**COMPREHENSIVE GUIDE**

**TO**

**DELIVERY OF LEGAL ASSISTANCE**

**TO OLDER PERSONS**



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**Comprehensive Guide To Delivery Of**

**Legal Assistance To Older Persons**

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**INTRODUCTION TO THE GUIDE**

The Center for Social Gerontology (TCSG) is pleased to make available to the law and aging network this *Comprehensive Guide to Delivery of Legal Assistance to Older Persons.* It is intended to provide guidance in the planning, design, implementation, and assessment of legal delivery systems for older persons at the state and local levels.

**Impetus for Development of the Delivery Systems Guide**

Since 1985, TCSG has served as a National Support Center In Law And Aging. During this time, state directors and their legal services developers, area agencies on aging, and providers of legal services have consistently expressed to TCSG two very important needs related to delivery of legal assistance. First, the need for help in grappling with the complex array of issues surrounding the establishment and operation of high quality, cost effective Title III legal assistance programs that adequately serve those most in need. Second, the need for assistance in building coordinated systems, of which Title III-funded programs are a key component, that effectively utilize the combined resources of Title III providers, the private bar, law schools, non lawyer advocates, State and area agencies on aging, and others to provide access to the system of justice to all older persons.

In some cases, these delivery issues are being addressed at a state level with the legal services developer providing leadership and coordination for providers and AAA funders in the state. Many developers, however, are untrained and inexperienced in program design and development; and significant turnover among them aggravates this problem. Thus many attempts to address these issues occur at the individual AAA/provider level.

Each year TCSG receives numerous requests for technical assistance dealing with the broad range of issues related to delivery systems. These include:

• assessing need for legal assistance;

• defining "adequate proportion;"

• targeting to those in greatest need without use of a means test;

• drafting requests for proposals, proposals, and contracts;

• establishing reporting systems that provide useful information without violating confidentiality;

• devising appropriate systems for soliciting client contributions;

• using non-Title III resources such as private bar volunteers, law school clinics;

• fundraising beyond Title III, etc.

The diversity of delivery models -- from staff attorney programs to referral programs dependent on private bar volunteers -- further complicates the issues listed above, as each model requires a somewhat different approach. And yet, prior to this *Comprehensive Guide* and the workshops undertaken to disseminate it, there were no formal training curricula or written materials which systematically addressed this complex array of issues and problems. Existing material on legal services delivery is scattered and often not utilized because of lack of availability or knowledge of its existence.

Given the complexity of the issues and problems being addressed, the inefficiency of having the same issues constantly re-addressed at local and state levels, and the diffuse nature of existing materials, a serious need for a written compilation of materials dealing with delivery issues in a comprehensive manner was perceived. It is for these reasons that TCSG has developed -- as part of its National Legal Support Project funded by the Administration on Aging -- this *Comprehensive Guide On Delivery Of Legal Assistance To Older Persons.*

**Contents of the *Comprehensive Guide***

The *Comprehensive Guide* attempts to address the entire range of issues related to delivery systems that combine funding from the Older Americans Act and other private and public sources. Twelve chapters cover the following:

• Legal Assistance Under the 2000 Amendments to the Older Americans Act: The Act, Regulations and Legislative History.

• Roles of the Aging Network in Legal Services Delivery Systems.

• Common and Emerging Legal Problems of the Elderly.

• Assessing Legal Needs of Older Persons.

• Targeting, Priority Setting, and Means Testing.

• Overview of Models for Delivery of Legal Assistance to Older Persons.

• Tips on Developing Requests for Proposals and Proposals.

• Comprehensive Sample Provisions, With Annotations, for Contracts Between Area Agencies and Legal Assistance Providers.

• Development and Operation of a Title III Legal Assistance Program.

• Evaluating the Performance of Legal Providers and Considerations in Devising Systems for Reporting.

• Private Sector Fundraising for Title III B Legal Services Programs for the Elderly.

• National Resource and Support Organizations.

**Please give us your suggestions**. AoA has funded TCSG to update the *Comprehensive Guide* during the current year. **If you have comments or suggestions on how to improve the *Comprehensive Guide*, please contact TCSG's Co-Director, Penelope Hommel, at (734) 665-1126.**

**Brief History of The Center for Social Gerontology**

The Center for Social Gerontology, Inc. (TCSG), a non-profit organization, was established by Wilma Donahue, Ph.D., in 1971 as the International Center for Social Gerontology. In 1985, TCSG adopted its current name to reflect a shift of focus from international to national activities, and moved its headquarters from Washington, D.C. to Ann Arbor, Michigan.

