



# *Best Practice NOTES*

*On Delivery of  
Legal Assistance to Older Persons*

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Delivery System to Meet Critical Legal Needs of Vulnerable Elders*

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**FOREWORD**

This issue of *Best Practice Notes (BPN)* is devoted to providing guidelines for assessing/evaluating the capacity of a state's legal services delivery system to consistently and reliably deliver high-quality, high-impact legal assistance to vulnerable elders when their basic human needs are at stake. **Key elements** of such an **assessment** include examining the extent to which the delivery system:

- **Targets** limited legal resources--particularly Older Americans Act (OAA) resources--to the **most vulnerable, disadvantaged elders**;
- **Focuses limited resources on priority legal issues** that reflect the most critical needs of target populations in order **to maximize the impact** those resources have on meeting basic necessities (e.g. income, shelter, food, safety, health care), and on protecting essential rights;
- Is **coordinated with other legal and related resources** across the state to minimize duplication of effort, and get the right people to the right level of service on the right issues; and
- Is an **integral part of the aging service network**, so that legal services are recognized as a critical component of aging services.

This BPN is intended to assist state legal services developers, working with their Area Agencies on Aging (hereafter AAAs), OAA legal services providers (hereafter legal providers), and others, in undertaking the important task of assessing their states' delivery systems, and based on results, **building on strengths and addressing weaknesses**. We hope it will be especially helpful to states that received grants for Model Approaches to Statewide Legal Delivery Systems (hereafter MA grants) in 2013 from the Administration on Aging/ Administration for Community Living (hereafter AoA/ACL). Both first-time recipients of MA grants (known as Phase I grantees) and 2013 recipients that had received a prior MA grant (Phase II grantees) are required to conduct assessments of their states' delivery systems. It is suggested that even Phase II states that did a capacity assessment under their earlier grant and are eligible for a waiver from the requirement, may want to redo the assessment in light of changes made to their delivery system under their prior MA grant.

**GUIDELINES  
FOR ASSESSING  
CAPACITY OF A  
STATE’S LEGAL  
SERVICES  
DELIVERY SYSTEM**

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**PART I:  
INTRODUCTION  
TO CAPACITY  
ASSESSMENT**

I.A. Introductory  
Notes

I.B. What Is  
a Capacity  
Assessment?

This article is divided into **three parts**, and includes an **Appendix**:

- **Part I** provides introductory, background information, explores definitional issues and suggests a process to follow in conducting an assessment;
- **Part II** provides the guidelines themselves, describing what aspects of a state’s delivery system need to be explored at the various levels, and explaining why the various aspects are important;
- **Part III** suggests ways of analyzing information/data, reporting on findings, and setting forth approaches to be taken by various players to build on strengths and address weaknesses revealed in the assessment;
- **The Appendix** provides a listing of suggested questions to be pursued in the course of gathering information/data for the assessment.

As discussed further below, the capacity assessment described in this article is focused on the two core components of states’ delivery systems – OAA Title IIIB full-service legal services and statewide senior legal hotlines. It is designed to be comprehensive, and to include the broadest spectrum of important issues and questions to be explored in assessing a state’s delivery system. **It provides a prototype of what would comprise an “ideal” capacity assessment.** We recognize however, that time and resources are limited, and it may not be possible for many states to examine all aspects of the delivery system suggested here. It reflects what TCSG considers as “best practices” regarding capacity assessment, and it is offered as a model toward which states should strive.

Further, it is important to note that the guidelines presented here are intended as a **general descriptive guide and not a finely tuned instrument** for definitive evaluations. Development of such an *instrument* for national use is nearly impossible given the wide variation in delivery systems state-to-state, and differences in what is/is not already known about the systems. We believe, however, that use of the guidelines can lead to a great deal of insight into strengths and weaknesses of any state’s delivery system.

At the start, it is important to address the basic definitional question of what is meant by a capacity assessment.

For purposes of this article, the most relevant<sup>4</sup> dictionary definitions of “capacity” include:

*“1.a. the ability to hold, receive, store or accommodate b. a measure of content ... c. maximum production or output.”<sup>5</sup> and*

*“5: the facility or power to produce, perform, or deploy: capability <a plan to double the factory’s capacity>; also: maximum output <industries running at three-quarter capacity>”<sup>6</sup>*

“Assessment/the act of assessing” is defined as:

*“to make a judgment about (something)” and “to determine the importance, size, or value of <assess a problem>”<sup>7</sup>*

The ease or difficulty of assessing “capacity” depends on the kind of capacity being assessed. Where capacity is being examined in terms of the ability of something to hold or accommodate content, assessing or measuring capacity is not difficult. For example, the capacity of a 2-liter bottle, or the seating capacity of The University of Michigan football stadium (which is 109,901) can be easily assessed. However, where a complex system, a factory for example, is to be

assessed to determine its capacity for production/output, the assessment is much more difficult. And as the complexity and multi-dimensional nature of the system to be assessed increases, the difficulty of assessing capacity increases accordingly. Thus assessing something as complex as a state's legal delivery system to determine its capacity to meet the legal needs of the most needy older persons is very difficult.

Note: We recognize it is possible that parts of a state's delivery system may be operating at lower capacity than that of which they are capable, meaning its *potential* capacity may be greater than the extent to which it is currently being fulfilled. In this article, however, we do not attempt to address *potential* capacity. Rather, we describe how to assess what can be observed, that is, the capacity of the delivery system as it currently operates. Based on assessment findings, recommendations can then be made for building to a higher level.

In light of the above challenges, it is important to note the reasons the term "capacity assessment" is used here. This is the term used by the AoA/ACL in its 2013 Funding Opportunity Announcement (hereafter FOA) for grants for Model Approaches to Statewide Legal Assistance Systems (MA grants)<sup>8</sup>. A specific requirement of those grants is to undertake a capacity assessment of the state's existing delivery system. Because a major impetus for writing this article was to provide guidance to MA grantees in conducting capacity assessments, that is the term used.

I.C. Early Steps  
in a Capacity  
Assessment

I.C.1 Determine  
the Purpose  
of Doing the  
Assessment

As a first step, it is important to consider the *purpose(s)* in undertaking a Legal Services Delivery System Assessment (hereafter Delivery System Assessment). One does not think it strange to periodically evaluate things of value, such as one's financial situation or health. This is typically done to determine whether that thing of value, whatever it is, needs any changes or whether it is functioning in the way it is expected, intended or desired. In the broadest sense, this is the reason for undertaking an assessment of the legal services delivery system --to learn what the system does well, what could be done better, and where changes are needed.

It is important to note that, even if the immediate impetus for undertaking a Delivery System Assessment is to fulfill a grant requirement (as is the case with MA grantees), the purposes underlying the grant requirement need to be considered. As stated in AoA's/ACL's 2013 FOA for MA, the purpose is to "assess the capacity of the current legal service delivery system to meet identified "priority" legal challenges impacting older adults in the most social or economic need and develop recommendations to address systemic weaknesses."<sup>9</sup> This stated purpose fits well with how capacity assessment is defined for purposes of this article.

As used throughout the article, "capacity assessment" means –

*An assessment/evaluation of the existing, and therefore identifiable elements of the legal services delivery system, looking for its strengths and weaknesses from two baseline perspectives. First is to assess it with respect to meeting the goals/purposes of legal services under the Older Americans Act. Second is to assess it with respect to achieving recognized best practices for delivery of legal services. More specifically this means assessing the extent to which the system –*

- *Successfully targets limited legal resources to those in greatest social or economic need, the most vulnerable elders;*
- *Focuses limited resources on priority legal issues that reflect the most critical needs of target populations;*
- *Coordinates with other legal and advocacy resources across the state to maximize impact on the lives/well-being of those it is intended to serve; and*
- *Is an integral part of the aging network, such that legal services are recognized as a critical component of aging services.*

I.C.2. Plan How Findings Will Be Used

The true value of any study lies in the extent to which the results prompt those who are in a position to take action, to take the actions necessary to make needed changes. Thus it is important to consider early on, how the collected data/information will be used, including how various stakeholders in the system can be energized to build on strengths and address weaknesses identified through the assessment. That is, have a specific plan from the start to ensure that findings are used to improve the delivery system to better meet the most critical needs of vulnerable elders. (See Part III on using findings.)

I.C.3. Plan the Scope of the Assessment: Focus First on Two Core Components

Unless substantial, in-depth information already exists about the two key components of the state’s legal delivery system, that is –

1. IIBB full-service legal services and
2. Statewide senior legal hotlines (where a statewide hotline exists),

we suggest that you begin by focusing on these two components as the *core* of the legal delivery system. As you proceed with the assessment, some information about other important components will come to light (e.g. pro bono and reduced fee panels, wills/advance directive clinics, preventive legal education programs, law school clinics, etc.). However, we suggest that you not try to get a complete picture of these other components until you have a solid understanding of the two core components. We believe it is best to work first on strengthening the core, and then assess additional components to see how they support/supplement the core and how they might be improved.

I.D. Importance of the Process and the Players in It

Conducting an assessment is often seen as a task to be undertaken at the state level by the state legal services developer to gather information from AAAs and legal providers. However based on TCSG’s long experience and the experience of advocates and providers in the field, a broader approach is recommended -- one that is *not* “*top down*,” but rather, one that brings together and actively involves key players at all levels of the delivery system.

I.D.1. Process of Inclusion to Get Buy In

It is suggested that such a broad, inclusive approach applies to *all* aspects of strengthening a given state’s delivery system<sup>10</sup>, including capacity assessment. While relying heavily on leadership of the legal services developer, an inclusive approach improves mutual understanding and cooperation between and among the State Unit on Aging/Legal Services Developer (hereafter SUA/Developer), AAAs, legal providers and others and gets their buy-in. Further, it provides a forum for comprehensive assessment that looks not only at how well others are doing in their roles within the system, but also includes self-assessment by each of the key stakeholders on how well they are doing.

I.D.2. Benefits of a Process of Inclusion

Experiences that essential stakeholders such as AAAs, legal providers, and developers have shared suggest that an inclusive approach is much more likely than a top-down approach to lead to *joint efforts to improve the system* based on

findings. They have described problems that seem to be rooted in the formal, arms-length pattern of interaction that often characterizes their working relationships. Without a forum to develop meaningful understanding of the missions, roles, functions and challenges of one another, key stakeholders may be disinclined to work collaboratively to improve the system.

Another concrete benefit is that each of the stakeholders has something unique to contribute, and jointly, they can devise a list of questions/areas to investigate that will lead to a much better picture of the overall system. Further, a better picture of specific pieces of the delivery system can be obtained, and sources of data/information can be better identified by a broad range of stakeholders working collaboratively. Experience has shown that a capacity assessment or other delivery system initiative that does not take an inclusive approach is likely to meet resistance, lack follow through and ultimately have negligible effect.

**PART II:  
DESCRIPTIVE  
GUIDELINES FOR  
CONDUCTING  
A CAPACITY  
ASSESSMENT**

Any capacity assessment -- whether it is of the two core components as we suggest above or a more advanced assessment of additional components -- should examine the delivery system at three levels. Thus (with the exception of the section on “Targeting, Priority Setting and Outreach” in II.B. below), the Guidelines are divided into three sections to address each of the following three levels:

II.A. Organizational Structure

- Guidelines for Assessing Capacity at the **SUA/Developer Level** (Section II.C.);
- Guidelines for Assessing Capacity at the **AAA Level** (Section II.D.); and
- Guidelines for Assessing Capacity at the **Legal Provider Level** (Section II.E.).

