that they would consent to monitoring if a current roommate or surrogate of a roommate withholds consent; and

(6) allowing patients, roommates and potential roommates to change rooms, when feasible, in those cases where consent is an issue.

**B.** Undue burden includes, but is not limited to, making structural changes to a room by anyone other than a licensed contractor, or a non-licensed person approved by the facility.

**C.** If a patient or surrogate chooses to install a monitoring device that uses Internet technology for visual monitoring, a facility shall allow the patient or surrogate to install any necessary Internet access line(s), if feasible. This may require access to the facility's telecommunications or equipment room, and the facility shall provide such access. In addition:

(1) a patient or surrogate is responsible for contracting with an Internet provider and for any expense for activation, installation and on-going service; and

(2) the facility is not required to allow Internet access through facility or corporate networks that also maintain confidential patient, medical, financial or personnel records.

**D.** A facility has the burden of proving that a requested accommodation is not feasible or constitutes an undue burden.

**E.** A facility may impose a refundable damage deposit of up to \$150 to cover the cost of repairing any damages to the facility caused by the installation or removal of a monitoring device. Within 30 days after the removal of a monitoring device, the facility shall deliver to the patient or surrogate a written statement itemizing any deductions from the deposit together with the balance of the deposit. The facility has the burden of proving that any deductions from the deposit are reasonable.

[9.2.23.10 NMAC - Rp, 9.2.23.10 NMAC, 09/23/2025]

#### **9.2.23.11 CONSENT OF PATIENT:**

**A.** Consent to the authorization for the installation and use of a monitoring device may be given only by a patient or surrogate.

**(1)** If a patient has capacity to consent, only the patient may do so, notwithstanding the terms of any durable power of attorney, advance health-care directive, or similar instrument.

**(2)** If a patient does not have capacity to consent, only the patient's surrogate may give consent. If there is a dispute among surrogates within the same priority class under the Uniform Health-Care Decisions Act, none of them can give consent.

**(3)** A patient is presumed to have capacity to consent unless the patient has been determined to be incapacitated by a court of competent jurisdiction or by two qualified health-care professionals, one of whom shall be the primary physician, in accordance with the terms of the Uniform Health-Care Decisions Act.

**B.** Consent to the authorization for the installation and use of a monitoring device shall include a release of liability for the facility for a violation of the patient's right to privacy insofar as the use of the monitoring device is concerned.

**C.** A patient or surrogate may reverse a choice to have or not have a monitoring device installed and used at any time, after notice to the facility on a form prescribed by the department.

[9.2.23.11 NMAC - Rp, 9.2.23.11 NMAC, 09/23/2025]

#### **9.2.23.12 CONSENT OF ROOMMATES:**

**A.** Consent of a roommate to the installation and use of a monitoring device by a patient or surrogate may be given only by the roommate or the roommate's surrogate.

**(1)** If a roommate has capacity to consent, only the roommate may do so, notwithstanding the terms of any durable power of attorney, advance health-care directive, or similar instrument.

**(2)** If a roommate does not have capacity to consent, only the roommate's surrogate may give consent. If there is a dispute among surrogates within the same priority class under the Uniform Health-Care Decisions Act, none of them can give consent.

**(3)** A roommate is presumed to have capacity to consent unless the roommate has been determined to be incapacitated by a court of competent jurisdiction or by two qualified health-care professionals, one of whom shall be the primary physician, in accordance with the terms of the Uniform Health-Care Decisions Act.

**B.** Consent to the authorization for the installation and use of a monitoring device shall include a release of liability for the facility for a violation of the roommate's right to privacy insofar as the use of the monitoring device is concerned.

**C.** A roommate or the roommate's surrogate may condition or limit consent on the use, including the time of operation, direction, focus or volume, of a monitoring device.

**D.** A roommate or the roommate's surrogate may reverse a choice to give, not give, or limit consent at any time, after notice to the facility on a form prescribed by the department.

**E.** If a monitoring device is being used in the room of a patient and a new roommate, who has not yet consented to the use of the monitoring device, moves into the room, monitoring shall cease until the new roommate, or the new roommate's surrogate, has consented in accordance with this section.

[9.2.23.12 NMAC - Rp, 9.2.23.12 NMAC, 09/23/2025]

#### **9.2.23.13 FORMS:**

**A.** The department shall prescribe forms for implementing the Patient Care Monitoring Act and this rule. No facility shall use any forms other than those prescribed by the department.