TCSG, since its inception, has been a non-profit research, training and social policy organization dedicated to promoting the individual autonomy of older persons and advancing their well-being in society. TCSG has pursued this goal through a wide variety of projects, including serving since 1985 as an Administration on Aging-funded National Support Center in Law & Aging.

TCSG's mission is to help society adapt to the dramatic increase in the numbers of old and very old, and to insure that older persons at all socio-economic and health levels are able to meet their needs and use their talents and abilities in a changing society. We undertake to lead, and even prod, policy makers and others to consider carefully the implications of the aging of America in formulating social policies and programs.

**In Pursuit of Our Goals We:**

\* Conduct and encourage research on various issues important to development of sound social policy and programs;

\* Disseminate information and research findings on issues in aging;

\* Educate public policy makers on issues affecting older Americans; and

\* Conduct training to enhance skills of professional and technical workers in aging.

Over the years, our specific objectives and activities have evolved in response to emerging issues and as the needs of older persons and of aging society have evolved. Currently, TCSG is focusing particular attention on: law and aging issues and delivery systems; research on the provision of and standards for guardianship services; tobacco and elderly issues; and, the use of mediation in guardianship and long-term care cases.

# CHAPTER I

# Legal Assistance Under the 2000 Amendments to the Older Americans Act:

# The Act, Regulations and Legislative History

# (Updated August 2001, by Krista L. Campeau & Penelope A. Hommel)

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Legal Assistance Under the 2000 Amendments To The Older Americans Act:

The Act, Regulations, And Legislative History

**A. Historical Background**

When originally enacted in 1965, the Older Americans Act did not address legal assistance. Between 1970 and 1974, however, the United States Senate Special Committee on Aging conducted hearings which provided evidence that the legal needs of the elderly were not being met. At that time, although some legal services were available to low income persons through local Legal Services Corporation (LSC) offices, few older people were receiving these services. Also, the majority of older people could not afford a private attorney and were not being served through the private bar. The problem was compounded by the scarcity of attorneys (in LSC and other legal aid offices) who had substantial knowledge of older persons' legal rights or experience in protecting those rights. It was concluded that advocacy in the form of specialized legal services had to be developed to help older persons (individually or as part of a class) enforce their rights. Congress responded to this need in 1975 when it incorporated legal assistance (then known as "legal services") into the Act.

In 1975, the Administration on Aging used $1.2 million of its section 308 Model Project funds to support law-related projects to assist in development of legal assistance programs for the elderly and substantive materials for use in training attorneys. From that beginning, the importance of legal assistance received increasing rec­ognition. Over the years, state and area agencies have demonstrated growing support for legal assistance and increased recog­nition of the important role played by legal assistance providers as advo­cates for older persons. Under the Older Americans Act, this rec­ognition has taken the form of specifying legal assistance since 1978 as one of three priority categories of services under Title IIIB; expand­­ing Title IV to include training and national support on legal rights of the elderly; and requiring that each state unit on aging as­sign sufficient personnel to provide leadership in developing legal assist­ance programs for older individuals throughout the state.

A brief history and explanation of the Act are discussed below.

The Older Americans Act (42 U.S.C.A. § 3001 et seq.) was enacted in 1965. Since that date, it has been amended thirteen times. The Act is Congress' primary vehicle for providing services and funds for meeting the needs of older persons.

Title I of the Act declares its objectives. The Act expressly aims to improve the lives and well being of older persons with respect to income; housing; restorative services; health; employment; retirement; civic, cultural and recreational activities; community services, aging research, and so forth. Title II is the legislative basis for creation of the Administration on Aging (AoA) and sets forth the duties and functions of the Assistant Secretary for Aging and of AoA. Title III authorizes development and funding of supportive services (Part B), nutrition services (Part C), disease prevention and health promotion services (Part D), and family caregiver support services (Part E) through grants to the states which, in turn, allocate funds to area agencies on aging. Title IV provides funding for training, research and demonstration projects in the field of aging. Title V provides for the development of community service employment programs for low-income persons 55 years of age and older. Title VI provides grants for supportive and nutrition services for Native Americans. Title VII, newly created by the 1992 Amendments, authorizes funding for States to carry out vulnerable elder rights protection activities.