II.A.1. Guidelines Divided into Three Sections Around Three Levels to Be Assessed

It is important to note however, that although there are different roles and responsibilities to examine at each of the three levels, they are all interlinked and must come together to function as a whole. Thus, particular focus should be placed on the state legal services developer, and her/his ability to pull together findings, make recommendations and provide needed leadership to improve the system overall and ensure that it meets essential legal needs of the most needy.

II.A.2. Two Bases for Assessment: OAA Compliance & Best Practices

In addition to organizing the Guidelines into three sections around the three levels to be assessed, each of the three sections is further divided into two subsections.

- The first subsection provides guidelines for assessing each of the three levels against requirements of the **Older Americans Act, which must serve as the touchstone** for any legal delivery system assessment.
- The second subsection provides guidelines for assessing each of the three levels **in light of recognized “best practices.”**

II.B. Guidelines for Assessing Targeting/Priority Setting/Outreach

As noted, the one exception to the organizational structure described above is the discussion of OAA requirements for targeting, priority setting and outreach. Because they are so critical to legal delivery systems, and because they are essential at all three levels – SUA/ Developer, AAAs, and legal providers -- we provide one overall discussion of these OAA requirements and how to assess for compliance.

II.B.1. OAA Targeting

The OAA is very clear that services must be targeted. Throughout the Act, there are clear and strong directives to SUAs, AAAs, and service providers to assure

Requirements  
Generally

that services are effectively targeted to particular needy populations. In each reauthorization, including the most recent in 2006, Congress has substantially strengthened targeting requirements. Thus a first step in assessing the delivery system is to evaluate the effectiveness of all three levels in reaching and serving those in greatest need. A few examples of provisions in the Act include:

Section 305 regarding organization of the State and designation of AAAs requires the State agency to “*provide assurance that preference will be given to providing services to older individuals with greatest economic need . . . greatest social need (with particular attention to low-income . . ., including low-income minority . . ., older individuals with limited English proficiency, and older individuals residing in rural areas) . . .*”<sup>11</sup>

Each area agency is required to develop a plan to provide a comprehensive and coordinated system of services, including determining the need for such services. In assessing need, AAAs must consider the number of older persons in greatest economic and social need, with particular attention to low-income individuals, low-income minority, those with limited English proficiency, those residing in rural areas, those at risk for institutional placement and those who are Indians.<sup>12</sup>

With regard to service providers, AAAs are directed to --

- (aa) *set specific objectives . . . for providing services to older individuals with greatest economic need, older individuals with greatest social need, and older individuals at risk for institutional placement;*
- (bb) *include specific objectives for providing services to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas; and*
- (II) *include proposed methods to achieve the objectives described in items (aa) and (bb) of subclause (I).*<sup>13</sup>

They are further directed to enter into agreements with a variety of service providers to meet identified need, and to include in every agreement for services, including legal, a requirement that each provider will specify how it intends to satisfy service needs of the target groups.<sup>14</sup>

II.B.2. Targeting  
Requirements  
Stronger for  
Legal Services

Beyond assessing compliance with general OAA targeting requirements, it is important to remember that the obligation to target *legal services* is even greater than for other OAA services. This is because the Act’s definition of legal assistance includes a targeting requirement, and it is the only service definition to include such a requirement. The definition is “*legal advice and representation . . . to older individuals with economic or social needs*”;<sup>15</sup> (emphasis added)

II.B.3. Means  
Testing  
Prohibited

Equally important is to remember that, while targeting requirements are stressed throughout the OAA, the use of “means testing” (looking at income and assets) to determine eligibility for services is strictly prohibited.<sup>16</sup> Thus the assessment needs to examine carefully whether means testing is being used, as well as the extent to which other means of achieving targeting are in place.

II.B.4. Priority  
Setting

One of the most effective ways to achieve targeting without means testing is to clearly establish legal issue areas to receive priority for services given limited resources. Simply stated, priority setting is the identification by SUA, AAAs, and legal providers of specific types of life problems that are most critical to the various target groups for meeting their basic needs (e.g. income, shelter,

nutrition, health care), on which legal services can have meaningful impact. These life problems are translated into legal issues, which become the issues that receive highest priority for limited legal resources.<sup>17</sup>

A basic guide for priority setting is provided in the 11 broad case priorities set forth in the OAA – income; health care; long-term care; nutrition; housing; utilities; protective services; defense of older persons against guardianship; abuse, neglect; and age discrimination.<sup>18</sup> Under these broad areas, specific needs of target groups in the state/area should be delineated and widely publicized as areas in which legal services can be provided.

Note: A particularly important issue in priority setting is guardianship. Appropriate roles for IIB legal providers under the Act are defending older persons against guardianship or terminating guardianship, and in only limited circumstances, representing an older person (60+) petitioning for guardianship.<sup>19</sup> Thus it is extremely important in an assessment to explore the actual roles legal providers are taking.

Also Note: An equally important issue arises from the fact that there has recently been a push for legal services to place greater priority on cases involving elder abuse, neglect and financial exploitation. While these cases are very important, they are often very complex and time consuming and involve thorny ethical challenges. Substantial planning and development of policies and procedures need to occur before legal programs attempt to serve this highly vulnerable population.

#### II.B.5. Strategic Outreach

To further underscore the importance of targeting, the Act describes responsibilities of SUAs and AAAs in ensuring and undertaking strategic outreach to needy target populations. It is likely that some older persons do not perceive the legal nature of their life problems, and may see only wills and advance planning issues as requiring legal assistance. They may not view problems concerning Social Security, SSI, Medicare, Medicaid, nursing homes, consumer problems, housing and veterans' benefits as having legal ramifications. Thus a quality legal delivery system must have a carefully developed outreach and community education program to assist older persons to recognize existing or potential legal problems. The OAA recognizes this and requires SUAs to undertake outreach to identify individuals in the target groups and inform them and their caregivers of availability of services.<sup>20</sup> AAAs are similarly directed to use outreach efforts specifically geared to identifying individuals in the target groups and to inform them and their caregivers of the availability of services.<sup>21</sup> Outreach efforts by both the SUA/Developer and AAAs must be closely coordinated with efforts by legal providers. These outreach efforts must be carefully examined in a capacity assessment.

#### II.C. Guidelines for Assessing Capacity at the SUA/ Developer Level

Beyond assessing the SUA/Developer with respect to Targeting, Priority Setting and Outreach described above, there are other important OAA requirements against which the SUA/Developer must be assessed.

#### II.C.1. Assessing SUA/Developer for OAA Compliance

One of the most important determinants of a high-quality, high-impact legal delivery system is strong leadership by the state legal services developer.<sup>22</sup> Thus assessment of the SUA must begin here. The OAA calls for state leadership by the developer in two places.

*II.C.1.a. OAA  
Requirements for  
Leadership by  
Legal Services  
Developer*

First, in the State Plan Section, Title III requires that “[t]he plan shall provide assurances that each State will assign personnel (one of whom shall be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State.”<sup>23</sup>

Second, Chapter 4 of Title VII (Vulnerable Elder Rights Protection) reinforces this by stating that “[a] State Agency shall provide the services of an individual who shall be known as a State legal assistance developer, and the services of other personnel sufficient to ensure – (1) State leadership in securing and maintaining legal rights of older individuals; ...”<sup>24</sup>

A few examples of state leadership that developers should be providing include:

- Working with IIIB providers and AAAs to coordinate IIIB services with LSC, P&A, pro bono, hotlines, ombudsmen, and others to improve the quality and quantity of legal services statewide, and to conduct cross training, conferences, and other educational projects;
- Determining need and providing/arranging for education and training for attorneys, volunteers, older persons and others on elder rights, and legal issues;
- Determining need and providing/arranging for TA and regular communication forums for AAAs, legal providers and other elder rights advocates on the legal delivery system;<sup>25</sup>
- Staying abreast of emerging trends and changes in Federal and State law/regulation which affect elder rights, and assuring that SUA staff, legal providers, AAAs and others have adequate information/understanding to assist older persons in understanding their rights, benefiting from services/opportunities authorized by law, and maintaining rights of elders at risk of guardianship; and
- Providing leadership and guidance for legal providers to coordinate with the long term care ombudsman program at the local level, including on conflicts of interest, case acceptance and referral procedures and protecting confidentiality. The developer should also work with the State Ombudsman to develop policies and procedures to protect the integrity and confidentiality of both programs, when legal and ombudsman programs are housed in the same agency.

**Important Caveat re Leadership of State Developer.** In assessing a state’s legal services developer, an extremely important caveat must be stressed. Unlike the State LTC Ombudsman and State Abuse Prevention Programs, there is no funding under Title VII for the Legal Assistance Development Program. Thus, what any particular developer realistically can do depends on the support – financial and other – that she/he receives from the SUA. Due to the lack of funding, many developers have to wear a number of different hats, which leaves little time for legal development work. So while it is important to evaluate the SUA/developer as part of a capacity assessment, it is equally important to remember, at every step, the serious limits under which many developers work. Failure of a legal services developer to fulfill all OAA mandated tasks may not be a reflection on the individual LSD, but rather a reflection on the resources and support available to that office. Ideally the findings of the assessment will be put to use in advocating for funding/resources for the developer position.

*II.C.1.b. Other OAA Requirements for the SUA/Developer*

Beyond targeting and leadership, the OAA establishes other requirements for the SUA/Developer that should be examined. These include:

- Specifying a minimum proportion of IIIB funds received by each AAA that each AAA must expend (in the absence of a waiver) for each of the three priority services --legal, access and in-home.<sup>26</sup>
- Overseeing the waiver process to ensure the SUA grants a waiver *only* when the AAA truly demonstrates that legal services being furnished are sufficient to meet the need and after the AAA has conducted a timely public hearing upon request.<sup>27</sup>
- Assuring in its state plan (and then monitoring to be sure AAAs are complying) that AAAs enter into contracts with legal provider grantees: 1) with experience/capacity to deliver needed services; 2) that grantee's program is designed to serve elders with social or economic need; 3) that grantee, if not LSC, will coordinate with LSC projects; and 4) that the AAA makes a finding that grantee is the best entity to provide legal services.<sup>28</sup>
- Issuing guidelines on grievance procedures that AAAs and legal providers must have in place for older persons dissatisfied with, or denied, services.<sup>29</sup>

An extremely important, though often overlooked, requirement is that the SUA include a broad elder rights plan<sup>30</sup> as part of its State Plan. Title VII directs SUAs, in consultation with AAAs, to identify and prioritize statewide elder rights activities to secure/maintain benefits and rights of vulnerable elders.<sup>31</sup> In developing and carrying out its elder rights plan, the SUA should look to the legal services developer who is in a unique position to identify patterns of recurring problems where systemic change in policy, law or procedure is needed, as well as high priority legal issues that call for coordinated elder rights efforts statewide.

*II.C.2. Evaluating the SUA/Developer Against Recognized Best Practices*

Below we discuss roles and responsibilities of the SUA/developer -- beyond OAA requirements -- that should be examined. Neither time nor space allows a thorough discussion of the many areas where leadership/action by the SUA/developer are needed, thus we discuss those we consider most essential.

