

**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 (NMALTSO).  
[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:** September 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.