**The 1967, 1969, 1972, 1973, 1974, 1975, 1977, 1978 and**

**1981 Amendments**

A history of the amendments made to the Act between 1965 and 1981 can be found at pages 3 through 5 of the 1984 Report of the Senate Committee on Labor and Human Resources, S. REP. No. 467, 98th Cong., 2d Sess.:

*"The Act was first enacted in the 89th Congress and has been amended nine times, in 1967, 1969, 1972, 1973, 1974, 1975, 1977, 1978 and 1981. The original Act established AoA as the Federal-level agency responsible for the administration of programs under the Act and authorized State and community social services programs and research, demonstration, and training projects. Provisions of the original legislation were extended by the amendments of 1967. The 1969 amendments strengthened the title III community service programs and charged State agencies on aging with statewide responsibilities for planning, co­ordination, and evaluation of programs for older persons. These amendments also added a program of area-wide model projects to test new approaches in meeting the social service needs of older persons, and authorized the foster grandparent and retired senior volunteer programs which provide for part-time vol­un­teer opportunities for older persons. (These latter programs, currently administered by ACTION, were repealed as part of the Older Americans Act in 1973 and were incorporated into the Domestic Volunteer Service Act of 1973.)*

*"Major amendments to the Act occurred in 1972 and 1973. The 1972 amendments created the national nutri­tion program and authorized grants to public and nonprofit sponsors for the development of congregate meal services in order to meet the nutrition and social service needs of persons 60 years or over. In addition to providing meals, Congress envisioned the program to serve as an important vehicle for fostering social interaction among participants and to facilitate social service delivery.*

*"With the enactment of the 1973 amendments, the Older Americans Act was significantly revised and expanded by the creation of a nationwide network of area agencies on aging. Area agencies were given responsibility for planning and coordination of, and advocating for, programs for older persons within planning and service areas designated by State agencies on aging. Area agencies were to use their limited service funds as catalysts for garnering other service funds for older persons. The 1973 amendments also created a National Information and Resource Clearing House for the aging and the Federal Council on the Aging, and authorized grants for multipurpose senior cen­ters and the community service employment program for older persons.*

*"The 1974 amendments primarily extended authority for the nutrition program for the elderly, and the 1975 amendments extended authority for the other components under the Act including the State and area agency and the community service employment programs. The 1975 amendments also established certain services as priority services under the title III program--transportation, in-home services, legal services, and residential repair services. The amendments in 1977 made minor adjustments in the Act, including extending authorization for donated commodities assistance by the U.S. Department of Agriculture.*

*"Amendments made in 1978 further strengthened and expanded Title III of the Act by consolidating the social services, multipurpose senior center, and nutrition services portions of the Act (previously authorized under separate titles and under separate administrative authorities) in an expanded Title III. These amendments modified the requirement for priority services by requiring that 50 percent of each area agency's allotment be expended on access, in-home, and legal services. In addition, a separate authorization for home-delivered meals under Title III was made. The previous requirement that State and area agencies develop annual plans on aging was altered to allow for a 3-year planning cycle. These amendments also required each state agency to develop a statewide nursing home ombudsman program and added a new Title VI to the Act authorizing grants for social and nutrition services to Indian tribal organizations. The community service employment program was amended to raise the income eligibility re­quirement for participants from the poverty level to 125 percent of the poverty level and to increase the proportion of funding to States under the program.*

*"The 1981 amendments provided for a 3-year extension for the Act and made certain modifications designed to give State and area agencies more flexibility in administering the title III program. These amendments included modifying State and area planning requirements to allow for plan development on a 2-, 3-, or 4-year basis, to replace prior law requirements for a 3-year planning cycle; modifying the priority service requirement by requiring each area agency to spend an "adequate proportion" of funds on priority services to replace the prior law requirement for a fixed percentage of funds; and allow­ing a State to transfer up to 20 percent of the separate allotments for supportive and nutrition services between such allotments. Other amendments included placing a fixed authorization level on the U.S. Department of Agriculture commodity program which sup­ple­ments title III funds for nutrition services. Under title IV, authorizations for certain training, research, and demonstration activities were consolidated. Other amend­­ments emphasized the transition of title V participants to private sector employment under the com­­munity service employment program, and eliminated an age definition for older Indians under the pro­gram of grants to tribal organizations. Authorization for the National Information and Resource Clearing House for the Aging was eliminated."* S. REP. No. 467, 98th Cong., 2d Sess. (Emphasis added.)

**The 1984 Amendments**

The 1984 amendments to the Act made a number of technical changes. The term "legal assistance" replaced "legal services," and "older individual" was defined for Title III purposes as "any individual who is 60 years of age or older." The amendments also re­quired that, in the delivery of services, particular attention be paid to minority low-income individuals. "Greatest economic need" was defined as "income below the poverty threshold as established by the Bureau of the Census" and "greatest social need" was defined in terms of "non-economic factors which include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status and which restrain an individual's ability to perform normal daily tasks or which threaten his or her ability to live independently."