*II.C.2.a. Basic Knowledge of Overall Delivery System*

Most basic is to assess the extent of knowledge/understanding the developer has of the *overall delivery system and its component parts*, as well as the extent to which the developer oversees and guides the system. At minimum, the developer should have current information on:

- Who is/are the provider(s) with which each AAA contracts, and what types of entities are they – LSC program, non-LSC legal aid, private attorney, law school clinic, etc.?
- What level of funding is provided by each AAA to each provider, and does the IIIB funding meet the minimum percentage?
- Does funding include funds beyond IIIB, and if so, what are those other funding sources?
- Are there any waivers granted by the SUA, and were proper procedures followed by the SUA in granting the waiver?
- To what extent do various providers have an identifiable elder legal services component, e.g. attorney/paralegal focused on serving elders? Or does Title IIIB funding go to the legal program and then program attorneys with different areas of expertise (e.g. housing, Social Security/SSI) are assigned cases according to the legal issues presented, so that there is not an identifiable elder services program?

To the extent such basic information is not known, a major recommendation is that the developer collect it.

*II.C.2.b. Leadership in Fostering Best Practices*

At an even broader level, the developer's leadership in fostering a policy framework for programmatic direction and operation of the delivery system statewide needs to be assessed. The developer should work with AAAs and providers to establish programmatic goals, objectives, outcomes and strategies for obtaining them. A recommended forum for creating and implementing such a policy framework is for the developer to convene key players in the delivery network to examine strengths and weaknesses of the existing system from their various perspectives, and then jointly create a vision of what they would like the system to be. Based on this vision, Statewide Standards for Delivery of Legal Services are jointly developed. Standards are essentially a set of policy guidelines which describe/define essential elements of a high-quality, high-impact delivery system to address the most critical legal needs of the state's most vulnerable seniors, and which set out key roles and responsibilities of the major players in the system. In some states Standards are known as Guidelines or Best Practices. But whatever their title, the developer's leadership in creating and implementing/enforcing them is key.

There are also a number of important tools related to standards on which the developer should take the lead, which can significantly enhance the overall delivery system and provide important assistance to AAAs in selecting and contracting with providers. These include for example:

- A sample Request for Proposals (RFP) for use by AAAs and selection guidelines to assist AAAs in choosing the entity best able to provide needed services; and
- Tools for monitoring Title IIIB legal assistance programs.

The developer should work with AAAs and legal providers on methods to be used for potential clients to access legal services. It is recommended that potential clients have direct access to the legal provider rather than being required to go through the AAA or ADRC, as this compromises confidentiality and could dissuade some from seeking legal assistance. This is not meant to discourage referrals from AAAs/ADRCs, but to discourage that avenue being the only/primary method of accessing legal services.

One very important area where the developer needs to provide leadership, but that is often overlooked and is missing from most state standards, is in the development of a transition protocol to guide situations where there is a change in legal providers within a AAA region. The developer should also monitor any transition to see that the protocol is followed and that all existing clients are taken care of.

*II.C.2.c. Leadership in Statewide Reporting*

Related to Standards, and equally important to assess, is the developer's leadership in developing/implementing uniform statewide reporting. This is extremely important to reducing/eliminating burdensome reporting that may be required by individual AAAs and to establish and maintain a system for meaningful reporting that can accurately capture:

- ✓ client characteristics to show the extent to which target populations are being reached/served;
- ✓ types of, and extent to which, priority legal issues are being addressed;

- ✓ levels of service being provided; and
- ✓ impact or outcomes for older persons receiving service.

The assessment should also look at the extent to which the developer is actually using the reported information, for example:

- ✓ compiling and sharing information statewide;
- ✓ using it to build support and understanding of the importance of legal services and expand resources for the services; and
- ✓ compiling and disseminating an annual report for policy makers and others that “paints the picture” of the critical impact legal services have on the lives and well being of vulnerable, target populations.<sup>32</sup>

*II.C.2.d. Limitations and/or Conflicts of Interest*

The ability of the developer to work effectively on behalf of the state’s elders requires that she/he operate independently, confidentially and free from conflict or compromise. Thus, the assessment should look at any limitations and any real or potential conflicts that are placed on the developer by the SUA/AAAs or that result from having to wear a number of different hats. For example, an improper conflict of interest may result from the developer simultaneously serving as legal counsel for the SUA, since the counsel’s duties as attorney for the state could easily interfere with the developer’s duties to ensure that the legal assistance system protects older persons who may be harmed by the state’s programs or operations.

II.D. Guidelines for Assessing Capacity at the AAA Level

**Note:** *If a state has no AAAs and the SUA functions both as the state agency and area agency, the following information should be gathered about the state agency functioning in its capacity as area agency for the entire state.*

II.D.1. Assessing AAA Compliance with OAA Requirements

Beyond assessing the AAAs with respect to Targeting, Priority Setting and Outreach described above, there are other important OAA requirements against which the AAAs must be assessed.

Paralleling the SUA/developer requirement, AAAs are mandated<sup>33</sup> to expend at least the minimum percentage of their IIIB funds set by the SUA on each of Act’s three priority services: access, in-home, and legal assistance. To obtain a waiver, the AAA must demonstrate to the SUA that legal services being furnished in the area are sufficient to meet the need, and must conduct a timely public hearing upon request.<sup>34</sup> The capacity assessment should examine the level of IIIB funding provided by each AAA to its providers and if a AAA has received a waiver, did the AAA follow proper procedures?

AAAs have specific requirements regarding provision of legal assistance and selecting providers, and they must assure the SUA in their area plans that they will comply with these requirements. The requirements include that the AAA:

- Will contract only with legal providers that demonstrate experience or capacity to deliver needed legal assistance to elders with social or economic need; that if the grantee is not an LSC grantee, it will coordinate with existing LSC projects in the area; and that it agrees to be subject to specific restrictions and regulations promulgated by LSC, and adopted as regulation by the Assistant Secretary for Aging;
- Makes a finding, after assessment that the grantee selected is the best entity

to provide the services;<sup>35</sup>

- Will work with its legal provider(s) to involve the private bar, including groups furnishing services on a pro bono and reduced fee basis;
- Must honor lawyer-client confidentiality/privacy and may not require a legal provider to reveal any client identifying information;<sup>36</sup> and
- Must have in place, and ensure that providers have in place a grievance procedure for older persons dissatisfied with, or denied, services.<sup>37</sup>

#### II.D.2. Evaluating AAAs Against Recognized Best Practices

Beyond OAA compliance, AAAs have responsibility for a number of service delivery issues against which they should be assessed. To the extent that basic information described above in Section II.C.2 (e.g. with whom/what agency does each AAA contract?) is not already known, the assessment must gather and evaluate this information for each AAA.

In states that have Statewide Standards for Delivery of Legal Assistance and accompanying tools to assist AAAs (e.g. sample RFP, sample monitoring tool, uniform statewide reporting), the Standards and accompanying tools can provide a framework against which AAAs should be assessed. With or without standards however, basic roles/responsibilities against which AAAs should be assessed include:

- Monitoring performance of legal providers (using any monitoring instrument developed for statewide use);
- Assuring adequate reporting by providers on client demographics, types of legal issues handled; level of service provided, case scenarios and indicators of impact that legal services have on the lives and well-being of vulnerable elders (using any statewide reporting system developed and not adding additional burdensome reporting requirements) and supplying reported information to the developer;
- Utilizing a sample RFP and contract for legal services to assure some uniformity of services provided from area to area;
- Working with providers and the legal services developer to enhance financial resources for legal services beyond Title III B;
- Undertaking activities, in collaboration with providers and the developer to obtain private bar involvement;
- Assuring that providers have no conflicts of interest that might interfere with ability to reach and serve the most vulnerable elders;
- Assuring that providers have procedures for assessing client satisfaction;
- Working with providers and the developer to develop and conduct: strategic targeted outreach and preventive education to help vulnerable elders avoid legal problems;
- Assuring that legal services are seen as an essential and integral component in the aging service network.

As was described for the developer under Sec. II.C.2.b. above, AAAs also have responsibility for working with the developer and legal providers on ways for potential clients to access legal services. We recommend that they have direct access to the legal provider rather than being required to go through the AAA/ADRC, as could dissuade some from seeking legal assistance. This is not meant to discourage AAAs/ADRCs from making referrals, but to discourage that being

the only/primary avenue for accessing services. A protocol should be in place to guide AAAs so that the referral process is effective, while it also respects and protects the privacy/confidentiality of the elder and her/his legal issue.

Also as with developers, an extremely important, though often overlooked, area in which AAAs should be assessed is related to transition from one legal provider to another. There needs to be statewide policy/guidance for a AAA to follow in making such a change, and it needs to be as seamless as possible so that all clients are served and protected throughout the transition.

## II.E. Guidelines for Assessing Capacity at the Legal Provider Level

This section on Legal Services Providers addresses both IIIB full-service providers and legal hotline providers. Because the OAA does not address hotlines specifically, the first subsection on OAA compliance addresses only IIIB full-service providers.

### II.E.1. Assessing IIIB Full-Service Legal Provider Compliance with OAA Requirements

Beyond the important targeting requirements discussed above, the OAA contains limited provisions that set direct requirements for IIIB full-service legal providers. Most requirements affecting IIIB providers are directed to SUAs and AAAs and have been discussed above. For example, a IIIB legal provider:

- Must have experience/capacity to deliver needed legal assistance to elders with social or economic need;
- If not an LSC grantee, it must coordinate with existing LSC projects, and agree to be subject to specific restrictions and regulations promulgated by LSC, and adopted as regulation by the Assistant Secretary;<sup>38</sup>
- Must work with its AAA to involve the private bar, including pro bono and reduced fee programs;
- Must have in place a grievance procedure for older persons dissatisfied with, or denied, services, and inform all clients of the procedure.<sup>39</sup>

Direct requirements that do exist for IIIB providers in the OAA include:

- They must provide “legal assistance” as defined in the OAA, which is:
  - (A) . . . *legal advice and representation provided by an attorney to older individuals with economic or social needs; and*
  - (B) *includes—*
    - (i) *to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and*
    - (ii) *counseling or representation by a nonlawyer where permitted by law.*<sup>40</sup> (emphasis added)

Not only does this definition include the specific targeting provision discussed above, it specifies it must include representation. That is, a legal program that provides only advice, counsel, and/or education clearly does not meet the definition. It further specifies that the advice and representation must be by an attorney though it may also include counseling and assistance by a paralegal/law student under direct attorney supervision, and counseling/representation by a non-lawyer where permitted by law (e.g. in Social Security Administrative Hearings). If services are provided *only* by paralegals, law students, or non-lawyers, the legal provider is not providing legal assistance as defined in the Act. (“Representation” is not defined in the OAA, thus the question of what constitutes representation is discussed below.)

- They must follow strictures on contributions for services. Contributions are allowed, but providers must solicit them in a way that is non-coercive, and all collected contributions must be used to expand legal services and supplement (not supplant) IIIB funds.<sup>41</sup>
- They must also coordinate with the long term care ombudsman program at the local level, in conformance with statewide policies on such things as conflicts of interest, case acceptance and referral procedures and protecting confidentiality. When legal and ombudsman programs are housed in the same agency, IIIB providers need to follow statewide policies and procedures to protect the integrity and confidentiality of both programs.

