



**Susana Martinez, Governor**  
*Kyky Knowles, Acting Cabinet Secretary*

### Concise Explanatory Statement NMAC 9.2.19

The New Mexico Aging and Long Term Services Department approved, at its 11/22/2017 hearing, to repeal its rule 9.2.19 NMAC, Aging - Long Term Care Ombudsman (filed 1/16/2001) and replace it with 9.2.19 NMAC, Aging - Long Term Care Ombudsman, adopted on 12/13/2017 and effective 12/29/2017. This rulemaking was undertaken as a result of changes to the Older Americans Act of 1965, 42 USC 3001, et seq., and the NM Long-Term Care Ombudsman Act, NMSA 28-17-1 et seq. The purpose of some of the changes to the rules include a new definition for informed consent and clarifying language outlining the duties of the ombudsman to report on suspected abuse. The changes to the rule set standards by which ombudsmen are required to report suspected abuse based on whether a resident of a long-term care facility can provide informed consent, or when the resident is unable to provide informed consent and when there is no surrogate decision-maker. The new rule also adds the definition of surrogate decision-maker to include guardians, legal representatives, fiduciaries authorized by law to act on the resident's behalf, and individuals chosen by the resident to act on their behalf.

This proposed rule was amended to include a public comment received at public hearing, specifically that NMAC 9.2.19.38 B(5) be amended to state, "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." The proposed rule originally stated, "The Department's General Counsel or designee 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." This change to the proposed rule is consistent with 42 U.S.C. 3058 g(d)(2)(c).