Regarding services, the 1984 amendments: referenced services to pre­vent elder abuse; increased authority of states to transfer funds between supportive and nutrition services; required that states spend some service funds for effective demonstration projects in health and nutrition education; and required area agencies annually to detail the amount expended for each category of "priority service" (including legal assistance) during the previous fiscal year. The lang­uage requiring that an "adequate proportion" of funds be spent on priority services was modified to require that an "adequate proportion" be spent on "each" priority service.

The 1984 amendments authorized states to use a portion of their services allotment for state agency administration, in lieu of separate authorization of funds for state agencies. States were also re­­quired to assign personnel to provide state leadership in developing legal assistance programs and to provide in-service training for personnel of agencies and programs under the Act.

**The 1987 Amendments**

The 1987 amendments to the Act contained numerous provisions which impacted on legal assistance.

The 1987 amendments retained the requirement that an "adequate proportion" of Title IIIB funds be expended for each of the three priority services: access, in-home, and legal assistance but added a new provision requiring state plans to specify a minimum percentage of the funds received by each area agency for Title IIIB services which must (absent a waiver by the state) be used to provide each of the three priority services.

Similarly, the act retained the waiver requirements in place prior to the 1987 amendments with some additional requirements. Thus, an area agency requesting a waiver of the requirement that an "adequate proportion" of Title IIIB funds be expended on any one of the three categories of priority services must: (1) demonstrate that services being provided for such category are sufficient to meet the need for such services in the area; and (2) conduct a public hearing, after notice regarding the waiver. An area agency must seek a waiver whenever it proposes to fund legal assistance, access, or in-home services at or below the "minimum proportion" set by the state. Whenever a state agency proposes to grant a waiver, the state agency must publish its intention to do so with the justification for the waiver at least 30 days prior to the effective date of the decision to grant the waiver. During the 30 day notice period, an individual or service provider from the area may request a hearing before the state agency on the waiver request and the state shall afford an opportunity for such a hearing. State agencies granting a waiver of the minimum funding requirement for legal assistance, access or in-home services are required to provide the Commissioner on Aging with a report detailing the demonstration made by the area agency to obtain the waiver and copies of the records of the public hearings conducted by both the area agency and the state agency. The Commissioner must, in turn, provide an analysis of such reports to Congress.

Under the 1987 Amendments, for fiscal years beginning after September 30, 1988, the Administration on Aging is required to collect and report to Congress statistical data and analyses regarding programs and activities carried out with funds provided by the Act, including:

A. with respect to each type of service provided with such funds-

(1) the aggregate amount of such funds expended to provide such service;

(2) the number of individuals who received such service;

(3) the number of units of such service provided;

B. the number of senior centers which received such funds;

C. the extent to which each area agency satisfied the provision of the Act requiring that an adequate proportion of Title IIIB funds be expended for each of the three priority services (access, in-home, and legal assistance), and an analysis of information from states regarding waivers granted for funding priority services;

D. the extent to which each area agency has satisfied the requirement that preference be given to serving those in greatest social and economic need with particular attention to low-income minority individuals, and an analysis of information regarding the effectiveness of state and area agencies in targeting services to those in greatest need with particular emphasis on low-income, low-income minority, and frail individuals.

Also, under a new provision in the 1987 Amendments, the Commissioner on Aging was required to submit a report to Congress by September 30, 1989 assessing the unmet need for supportive services (such as legal assistance), nutrition services and multipurpose senior centers. This report was to summarize in detail for each state the results of the most recent evaluation conducted by the State Agency under the then current state plan. The report was to recommend administrative action and legislation relating to satisfying the demand for supportive services at senior centers and other sites. The Act specifically authorizes the Commissioner on Aging to issue regulations to ensure that the evaluations required to be summarized in the report include data that are objectively collected and statistically valid.

The 1987 amendments also provided that State and area agencies are prohibited from requiring a legal assistance provider from revealing information that is protected by the "attorney-client privilege."

Finally, the 1987 Amendments continued to stress targeting services to those in greatest social and economic need with special emphasis on low-income minority individuals. The amendments mandated that area agencies include in each agreement made with a provider of any services the requirement that the provider (1) specify how it intends to satisfy service needs of low-income minority individuals; and (2) attempt to provide services to the population of low-income minority individuals in at least the same proportion as that population bears of the older population as a whole. Similar provisions were added to both the state and area plans sections of the Act.