The OAA Regulations also set requirements for legal providers. They address topics such as: outside practice of law by provider staff; prohibition of certain political activities; handling of fee-generating cases; etc. Space does not permit an examination here; they can be found at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr\\_1321\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr_1321_main_02.tpl)

II.E.2 Assessing  
Legal Providers  
Against Recognized  
Best Practices

This section first addresses IIIB full-service providers and then addresses senior legal hotlines.

*II.E.2.a. Assessing  
Full-Service IIIB  
Providers Against  
Recognized  
Best Practices*

Those selected as IIIB legal providers should have been selected because they have been found to be the “best entity,” meaning that they have the experience and capacity to provide legal assistance to older individuals in social or economic need, as well as to fulfill the contract requirements in the particular service area. Each IIIB legal provider’s capacity should be reviewed and assessed separately and apart from any other IIIB legal provider, even if they are all part of the same parent organization. The following areas, many of which parallel areas to be assessed for AAAs and SUAs, provide some guidance on that review.

As with AAAs, in states that have Statewide Standards for Delivery of Services, and accompanying tools to assist AAAs and providers (e.g. uniform statewide reporting, etc.) the Standards and accompanying tools can provide a framework against which IIIB full-service providers should be assessed. However, with or without standards, basic roles/responsibilities against which Title IIIB providers should be assessed include:

- Extent to which direct representation of vulnerable clients is the primary focus of the IIIB program, as opposed to other activities such as community legal education;
- Program staff have experience and training in the priority areas of law set forth in the OAA/state standards and there is an established mechanism for training new staff, for periodic training of existing staff, and providing opportunities for outside training;
- Extent to which services to vulnerable elders is a clearly identifiable part of the provider’s program, rather than being subsumed under the primary funder’s identification, e.g. Legal Services Corporation;
- All program attorneys are licensed to practice in the state (unless the state allows for some limited practice for unlicensed attorneys);
- All paralegals and non-lawyer program staff (including attorneys licensed in other jurisdictions or not yet licensed) operate under direct and regular supervision of an identified, licensed attorney;

- Program staff are knowledgeable about and adhere to Rules of Professional Conduct of the State Bar;
- Program has an established mechanism for formal staff evaluations;
- Program provides reporting on demographics of clients served, types of legal issues handled, level of service provided, and case scenarios demonstrating the impact legal services have on the lives and well-being of the most vulnerable elders along with “indicators of impact”/outcomes that demonstrate the effect and impact the provision of legal services had on clients, such as benefit dollars obtained and dollars avoided or saved for clients (using any statewide reporting system developed), and supplying reported information to the developer as well as AAAs;
- Program has and utilizes clear policy/procedures to guard against conflicts of interest that might interfere with ability to reach and serve the most vulnerable elders and/or to serve a particular client, and for evaluating the potential for conflict in particular circumstances; and
- Program coordinates with the long term care ombudsman program at the local level, according to guidance from the developer addressing such things as conflicts of interest, case acceptance and referral procedures and protecting confidentiality. When legal and ombudsman programs are housed in the same agency, as is frequently the case, the legal provider should follow policies and procedures to protect the integrity and confidentiality of both programs.

As discussed above for the developer and AAAs, IIIB legal providers should work with them on methods for potential clients to access services. As above, we recommend that potential clients have direct access to the legal provider rather than being required to go through the AAA/ADRC. This is not meant to discourage referrals from AAAs, but to discourage that being the only/primary avenue. Providers need to have a protocol in place, so that the referral process is effective and respects/protects the privacy/confidentiality of the elder and his/her/their legal issue.

Further as discussed above for developers and AAAs, an extremely important area in which legal providers should be assessed is related to transition from one provider to another. When there is a change of providers, the exiting provider should provide a full accounting of the status of the program/cases, and any cases that remain open. And the exiting provider must either commit to close out any open cases or ensure that clients are clearly informed about the transition before files are transferred to the new provider. The exiting and new providers should coordinate for as seamless a transition as possible, and they must keep the AAA informed of progress and when it is complete, so that the AAA can conduct any final exit interview for final payment to the exiting provider.

There are also a number of important roles/responsibilities that providers should undertake in collaboration with AAAs and the SUA/legal services developer and against which they should be assessed, including the extent to which they work jointly --

- To ensure that legal services are seen as an essential and integral component in the aging service network;
- To enhance financial resources for legal services beyond Title IIIB;

- To develop a method for surveying client satisfaction, while assuring the client's right to confidentiality;
- In monitoring the program (using any monitoring instrument developed for statewide use);
- To obtain private bar involvement (PBI), through pro bono and reduced-fee services, establish clear policies and procedures for incorporating the use of volunteer and/or retired attorneys, and receiving assistance/partnering with large law firms and/or corporate legal departments;
- To develop and conduct preventive education to help vulnerable elders avoid legal problems; and
- On broad elder rights issues where systemic change in policy, law or procedure is needed, as well as high priority legal issues that call for coordinated efforts area-wide and/or statewide.

**Issue of Representation.** As mentioned above, the definition of legal assistance in the OAA states that it must include representation; provision of advice only is not sufficient to meet the definition. Because the OAA does not define "representation," some discussion of what constitutes representation is in order.

What constitutes representation for IIIB legal services, must be examined in the context of --

- those to be specifically targeted for services, and
- the critical and complex nature of the legal issues which are to receive priority under the Act.<sup>42</sup>

In this context, it seems clear that Title IIIB legal programs must be able to provide direct and full representation to the target populations who are often those least able to advocate on their own behalf.

This is supported by the *2006 ABA Standards for Provision of Civil Legal Aid*<sup>43</sup> (hereafter ABA Standards) which were designed to provide guidance/best practices to providers of civil legal aid seeking to provide high quality legal representation.<sup>44</sup> Section 3 of the ABA Standards is devoted to *Standards Regarding Provider Effectiveness*, and it includes lengthy discussions of Full Representation and Limited Representation.

Standard 3.1 is devoted to Full Representation and discusses situations/circumstances where full representation is called for. The Commentary on Standard 3.1 describes what constitutes full representation. It states:

*There are many issues that clients confront that cannot be resolved favorably without full representation. Full representation involves 1) identifying the client's legal problem, 2) determining the client's objective and 3) pursuing that objective rigorously throughout the matter at hand.*

It goes on to say:

*Full representation is called for when the facts and law are complex, the forum is particularly challenging for litigants or the client is unlikely to be able to handle the issue alone because of language or cultural barriers, emotional factors or a disability. The importance of full representation also increases in relation to the potential gravity of the loss... or the significance of the benefit to be gained ....*<sup>45</sup>

In light of the populations to be targeted under the OAA (the most needy/vulnerable, those with limited English proficiency, rural, etc.) and the critical and complex nature of the priority legal issue areas specified in the OAA (housing, income, defense against guardianship, abuse, etc.), Standard 3.1 would indicate that full representation must be available from Title IIIB legal programs.

*II.E.2.b. Evaluating Senior Legal Hotline Providers Against Recognized Best Practices*

Senior Legal Hotlines can play an important role within legal service delivery systems as they are designed to provide a limited scope of legal assistance to a large number of elders at a low cost. The capacity assessment must examine the following:

- Range of legal issues handled and levels of service provided.
- Demographic characteristics of older persons being served.
- “Indicators of impact”/outcomes for hotline clients. It is important to remember that outcomes should be limited to that which can be known at the time of case closure and will not require later follow up (i.e. they should not include a projected outcome that is contingent on the client actually following through on advice given). They should reflect the immediate and direct impact of the delivered assistance on the lives/well being of clients served.
- Staffing, including the use of volunteers, and operations. If staff are not physically together at a particular “site” there should be a process for coordination/communication (e.g. staff meetings via conference call, scheduled time for staff to meet physically; regular protocol for case reports/reviews, etc.) If volunteers are used, examine the process for training/keeping them updated, and supervising them; if they work “off site,” look at how they are monitored, and the process for coordination/communication.
- Referral protocols. Are referrals made to (1) IIIB legal providers, (2) pro bono attorneys, (3) private attorneys who will charge a fee, (4) others? How are the referrals made, e.g. direct referral to the attorney/warm hand off or older person given a name/phone number to contact? Does hotline conduct follow up? How is “informed consent” addressed, and does the referral protocol address the issues of privacy/confidentiality?

Beyond the issues described above, the limited scope of legal assistance that hotlines are designed to provide raises a number of important issues to be examined. The ABA standards address these issues and offer a number of important cautions with regard to limited representation programs. These cautions need to be carefully considered as part of your initial capacity assessment and periodically re-evaluated.

The ABA Standard devoted to limited representation is 3.4. It states:

*A provider may limit its representation to specific tasks and activities undertaken on a client’s behalf, if the limited representation is reasonable under the circumstances and the client knowingly consents to the limitation.<sup>46</sup> (emphasis added)*

Regarding what is “reasonable under the circumstances,” the following guidance is offered in the Commentary to Standard 3.4:

*A provider’s decision ... is reasonable when the assistance is likely to benefit clients ... and the types of cases in which limited representation is offered are appropriate.<sup>47</sup>*

...  
*Because limited representation usually relies on clients taking action to assist themselves, it is important that the provider assess the extent to which clients generally are able to take advantage of the assistance and that it benefits them.*<sup>48</sup>

...  
*There may be groups of clients for whom limited representation would not be appropriate because of language or cultural barriers, or mental or physical limitations that would prevent them from following up without assistance.” The provider should be aware of such groups and be cautious ...*<sup>49</sup>

Standard 3.4 goes on to point out that some of the more challenging issues regarding “reasonable under the circumstances” arise from the ethical duties to *provide competent representation and protect the client’s interest* when an attorney-client relationship is formed. It notes that while limited assistance may be sufficient to protect the client’s interest in some cases, in others,

*... no amount of limited representation will be sufficient to resolve the problem. Many factors, such as the client’s language capability, cultural values, level of education, emotional stability, self confidence and ability to communicate will affect the degree to which the individual can take steps to resolve the presenting problem with only limited assistance.*<sup>50</sup>

Regarding what constitutes “informed consent” by the client, the Commentary to Standard 3.4 points out that there is a critical difference between limited representation (aka “unbundled services”) where individual clients pay for services they receive, and limited service programs where clients do not pay for services, but rather services are funded by another entity, e.g. Older Americans Act. The Commentary explains:

*Limited representation in the context of legal aid for low-income persons differs in a significant way from limited representation for paying clients. ... The concept of “unbundled legal services” was developed ... in response to need of moderate income persons who could not afford full representation. ... It is the client in such circumstances who decides what services to purchase based on the client’s judgment of the need and the ability to pay. ... In the case of free legal aid, limited representation is often offered through systems such as hotlines. ... In practice, in such systems, it is the legal aid provider, not the client that decides what level of service will be provided. That fact places a special burden on the provider to decide prudently when limited representation will be offered and creates special considerations with regard to the meaning of informed consent.<sup>51</sup> (emphasis added)*

Informed consent implies that the client can choose not to accept the limited representation and seek full representation elsewhere. However, for OAA target populations, full representation may not be a realistic possibility unless it is available through a referral from the hotline to a program that can provide full representation.

