

**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 (NMALTSO).  
[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:** September 23, 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 09/23/2025.

**Other:** 9.2.1 NMAC, General Provisions (filed 6/17/2015) Replaced by 9.2.1 NMAC, General Provisions effective 09/23/2025.