**B.** A facility shall maintain the original copies of all completed forms relating to a patient for at least three years from the date of the patient's discharge from the facility. The forms shall be accessible to the program at all times.

[9.2.23.13 NMAC - Rp, 9.2.23.13 NMAC, 09/23/2025]

**9.2.23.14 AUTHORIZATION FORM:** The form for the authorization of installation and use of a monitoring device shall provide for:

**A.** consent of the patient or surrogate authorizing the installation and use of the monitoring device;

**B.** notice to the facility of the patient's installation of a monitoring device and specifics as to its type, function and use;

**C.** consent of any roommate, or that roommate's surrogate;

**D.** notice of release from liability for privacy violation through the use of the monitoring device; and

**E.** waiver of the patient's right to privacy in conjunction with the use of the monitoring device.  
[9.2.23.14 NMAC - Rp, 9.2.23.14 NMAC, 09/23/2025]

**9.2.23.15 UNAUTHORIZED USE:** In any civil action against the facility, material obtained through the use of a monitoring device may not be used if the monitoring device was installed or used without the knowledge of the facility or without the prescribed form.  
[9.2.23.15 NMAC - Rp, 9.2.23.15 NMAC, 09/23/2025]

**9.2.23.16 IMMUNITY:** Compliance with the provisions of the Patient Care Monitoring Act shall be a complete defense against any civil or criminal action brought against the patient, surrogate or facility for the use or presence of a monitoring device.  
[9.2.23.16 NMAC - Rp, 9.2.23.16 NMAC, 09/23/2025]

**9.2.23.17 NOTICE TO CURRENT PATIENTS:** Within six months of the effective date of the Patient Care Monitoring Act, all facilities shall provide to each patient or surrogate a form prescribed by the department explaining the provisions of the Patient Care Monitoring Act and giving each patient or surrogate a choice to have a monitoring device installed in the patient's room. Copies of the completed form shall be kept by the facility and shall be made accessible to the program.  
[9.2.23.17 NMAC - Rp, 9.2.23.17 NMAC, 09/23/2025]

**9.2.23.18 NOTICE OF MONITORING DEVICE:** The facility shall post a notice in a conspicuous place at the entrance to a room with a monitoring device that a monitoring device is in use in that room of the facility. The notice shall be posted at the facility's expense and shall state in English and Spanish: "*warning: this room is monitored electronically.*"  
[9.2.23.18 NMAC - Rp, 9.2.23.18 NMAC, 09/23/2025]

**9.2.23.19 PROHIBITED ACTS:** No person or patient shall be denied admission to or discharged from a facility or be otherwise discriminated against or retaliated against because of a choice to authorize installation and use of a monitoring device. Any person who violates this section shall be subject to the provisions of Section 28-17-19 NMSA 1978 and Rule 9.2.21 NMAC.

**A.** The civil penalty for denying a person admission to a facility or for discharging a patient from a facility in violation of this section shall be \$10,000 per occurrence.

**B.** The minimum civil penalty for failing to accommodate the installation of a monitoring device, in violation of Section 9.2.23.10 of this rule, shall be \$1,000.

**C.** The minimum civil penalty for any person other than a patient or surrogate interfering with the use of a monitoring device or destroying a recording made by a monitoring device shall be \$1,000.

**D.** The minimum civil penalty for failing to refund a damage deposit in accordance with the terms of Section 9.2.23.10 of this rule shall be \$500.

**E.** The civil penalties for other forms of discrimination or retaliation that violate this section shall be determined in a manner consistent with Rule 9.2.21 NMAC.

**F** Except for violations of Subsections B, C and D of this section, it is irrelevant whether the installation or use of a monitoring device was authorized in accordance with the terms of the Patient Care Monitoring Act and this rule.

[9.2.23.19 NMAC - Rp, 9.2.23.19 NMAC, 09/23/2025]

**9.2.23.20 CRIMINAL ACTS:** Any person other than a patient or surrogate found guilty of intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.  
[9.2.23.20 NMAC - Rp, 9.2.23.20 NMAC, 09/23/2025]

**History of 9.2.23 NMAC: [RESERVED]**

**History of Repealed Material:** 9.2.23 NMAC, Patient Care Monitoring In Long - Term Care Facilities filed 6/30/2004 effective 09/23/2025.

**Other:** 9.2.23 NMAC, Patient Care Monitoring In Long - Term Care Facilities filed 6/30/2004 Replaced by 9.2.23 NMAC, Patient Care Monitoring In Long - Term Care Facilities effective 09/23/2025.