*Ethical considerations require that the client be apprised of the limitations ... including necessary actions for which assistance is not being provided and the practical risks for the client if the actions are not taken. ...*<sup>52</sup>

All of the above cautions need to be carefully considered in assessing the capacity of a hotline to meet the needs of the target populations and to address the critical and complex priority legal issues specified in the OAA. In light of the cautions, the ABA Standards conclude:

*A provider should not confine its assistance to limited representation unless it participates in a regional or statewide delivery system in which a full range of assistance is offered.*<sup>53</sup> (emphasis added)

Thus a critical piece of the assessment is to determine whether/to what extent the hotline is truly an integral part of the broader, full-service legal delivery system for vulnerable elders such that hotline clients have ready access to full services through that broader system as opposed to only limited services of the hotline. This means that an important part of the assessment must include looking at numbers/types of cases that are referred for further legal assistance beyond what the hotline can provide and the types of legal agencies/entities to which such referrals are made.

II.F. Guidelines for Assessing Experience of Other Elder Rights Advocates

As a final note, it is helpful to obtain the perspective of other elder rights advocates (such as leaders and workers with the long term care ombudsmen program, APS, SHIP and Senior Medicare Patrol, ADRC/ AAA Information and Assistance, meals-on-wheels/congregate meal sites, in-home care providers) in doing a capacity assessment. A few examples of questions to ask them about their knowledge of their legal services program(s) are included in the final section in Appendix A.

**PART III.  
PUTTING RESULTS OF CAPACITY ASSESSMENT TO USE**

Having gathered the necessary information, it now becomes possible to analyze and assemble it to determine how well the overall system, and its component parts, are meeting its goal and intended purpose, and to glean what the system does well, what could be done better, and where changes are most needed. As with any study, results are useful only to the extent they are used. Thus the value of the study and report/recommendations lies in the extent to which they prompt those who are in a position to take action, to undertake those actions necessary to make needed changes, so that vulnerable elders across the state in need of legal assistance will ultimately be better served by the system.

III.A. Introduction

An excellent example of a final report and recommendations can be found on TCSG's website. The study was undertaken and the report prepared by Natalie Thomas, Georgia Legal Services Developer and co-author of this article.<sup>54</sup> Links to specific pages of the Georgia report are included in footnotes to the following.

III.B. Information/ Charts on the SUA/Developer

1. Briefly summarize the key roles of the SUA/Developer.
2. Indicate whether there is a developer, the developer's qualifications, how long the person has been in the job, whether that person does full-time developer work, and if not, the other hats worn by the developer and if those other hats result in conflicts.
3. Describe any additional personnel assigned to assist the developer.
4. Describe the funding requirements established by the state and brief history of how it was established. Discuss minimum percent/minimum funding level, any maintenance of effort requirements, waivers requested and action taken on them.
5. Describe briefly the history of the developer position in the state, the leadership roles taken by the developer and the policies and products of that leadership that help guide the delivery system and the players in it.

6. Describe ongoing activities of the developer, (e.g. TA to AAAs and providers, training, written materials, etc.).
7. Describe all uniform standardized mechanisms/tools the state has in place for the IIIB legal services programs (e.g. statewide reporting, standards, sample RFP, monitoring tool, etc.) or indicate the absence of them and what the state uses instead. Also outline the role of the developer in overseeing implementation of such things as standards and statewide reporting.
8. Consider developing a chart to provide a visual of what the developer actually does, indicating any limitations or special permissions needed for the developer to undertake them.<sup>55</sup>

III.C. Information/  
Charts on AAAs

1. Describe the number of AAAs, types of agencies (e.g. private non-profit, part of Regional Council of Government) and length of time as an AAA.
2. Identify funding: amount of funding provided to each legal services provider by each AAA; percent of IIIB funds provided to legal services by each AAA; all sources of funding provided to legal services provider by the AAA. Discuss any waivers.
3. Discuss responsibilities of AAAs with respect to legal services and strengths and weaknesses in fulfilling those responsibilities.
4. Describe relationships between AAAs and their legal providers, including how well they work together on such things as outreach, priority setting, finding additional sources of funds.
5. Describe the process AAAs use for issuing RFPs, selecting providers, and monitoring.
6. Describe efforts by AAAs to ensure that legal services are seen as an essential and integral part of the aging service network.

III.D. Information/  
Charts on IIIB  
Legal Providers

1. Identify the III B legal providers (name, address, length of time as provider).
2. Identify the type of entity/agency in which each IIIB legal services provider is housed, staffing, types of cases handled.
3. Consider preparing a listing/chart showing for each AAA region: the legal provider(s), any subcontracts, level of funding, staffing, a brief description of the provider(s) agency, services provided, and counties served.<sup>56</sup>
4. Approximate number and characteristics of clients served in the past reporting year, indicating the dates of the reporting year (i.e. is the provider targeting effectively?).
5. Approximate number of units<sup>57</sup> of service provided in the past reporting year, distinguishing the units by type of service – outreach/legal community education, and hours of legal and related services, as well as numbers of cases opened and cases closed in the reporting year.
6. Describe the types of substantive issue areas handled in the past reporting year (e.g. Housing, SSI, Medicare, Medicaid, consumer, Social Security, financial powers of attorney, advance directives for health care, wills) and approximate number of cases in each area.
7. Describe levels of services provided. (e.g. brief service, advice only, administrative hearing, court action, extended representation, other) and approximate number of cases at the various levels.
8. Describe partnerships the IIIB provider has with universities, private attorneys, corporate law firms, state/local government agencies, etc.
9. A very effective way of assessing how well legal providers are doing in states that have standards, is to measure them (or have each do a self-assessment) against specific requirements in the standards.<sup>58</sup>

III.E. Information/  
Charts on Hotlines

1. Identify the Statewide Senior Legal Hotline(s) -- name, address, length of time as a hotline provider, etc.
2. Identify the type of entity/agency in which the Hotline(s) provider is housed, staffing (delineate full-time, part-time, volunteer, student, etc. staffing), types of cases handled.
3. Describe sources and levels of funding for the statewide hotline.
4. Describe the extent to which the hotline is a truly integral part of a full-service no-cost program.
5. Approximate number and characteristics of clients served by the hotline in the past reporting year (i.e. is hotline targeting effectively), indicating the dates of the reporting year.
6. Approximate number of units of service provided in past reporting year, distinguishing the units by type of service – outreach/community education, legal and related services, as well as numbers of cases opened and cases closed in the reporting year.
7. Describe the types of substantive issue areas and approximate number of cases handled in the various areas in past reporting year (e.g. Housing, SSI, Medicare, Medicaid, consumer, Social Security, financial powers of attorney, advance directives for health care, wills).
8. Describe levels of services provided by the hotline, e.g. advice, limited/brief service only. If hotline provided services beyond advice and brief service, describe those levels of service and frequency with which they are provided.
9. Describe referral protocols/mechanisms in place to refer clients who need more legal assistance than hotline can provide. Differentiate protocols/mechanisms for referrals to IIB providers, other publicly funded legal services/legal aid providers, pro bono, reduced fee panels, and private practitioners who will charge client their regular fee for services.
10. Describe partnerships the hotline has with universities, private attorneys, corporate law firms, state/local government agencies, etc.

III.F. Information  
on Strengths and  
Weaknesses of  
Overall System & Its  
Component Parts

1. Indicate where there are gaps/weaknesses in what the state agency, area agencies and providers are currently doing/providing.
2. Indicate strengths that allow the state agency, area agencies and providers to maintain a high quality, high-impact, targeted delivery system, or at least keeps them from faltering.
3. Note where resources are inadequate to meet the legal services needs of the older persons in the target populations and emphasize what resources make the legal services an asset to those who are served.

III.G.  
Recommendations

Conclude the Report by providing highlights on what directions/next steps are needed to strengthen the legal services delivery system and to address weaknesses discovered during the capacity assessment.

.....

**APPENDIX A**  
**SUGGESTED QUESTIONS**  
**TO BE PURSUED IN GATHERING ASSESSMENT INFORMATION/DATA**

As noted above, this capacity assessment is designed to be comprehensive, and to include the broadest spectrum of questions to be explored in assessing a state’s delivery system. It provides a prototype of what might comprise an “ideal” assessment. We recognize however, that time and resources are limited, and that in many states it may not be possible to pursue all of the questions suggested below. Thus, four of the six sets of questions below are divided into two parts, with the first part containing the most essential questions and the second part containing questions that are less essential. The six sets of questions include –

- I. All Levels: Questions to Assess Compliance with OAA Targeting, Priority Setting, Outreach Requirements (Note: all the questions in this part are essential.);
- II. Questions to Assess the System at the SUA/Developer Level;
- III. Questions to Assess the System at the AAA Level;
- IV. Questions to Assess the System at the IIIB Legal Provider Level;
- V. Questions to Assess the System at the Statewide Legal Hotline level; and
- VI. Questions to Ask Other Elder Rights Advocates.

**I. ALL LEVELS – SUGGESTED QUESTIONS TO ASSESS COMPLIANCE WITH  
OAA TARGETING, PRIORITY SETTING, OUTREACH REQUIREMENTS**

**ALL OF THE QUESTIONS IN THIS PART ARE ESSENTIAL**

1. How and to what extent does the SUA/Developer –
  - Provide TA and monitoring to assure that strategic, targeted outreach is being undertaken?
  - Monitor demographic characteristics of clients served to ensure the most needy are being effectively reached and served?
  - Provide TA and monitoring to assure that means testing is not being used?
  - Provide leadership in working with AAAs and legal providers to establish priority legal issues that best reflect the most critical needs of target groups as broadly outlined in the OAA?
  - Provide TA and monitoring to assure that AAAs and legal providers are truly giving priority to those legal issues (rather than other issues such as wills), and that all publicity by AAAs and legal providers makes clear the priority legal issues they handle?
  - Have a clear policy regarding the limited roles of IIIB legal providers in the area of guardianship? And how does the SUA/developer monitor that the policy is being followed? If no such policy exists, are there plans to set one?
  - Provide leadership in developing protocols, with legal providers and AAAs, in the areas of abuse, neglect and exploitation, given that legal providers are being asked to place greater priority on these complex, demanding cases?
2. How and to what extent does each AAA –
  - Stress targeting limited legal resources to those in greatest social or economic need – in RFP, in contracts, in monitoring, etc.?
  - Assure that none of its provider(s) applies a means test for older persons to qualify for services, and yet targets resources to those in greatest need?
  - Include in its agreements with all service providers, requirements that the provider specify how it intends to provide services to satisfy needs of low income, low-income minority individuals, those with limited English proficiency, and those residing in rural areas?
  - Work with its provider(s) to assure that limited legal resources are used to address the most critical legal needs of target groups—the OAA priority legal issues? What is the process for setting priority issues – is it done jointly with the developer and providers?
  - Set requirements for providers to do outreach/presentations? Are requirements focused on senior centers/nutrition sites, or on other strategically chosen locations where particular target populations are likely to be (e.g. Hispanic community centers; low-income/government-subsidized housing, minority churches, etc.)? Are there requirements that presentations address priority legal issues, rather than addressing lower priority issues such as wills?
  - Work with its legal provider(s) to do outreach to target groups, or is this considered the responsibility of the legal provider?

3. To what extent does each OAA III B legal provider –

- Have procedures and practices that result in reaching target populations rather than operating on a “first-come, first-served” basis, and achieve this without means testing?
- Have a client population whose demographics truly reflect the OAA target groups?
- Work with its AAA(s) and the legal developer to assure that limited legal resources are used to address the most critical legal needs of target groups—the priority legal issues? What is the process for setting priorities?
- Have a major portion of cases that clearly fall within the priority legal issue areas?
- Conduct outreach and community education in locations where target groups are likely to be, and address topics in priority issue areas?
- Have clear policies regarding means testing?
- Have clear policies/protocols on (1) the limited role of IIIB providers in guardianship cases, and (2) have clear policies and procedures for self-assessment of their capacity to handle complex abuse cases?

**II. SUGGESTED QUESTIONS TO ASSESS THE SYSTEM AT THE SUA/LEGAL DEVELOPER LEVEL**

The following questions are provided to guide evaluation of the SUA/Developer in meeting other OAA requirements (beyond targeting) and in carrying out general functions necessary to maintain a statewide high-quality, high-impact delivery system. (In exploring each of these questions, it is important to keep in mind the caveat noted under II.C.1.a. above.)

**QUESTIONS 1-21 ARE THE MOST ESSENTIAL QUESTIONS.**

1. Does the SUA have a legal services developer and other personnel sufficient to provide effective state leadership to:
  - a. Create/maintain a coordinated statewide delivery system that effectively secures/ maintains critical legal rights and improves access to quality legal services for vulnerable elders; and
  - b. provide needed training, TA and other supportive functions to AAAs, legal providers, ombudsmen and other appropriate persons/groups?
2. If yes, does the developer work full-time doing development work? If not full-time, is the part-time developer’s work fully dedicated to legal services development?
3. Does the named developer have duties beyond legal services development? If yes, what are those duties and approximately how much time is available for legal development? Do the developer, AAAs, and providers believe this time is adequate to provide needed leadership?
4. Do non-development duties of the developer create potential or real conflict-of-interest situations with duties as developer, e.g. developer also serves as counsel for the SUA; developer also serves as IIIB legal provider?
5. What role does the developer/SUA play to assure that each AAA selects and enters into contracts with the legal provider(s) that is(are) the entity best able to provide the services as prescribed in the Act?
6. Has the SUA set a minimum percentage of IIIB funds that each AAA must expend on legal?
  - If yes, what is the minimum percentage?
  - How was that minimum established? For example, was it based on the average the AAAs were then spending, or was there a proactive process to try and estimate what it would cost to provide a minimally adequate program?
  - Is there a mechanism by which the SUA periodically re-assesses the adequacy of the minimum percentage?
7. Has the SUA granted any waivers currently in effect allowing area agencies --
  - a. To provide no funding for legal services? If so, how many waivers are currently in effect?
  - b. To provide less than the minimum percentage of Title IIIB funding? If so, how many are currently in effect?
8. When granting either type of waiver, what process was followed and what type and extent of evidence did the state require from area agencies to show that the need for legal services is being otherwise met?
9. Is there a mechanism available from the SUA to the developer for regular re-evaluation of funding levels for IIIB legal programs?
10. Does the developer have thorough knowledge/understanding of –
  - a. The provider(s) with which each AAA contracts and the types of agencies of which they are a part;
  - b. The level of funding provided to each provider by each AAA, and that the funding by each AAA is at least at the minimum percentage?
11. If there is a senior legal hotline, to what extent does the developer monitor to be sure that it is part of a full-service system such that elders who call the hotline have ready access to full services?

12. What is the developer permitted/required to do?
  - a. Communicate directly with legal providers;
  - b. Communicate directly with AAAs;
  - c. Conduct site visits, monitoring visits, technical assistance visits;
  - d. Engage in legislative, administrative and/or policy advocacy;
  - e. Present at seminars, university classes, conferences, etc.;
  - f. Convene various players in the delivery system to do such things as: share information/ resources; strategize to coordinate and maximize the impact of limited resources; plan to collaborate on outreach to particular, hard-to-reach target groups, design tools and other leadership documents such as standards and statewide reporting?
13. Are there restrictions on the developer undertaking any of the above activities? If yes, how do those restrictions interfere with the developer's leadership capacity called for in the OAA?
14. Does the state have statewide standards/guidelines that define what a high-quality, high-impact, targeted legal delivery system looks like and the roles/ responsibilities of the various players?
  - a. If yes, to what extent do the SUA, AAAs, legal providers comply? What does the developer do to assure compliance?
  - b. If no, are there plans to develop statewide standards/guidelines?
15. Does the developer/SUA provide a sample/model RFP, contract, monitoring instrument or other tools to assist AAAs with legal services?
16. Does the state have a uniform reporting system for IIIB legal services that provides reliable and meaningful information about such things as –
  - a. Characteristics of older persons being served (e.g. low income, minority, rural, limited English, etc.)?
  - b. Types of legal issues being handled, and do they reflect the most critical legal needs of target populations?
  - c. Levels of service being provided?
  - d. Types of outreach being undertaken to reach target groups, and effectiveness of the outreach?
  - e. Outcomes/indicators of impact on the lives and being of older persons in greatest need?
17. Does the developer/SUA compile reporting information at the state level and use it, in coordination with AAAs and providers, to garner support for legal services?
18. What is the developer/SUA's involvement should a AAA decide to change IIIB legal providers? Is there any statewide requirement, guidance, policy or standard in place for the AAA to follow when/if the AAA changes IIIB providers? If so, describe briefly. If not, describe how the developer/SUA would assure that the AAA has an adequate transition between providers and that clients are served and protected during the transition?
19. Does the developer/SUA have a policy and process in place to assure that IIIB legal providers protect the confidentiality of clients? To whom and in what circumstances does this policy/process apply? Is it the developer/SUA's policy to require any identifying information about clients as a regular part of the reporting system or monitoring of the IIIB legal providers?
20. Does the developer/SUA provide leadership and guidance for legal providers to coordinate with the long- term-care ombudsman program at the local level, including on conflicts of interest, case acceptance and referral procedures and protecting confidentiality? Does the developer also work with the State Ombudsman on policies and procedures to protect the integrity and confidentiality of both programs, when legal and ombudsman programs are housed in the same agency?
21. Does the developer/SUA provide leadership and guidance on methods to be used for potential clients to access legal services? Do potential clients have direct access to the legal provider or are they required to go through the AAA or ADRC? Is there a protocol for use by AAAs when they do make referrals to legal providers?

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**QUESTIONS A – L ARE LESS ESSENTIAL QUESTIONS.**

- A. Does the developer/SUA provide direct TA on legal services/delivery issues to AAAs, legal providers and others?
  - a. What are some types of TA provided to each group?
  - b. Are there types of TA needed on legal services delivery that the developer is not able to provide? If yes, describe the type of TA and why the developer cannot provide it.
- B. Does the developer/SUA provide/arrange for training, TA and other support on substantive legal issues to AAAs, legal providers, ombudsmen, and others?
  - a. Is there substantive training, TA, and other support that is needed that is not available?
  - b. If so, in what substantive legal issue areas are there gaps?
- C. Does the developer/SUA provide/arrange for development of resource materials for legal providers and others on substantive legal issues, particularly on new/emerging issues?

- D. Does the developer/SUA provide/arrange for assistance to older persons (via community education; written materials, training of non-legal aging service staff, etc.) in understanding their rights and exercising choices to prevent future legal problems, and maintaining the rights of those at risk of guardianship?
- E. What role does the developer/SUA play in assuring that if AAAs contract with non-LSC legal providers, those providers coordinate with existing LSC projects?
- F. Does the SUA undertake periodic assessments of the need for IIIB supportive services, including legal? Is special attention paid and input sought from the developer and legal providers on how to design questions and assessments regarding the need for legal services such that meaningful responses are obtained?
- G. Does the State plan demonstrate the state's commitment to providing leadership for high-quality, high-impact legal services targeted to those in greatest need and giving priority to their most critical legal needs?
- H. To what extent does the SUA back-up its stated commitment in the state plan by providing support and funding for the developer for training, travel, development of educational materials, etc.?
- I. In what ways and on what issues has the SUA/developer undertaken policy advocacy at a systems level on vulnerable elder rights issues in the past two years?
- J. To what extent does the developer/SUA review area plans, specifically those parts dealing with elder rights/legal services? Are area plans ever sent back to AAAs for revision because they are found to be inadequate with respect to elder rights/legal services?
- K. Does the developer/SUA work with AAAs and IIIB legal providers to try and generate additional funding for legal services (Title III B and other funding)?
- L. What procedures, policies, and/or activities does the developer have in place to assure that AAAs encourage and achieve a coordinated system overall that includes legal services as a critical and integral part of aging services? How successful would the developer/SUA say it has been in achieving an optimal level of integration?

### III. SUGGESTED QUESTIONS TO ASSESS THE SYSTEM AT THE AAA LEVEL

The following questions are provided to guide evaluation of a state's AAAs in meeting other OAA requirements (beyond targeting) and in carrying out general roles and responsibilities necessary to provide high-quality, high-impact, legal services throughout the AAA region. If the developer does not have current information about legal providers, funding levels, etc., the questions need to be asked at the AAA level.

**As noted above**, if a state has no AAAs, and the SUA functions both as the state agency and area agency, the following questions should be asked of the state agency in its capacity as area agency for the entire state.

#### QUESTIONS 1 – 15 ARE THE MOST ESSENTIAL QUESTIONS.

1. Is each AAA funding legal services at least at the minimum percentage of IIIB funds set by the SUA?
2. If not, and one or more AAA(s) obtained a waiver from the funding requirement, what was the process followed in obtaining the waiver -- what evidence did the AAA provide that the need was being otherwise met, and was a timely public hearing conducted on request?
3. What is the dollar amount provided by each AAA to each of its legal provider(s)?
4. What is the total percentage of IIIB funds that each AAA expends for legal services?
5. With whom/what agency does each AAA contract for legal services? {gather provider agency(ies) name, address, phone number, agency type (e.g. LSC.), etc.}
6. How does each AAA assure that it is contracting with the provider(s) that: a) has/have the experience and capacity to provide services to the most vulnerable elders; b) is/are the entity(ies) best able to provide services as prescribed in the Act; and c) has/have no conflicts of interest that might interfere with ability to reach and serve the most vulnerable elders?
7. Does each AAA require its IIIB provider(s) to provide the full range of legal advice and direct representation?
8. How does each AAA ensure lawyer-client confidentiality is protected, i.e. that the lawyer/legal provider does not divulge client identifying information for reporting or any other purpose?
9. Does each AAA have a mechanism to assure its legal provider(s) do not also provide other services that could lead to a conflict between their elder client and the service provider or the service provider's other clients (e.g. the legal provider also provides guardianship services or serves in a county/city legal department)?
10. How does each AAA assure adequate reporting by providers (using any statewide reporting system developed and not adding additional burdensome reporting requirements) and share reported information with the developer?

11. Does each AAA require or restrict certain kinds of activities with its funding? For example, does it require a certain amount of outreach/community legal education? Does it require that all funds go to casework and that they not be used for outreach/community legal education?
12. What is the primary avenue for elders to access legal services? Has there been a move to redirect accessing legal services through the AAAs/Gateway/ADRC's? Detail what that requirement or policy entails? How is client confidentiality protected in the utilization of such a referral method?
13. Does each AAA have a process for monitoring its legal provider(s)?
  - a. Is the AAA required by the state to monitor its legal provider(s)? If so, how often?
  - b. Is there a AAA staff person that works specifically with the legal provider(s)? If so, is this the staff person who conducts the monitoring or is there another staff person in charge of monitoring legal and other services?
  - c. If there is a statewide monitoring instrument, does the AAA use it?
14. If there is a senior legal hotline does each AAA require its IIB provider(s) to coordinate with it to ensure that the hotline is part of a full-service system and to make maximum use of limited resources?
15. If an AAA provides legal services directly (e.g. has an attorney or paralegal on staff), what evidence did the AAA provide to the State agency to demonstrate that --
  - a. The direct service provision is necessary to assure an adequate quantity of legal services;
  - b. Legal services are directly related to the AAA's administrative functions; or
  - c. Legal services can be provided more economically and with comparable quality by the AAA, as required in the OAA; and
  - d. If the AAA staff person is a paralegal, what does the AAA do to ensure direct supervision by an attorney?

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**QUESTIONS A – M ARE LESS ESSENTIAL QUESTIONS.**

- A. Does the AAA provide other funds beyond IIB for legal services? If yes, what are the dollar amounts and sources of those funds?
- B. How does each AAA describe its relationship with its legal provider(s) -- e.g. close working relationship, arms-length contractual relationship, other?
- C. If some of the legal services are provided by paralegals or law students, how does the AAA assure that there is direct supervision by an attorney?
- D. If a AAA contracts with a non-LSC program, how does it ensure that the provider coordinates with the LSC program in the area?
- E. In what ways does each AAA work with its provider(s) to involve the private bar, including those providing pro bono and reduced fee services?
- F. How does each AAA assure that any donations received for legal services are used by the provider(s) to expand the legal services they provide and to supplement (not supplant) IIB funds, and that the request for contributions is done in a non-coercive manner, as required in the OAA?
- G. How does each AAA work with its other (non-legal) service providers to ensure legal services are regarded as an essential and integral component of the aging service network?
- H. Does each AAA issue a RFP when seeking to fund IIB legal services?
  - a. If yes, does the RFP provide a good description of what the AAA is seeking to fund (following a sample RFP if one has been developed for the state)? Does it outline criteria for selection against which applicants will be judged?
  - b. If no RFP is issued, how does the AAA publicize the funding opportunity so there is an open, competitive bid process and so that bidders know what it is the AAA is looking to fund?
- I. For what period of time does each AAA award the grant/contract to a provider; how frequently is there a competitive bid process?
- J. Does any AAA allow a provider to subcontract a portion of its service area to another provider? If so, what is required in order for this to occur?
- K. What happens if a AAA decides to change IIB legal providers? Is there any statewide requirement, guidance for the AAA to follow when/if the AAA changes IIB providers? If so, describe briefly. If not, would the developer/SUA provide oversight to assure that the AAA has an adequate transition between providers and that clients are served and protected during the transition?
- L. How does each AAA pay for legal services: On an hourly/unit of service basis? Per case basis? As an annual grant? Other? (Specify)

- M. Whatever the means of paying for legal services, assuming there is a cap on total funding, how does the AAA deal with the point at which the cap is reached?

#### IV. SUGGESTED QUESTIONS TO ASSESS THE SYSTEM AT THE IIIB LEGAL PROVIDER LEVEL

The following questions are provided to guide evaluation of IIIB Legal Services Providers in meeting other OAA requirements (beyond targeting) and in carrying out general roles and responsibilities necessary to provide high-quality, high-impact legal services. Any specific information not captured at the Developer/ SUA or AAA level, should be asked of providers.

##### QUESTIONS 1 - 11 ARE THE MOST ESSENTIAL QUESTIONS

1. Does each IIIB provider provide legal assistance as defined in the OAA, e.g.
  - a. Advice and representation?
  - b. Service is provided by an attorney {can also include service by paralegals/law students under direct supervision of an attorney or by non-lawyers where permitted by law (e.g. Social Security Administrative Hearings)}?
2. Type of agency/organization of each IIIB provider contracting with a AAA
  - a. LSC-funded legal services program.
  - b. Non-LSC funded, non-profit legal aid/legal services program.
  - c. Private attorney.
  - d. Law School Clinic. If a clinic, for what period of time do students work at the clinic (e.g. a semester)? How are cases transitioned from one set of students to another? And how are services provided when students are on break/vacation?
  - e. Private Bar Pro Bono. If pro bono, do they handle priority issue areas or are they more focused on wills, powers of attorney, and advance directives for health care?
  - f. Private Bar Referral program. If private bar referral, do they handle priority issue areas or are they more focused on wills, powers of attorney, and advance directives for health care?
  - g. Area Agency on Aging (AAA)/Council on Aging providing the service directly.
  - h. Other (specify).
3. Detail the staffing of each IIIB legal provider and indicate the size (by number of counties or potential client population) of its service area. For each IIIB legal provider, identify whether --
  - a. There is a specific/designated attorney(s) or paralegal(s) who provides legal services to older persons such that there is an identifiable legal services program for elders;
  - b. There is a designated coordinator of services to elders assisted by other attorneys/ paralegals in the office; or
  - c. Cases are simply assigned according to whichever attorney/paralegal has expertise in the particular problem area of the older client.
4. Does the provider serve older persons with non-IIIB funds, e.g. LSC funds, when they meet eligibility guidelines for the non-IIIB services? If yes, what criteria determine whether they are served with IIIB funds or non-IIIB funds?
5. Levels of service provided -- approximately what proportion of each IIIB providers' cases are:
  - a. Telephone assistance only. Inquire about the nature and extent of service provided by phone, protocols for referral to another legal resource. And if a referral is made in order to resolve the legal problem, whether or not a file is opened by the IIIB provider and whether it is counted as a IIIB "case."
  - b. In-person Counsel and Advice.
  - c. In-person Limited action/brief service. Inquire how the IIIB provider defines "brief" service -- by task or time
  - d. Document preparation. Inquire whether document preparation is included in "telephone assistance" and/or "limited action/brief service"
  - e. Full/extensive service -- representation in administrative hearings and in court, appeals, etc.
  - f. Impact/systemic work. Inquire as to what the IIIB provider considers/counts as impact/systemic work
6. If there is a change/transition from one legal provider to another, does the exiting provider provide a full accounting of the status of the program/cases, and of any cases that remain open. Does the exiting provider commit to close out any open cases or ensure that communication has been provided to the client(s) to explain the transition? Do the former and new providers coordinate for as seamless of a transition as possible? Do the providers keep the AAA informed of the process and when it is complete so that the AAA can conduct any final exit interview for final payment to the exiting provider?
7. Does each IIIB legal provider have an established and publicized grievance procedure that dissatisfied seniors may use?
  - a. Does the grievance procedure provide access to the AAA?
  - b. Does the grievance procedure provide access to the state/ developer?
8. Can elders access legal services directly through the provider? Has there been a move to redirect access through the AAAs/Gateway/ADRC's rather than directly through the provider? How is client confidentiality protected in the utilization of

such a referral method? Is there concern that having to go through AAA/ADRC might dissuade some elders concerned about privacy from seeking services?

9. What is the policy/practice of each provider regarding contributions—how do they ensure they are solicited in a non-coercive manner, and that all contributions are used to expand legal services and supplement (not supplant) IIIB funds?
10. Does each IIIB provide reporting on demographics of clients served, types of legal issues handled, level of service provided, and case scenarios demonstrating the impact legal services have on the lives and well-being of the most vulnerable elders along with “indicators of impact”/outcomes that demonstrate the effect and impact the provision of legal services had on clients?
11. Does each IIIB provider coordinate with the long term care ombudsman program at the local level, according to guidance from the developer addressing such things as conflicts of interest, case acceptance and referral procedures and protecting confidentiality. When legal and ombudsman programs are housed in the same agency, does the legal provider follow policies and procedures to protect the integrity and confidentiality of both programs?

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**QUESTIONS A - D ARE LESS ESSENTIAL.**

- A. If the provider is not an LSC-funded program, how does it coordinate with the LSC program in order to make maximum use of overall legal resources?
- B. Does the provider utilize volunteers within its program? How many volunteers does the provider typically have at a time? (If the volunteers are part of a structured Internship Program, please detail that arrangement) If so, what is the procedure for supervision and monitoring of volunteers? In what type(s) of activities are volunteers permitted/ encouraged/allowed to engage? From what activities/tasks are volunteers prohibited?
- C. How well does each IIIB legal provider work with its AAA(s)?
  - a. Is there apparent coordination between the entities?
  - b. Do the AAA and IIIB legal provider work together to strengthen the delivery of legal services to the area’s elders or is the relationship merely one of contractual arrangement with little other interaction?
- D. How does each IIIB legal provider determine which cases to accept when more than one case falls within a priority area?
  - a. What factors contribute to the case acceptance decision-making process?
  - b. What options are provided to those seniors whose cases are not accepted?
  - c. How are those seniors whose cases are not accepted notified of this decision?
  - d. What is the general timeframe between the time one requests assistance from a IIIB legal provider and the time a decision is made to accept or reject that senior’s case?
  - e. What are the possible reasons stated for not accepting a substantive priority matter for a senior?

**V. SUGGESTED QUESTIONS TO ASSESS THE SYSTEM AT THE LEGAL HOTLINE LEVEL**

The following questions are provided to guide evaluation of Senior Legal Hotlines

**QUESTIONS 1 - 10 ARE THE MOST ESSENTIAL QUESTIONS**

1. Is there one statewide senior legal hotline or one or more local area hotlines? If more than one, to what extent are they coordinated?
2. Type of agency/organization housing each Senior Legal Hotline in the state
  - a. Free standing program not within/part of another agency.
  - b. Within a larger legal hotline for poor persons of all ages.
  - c. Within a LSC-funded legal services program.
  - d. Within a Non-LSC funded, non-profit legal aid/legal services program.
  - e. Within a private attorney’s office.
  - f. Part of a Law School Clinic. If a clinic, for what period of time do students work at the clinic (e.g. a semester); and how are hotline services provided when students are on break/vacation?
  - g. Part of a State or Local Private Bar Referral program.
  - h. Within a AAA.
  - i. Within a State agency (specify the agency).
  - j. Other (specify).
3. Detail the staffing for each legal hotline – how many attorneys, paralegals, intake workers, other?
  - a. Is the staff physically located at the hotline site or do they work off site?
  - b. If staff is not "on site," detail the process of coordination, communication, and monitoring/ supervising (e.g. conference

- call staff meetings; scheduled time for all staff to meet physically; regular protocol for case reports/consultations/reviews, etc.)
- c. Are volunteers used to supplement staff? If so, what is the process for training volunteers? Is there an established curriculum/ orientation and are there continuing education requirements for volunteers? Is there a special supervisory/monitoring regimen? Do volunteers also work "off site"? If so, how are they monitored?
  4. In what ways and to what extent is the hotline integrated with the IIIB full service providers and other publicly funded legal services, so callers have easy access to the full range of services?
    - a. Are clear protocols in place for making referrals from the hotline to IIIB and other legal service providers that protect client confidentiality?
    - b. Is there clear understanding and tracking by the hotline – a referral matrix – whereby the hotline tracks what issues IIIB/other legal providers can/will handle and what eligibility criteria are used by other providers so that clients are not referred to a provider who cannot/ will not take their case?
    - c. Are protocols in place for IIIB/other legal service programs to make referrals to the hotline?
  5. What is (are) the funding source(s) for each of the senior legal hotline provider(s)?
    - a. Specify whether funding sources place limitations or emphases on one or more particular substantive areas of law.
    - b. If there is any funding received directly from a AAA, indicate the source of the AAA's funds and the particular service(s) for which the AAA is providing that funding, and distinguish it from the AAA's funding for IIIB full service programs.
  6. What are the eligibility guidelines to receive senior legal hotline services?
  7. What levels of service are provided by the hotline?
    - a. Telephone advice only
    - b. Telephone advice and brief service
    - c. Document preparation
    - d. Other \_\_\_\_\_
  8. How are substantive case priorities selected for the hotline?
    - a. Predetermined by funder(s) – state agency on aging, AAAs or other funders?
    - b. Established by Statewide Legal Standards
    - c. Hotline sets its own priorities
  9. What are the hotline's protocols for referring cases to other legal providers: T.3 B providers? Pro Bono attorneys? Reduced fee panels? Private attorneys who will charge a fee and what is the protocol for determining to whom/how those fee-for-service referrals are made? How are the referrals made? What follow-up is conducted, if any, for any referral made? What instruction is provided to the senior to ensure that he/she knows what to expect from the referral? How is "informed consent" addressed? Does part of the referral protocol, if there is one, address the issues of "privacy"/"confidentiality"?
  10. What is the relationship between the hotline and IIIB legal services programs, e.g. close working relationship in which efforts are coordinated to make maximum use of limited resources? tension due to IIIB providers' concern that their case numbers and/or their funding will go down due to hotline? hotline operates on its own with little relationship to IIIB providers?

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**QUESTIONS A – F ARE LESS ESSENTIAL**

- A. Does the hotline serve older persons primarily with one type of funds more than others? If so, what funding is primary?
- B. What policies are in place to ensure that the Hotline is directly targeting and providing outreach to the State's most economically and socially needy populations?
- C. What standards or criteria are used to select or designate specific populations to be targeted by the hotline?
  - a. Is the means testing process a criterion utilized in selecting or designating target population(s)?
- D. How does the hotline coordinate with --
  - a. the AAAs?
  - b. the state legal services developer?
  - c. Other aging network partners – give examples?
  - d. Has the coordination with aging network been beneficial to hotline clients? If so, in what ways?
- E. Does the hotline coordinate with the State Bar? If so, detail in what way and indicate whether such coordination has been beneficial for hotline clients and how?
- F. What does the hotline do to assure that older persons statewide are receiving services from the hotline as opposed to only those in close proximity to where the hotline is housed?

## VI. SUGGESTED QUESTIONS TO ASK OTHER ELDER RIGHTS ADVOCATES

1. Are you able to identify the Older Americans Act provider of legal services to older persons in your service area?
2. Are you aware of the process used in order to determine whether an older person can receive legal services from this provider?
3. Have you had any difficulty accessing legal services from this/ these provider(s) in referring clients?
4. Have any clients that you referred complained about the quality of services that they received from this legal provider? Complained that the provider would not take their case?
5. How easy has it been to coordinate with this legal provider? On what types of issues do you coordinate with this legal provider?
6. What types of collaboration opportunities exist for you to work with this legal provider?
7. On what basis can you discuss the quality of this legal provider?
8. Based upon what you know of this legal provider, are you satisfied that the level of staffing, funding, resources, and training provided to this legal provider is adequate to meet the needs of the population that they serve? If so, how?
9. Do you have enough knowledge about legal services providers in your area to offer an assessment on whether the current provider is the best entity to provide legal services under the OAA contract?
10. Is the legal services provider as visible as it can/should be in your area?

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<sup>4</sup> We address only the relevant definitions of capacity with respect to a capacity assessment of systems and organizations. We do not delve into other definitions such as legal ones, e.g. the capacity to stand trial, the capacity to contract, testamentary capacity, etc. These definitions of capacity are not pertinent to the current discussion.

<sup>5</sup> Webster's New Collegiate Dictionary, 164 (3rd ed, 1973).

<sup>6</sup> *Capacity Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/capacity> (last visited Dec. 31, 2013).

<sup>7</sup> *Assess Definition*. MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/assess> (last visited Dec. 31, 2013).

<sup>8</sup> ADMINISTRATION FOR COMMUNITY LIVING, ADMINISTRATION ON AGING, MODEL APPROACHES TO STATEWIDE LEGAL ASSISTANCE SYSTEMS: PHASE I, HHS-2013-ACL-AOA-SL-0050 at 6-7, and PHASE II, HHS-2013-ACL-AOA-LE-0044, at 15-16, *available at* [http://www.acl.gov/Funding\\_Opportunities/Announcements/Index.aspx](http://www.acl.gov/Funding_Opportunities/Announcements/Index.aspx)

<sup>9</sup> ADMINISTRATION FOR COMMUNITY LIVING, ADMINISTRATION ON AGING, MODEL APPROACHES TO STATEWIDE LEGAL ASSISTANCE SYSTEMS: PHASE II, HHS-2013-ACL-AOA-LE-0044, at 10.

<sup>10</sup> TCSG believes this process of inclusion is equally important with such things as: developing and implementing statewide standards for delivery of legal services, developing and implementing uniform statewide reporting on legal services to help "tell the story" of the impact it has on the lives and well being of target populations; and developing and implementing a strategic state plan for effective outreach and targeting of the most needy elders.

<sup>11</sup> Older Americans Act §305(a)(2)(E), 42 U.S.C. § 3025(a)(2)(E) (2012).

<sup>12</sup> 42 U.S.C. §3026(a)(1) (2012).

<sup>13</sup> 42 U.S.C. §3026(a)(4)(A)(i)(I) (2012).

<sup>14</sup> 42 U.S.C. §3026(a)(4)(A)(ii) (2012).

<sup>15</sup> 42 U.S.C. §3002(33)(2012).

<sup>16</sup> 42 U.S.C. §3030c-2(b)(3) (2012); 45 C.F.R. §1321.71 (d)-(e) (2012). See 45 C.F.R. §1321.3 (2012) for the definition of "means test."

<sup>17</sup> For an in-depth discussion of targeting without means testing, see Penelope Hommel, *Targeting Older Americans Act Services Without Means Testing: Meeting the Challenge*, BEST PRACTICE NOTES ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS (The Center for Social Gerontology), Vol. 15, Nos. 1 & 2, July 2013, available at <http://www.tcs.org/bpnotes/July13/contentsjuly13.htm>

<sup>18</sup> 42 U.S.C. §3027(a)(11)(E) (2012).

<sup>19</sup> 42 U.S.C. §3030d(a)(6)(B) (2012).

<sup>20</sup> 42 U.S.C. §3027(a)(16) (2012).

<sup>21</sup> 42 U.S.C. §3026(a)(4)(B) (2012).

<sup>22</sup> For an in-depth discussion of roles and responsibilities of legal services developers, please see Eleanor Crosby Lanier & Penelope Hommel, *Essential Role of the State Legal Services Developer: Blueprint for a Model Job Description*, BEST PRACTICE NOTES ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS (The Center for Social Gerontology), Vol. 13, Nos. 1&2, December 2004, available at <http://www.tcs.org/bpnotes/december04/contentsdec04.htm>

<sup>23</sup> 42 U.S.C. §3027(a)(13) (2012).

<sup>24</sup> 42 U.S.C. §3058j (2012).

<sup>25</sup> In providing such TA to AAAs and legal providers, the developer must be careful that s/he is neither perceived, nor acts, as a spokesperson/advocate for one or the other. It is not the Developer's role to promote the interests of one over the other, but rather on getting

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the best possible services to the most vulnerable elders.

26 42 U.S.C. §3027(a)(1) & (2) (2012).

27 See 42 U.S.C. §3026(c) (2012) and 42 U.S.C. §3030c-3 (2012) for waiver provisions.

28 42 U.S.C. §3027(a)(11)(A)-(C) (2012).

29 42 U.S.C. §3027(a)(5)(B) (2012) and §3026(a)(10) (2012).

30 42 U.S.C. §3027(a)(19) (2012).

31 42 U.S.C. §3058d(a)(3) (2012).

32 See the following articles from The Center for Social Gerontology’s newsletter, *BEST PRACTICE NOTES ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS*: Matthew G. Batista, *Outcome Measures for Title IIIB Legal Assistance Programs: An Introduction*, BPN, Vol. 10, No. 3, March 2000; Saily Barinaga-Burch, *Reporting and Title IIIB Legal Assistance Programs*, BPN, Vol. 7, Nos. 1 & 2, April 1996; The *Purposes of Reporting: A Framework for Analysis*, BPN, Vol. 3, No. 1, February 1989; Gerard A Poissonier, *Meaningful Reporting – Part I – Assessing the Value of Legal Assistance in Maine*, BPN, Vol. 1, No. 5, April 1987.

33 42 U.S.C. §3026(a)(2) (2012).

34 42 U.S.C. §3026(c) (2012).

35 42 U.S.C. §3027(a)(11)(A & B) (2012).

36 42 U.S.C. §3026(e) (2012). Also see TCSG descriptions of confidentiality requirements at [http://www.tcsg.org/CompGuideChp\\_01.pdf](http://www.tcsg.org/CompGuideChp_01.pdf) (pages 46-51 and 52-53) which explain Congress’ error in using the phrase “attorney-client privilege” and describes what Congress intended to do based on legislative history. That is, the intent was to protect any “confidential” information which includes any identifying data or details on legal services clients.

37 42 U.S.C. §3026(a)(10) (2012).

38 42 U.S.C. §3027(a)(11)(A & B) (2012).

39 42 U.S.C. §3026(a)(10) (2012).

40 42 U.S.C. §3002(33) (2012).

41 42 U.S.C. §3030c-2(b)(1) (2012) and §3030c-2(b)(4)(E) (2012).

42 42 U.S.C. §3027(a)(11) (2012)

43 AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, *STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID* (August 2006).

44 From the Foreword to the ABA STANDARDS, *id.*

45 ABA STANDARDS, *supra* note 44, at 99.

46 ABA STANDARDS, *supra* note 44, at 112.

47 ABA STANDARDS, *supra* note 44 at 113.

48 ABA STANDARDS, *supra* note 44 at 114

49 ABA STANDARDS, *supra* note 44 at 115.

50 ABA STANDARDS, *supra* note 44 at 117.

51 ABA STANDARDS, *supra* note 44 at 113.

52 ABA STANDARDS, *supra* note 44, at 116-117.

53 ABA STANDARDS, *supra* note 44, at 114.

54 AT THIS TIME – A REPORT ON THE CAPACITY OF THE LEGAL ASSISTANCE DELIVERY SYSTEM SERVING VULNERABLE OLDER GEORGIANS, (July 2012) (hereafter Georgia Report), Natalie K. Thomas, Division of Aging Services, Georgia Department of Human Services.

55 See example from GEORGIA REPORT *id.* at 15, available at <http://www.tcsg.org/ma/GACapacityAssess7-12.pdf>

56 See example from GEORGIA, *id.* at 31-34, available at <http://www.tcsg.org/ma/GACapacityAssess7-12.pdf>

57 1 Unit = 1 hour

58 See example from GEORGIA, *supra* note 42, at 38-39, available at <http://www.tcsg.org/ma/GACapacityAssess7-12.pdf>



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