**The 1992 Amendments**

The 1992 Amendments to the Older Americans Act brought about significant changes, many of which impact upon legal assistance. Perhaps the most significant change in 1992 was the addition of Title VII, which called for State vulnerable elder rights protection activities.

In the 1992 Amendments, Title VII consolidated and strengthened four key advocacy programs: ombudsman (Chapter 2); prevention of elder abuse, neglect and exploitation (Chapter 3); state elder rights and legal assistance development (Chapter 4); and outreach, counseling, and assistance for insurance and public benefits (Chapter 5). Each of these programs previously existed in other sections of the Act; Title VII brought them all together. In order to be eligible to receive funding for any Title VII program, a State had to fulfill all Sec. 305 State Plan requirements, and had to include seven new assurances and a plan for implementing those assurances (an "Elder Rights Plan") in its State Plan. Any funds which a State received must be used to expand existing vulnerable elder rights protection activities, or to develop new ones.

Chapter 4 of Title VII outlined a program at the state level for improving the quality and quantity of legal and advocacy assistance "as a means for ensuring a comprehensive elder rights system." State agencies were required to foster legal assistance and advocacy activities through coordination with, and assistance to, area agencies on aging and other entities engaged in advocacy activities. Chapter 4 specifically set out nine functions which a State was to undertake in order to achieve the objective of promoting and protecting the rights of older individuals. This enumeration of State roles and responsibilities comprised the bulk of Chapter 4.

The provisions of the Act concerning the ombudsman program were moved from Title III to Chapter 2 of Title VII. The Amendments clarified these provisions, and further delineated the ombudsman's duties and responsibilities. Included among the ombudsman's duties were: (1) representation of the interests of residents before governmental agencies and investigation of legal and other remedies to protect the residents' health, safety, welfare, and rights; (2) identification and resolution of complaints regarding guardians and representative payees of residents; and (3) ensuring that residents have access to ombudsman services. The Amendments also specified procedures for access to records, and clarified what constituted consent to disclosure of a resident's identity. In addition, the Amendments explained the State's duties regarding provision of legal counsel to the ombudsman and representatives of the Office of Ombudsman, and provision of legal assistance services to residents of long-term care facilities.

The 1992 Amendments required the Assistant Secretary[[1]](#footnote-1) to develop guidelines for choosing and evaluating legal assistance providers and legal assistance developers; to encourage and provide TA to State and area agencies on aging; and to implement uniform data collection procedures for State agencies. In addition, the Assistant Secretary was required to monitor state compliance with the prohibition of conflicts of interest under the Act, and issue regulations containing certain requirements for the designation of an area agency on aging.

Also established by new 1992 provisions were a National Center on Elder Abuse, a National Aging Information Center, and a National Ombudsman Resource Center.

The 1992 Amendments clarified and expanded the duties and functions of State agencies on aging. The State Plan required area agencies to give priority to legal problems related to health, long-term care, nutrition, income, housing, utilities, abuse, neglect, defense of guardianship, and age discrimination. In addition, the Plan had to specify that the State would assign a legal assistance developer who would provide leadership in the development of legal assistance programs for older individuals. The State Plan also had to provide assurances that individuals within State and area agencies on aging were not subject to a conflict of interest. Finally, the State Plan had to contain several new assurances and an implementation plan (an Elder Rights Plan), as required by Sec. 705(a).

New provisions specified which factors the State agency had to take into account in developing its intrastate funding formula, and required that the formula be submitted to the Assistant Secretary for approval. If the Assistant Secretary did not approve the formula provisions, and the State did not fulfill the State Plan requirements, the Assistant Secretary was authorized to withhold that State's funding.

Throughout the Amendments, the drafters strongly emphasized targeting by State and area agencies on aging and all service providers including legal assistance providers, to those in greatest social and economic need, with particular attention to low-income minorities.

The 1992 Amendments also added various provisions regarding area agencies on aging. These indicated that area plans must establish procedures for coordinating entities which provide services to older persons; establish grievance procedures for older persons who are dissatisfied with or denied services under Title III; and coordinate with nonprofit entities to provide for the development, provision, and expansion of supportive services. In addition, area plans had to ensure that special outreach efforts would be used to identify older individuals residing in rural areas; those with severe disabilities, with limited English-speaking ability, or with Alzheimer's disease, who are eligible for assistance under the Act.

The Technical Amendments of 1993 also made a number of changes to the Act. The amendments redesignated the Commissioner on Aging's position as Assistant Secretary for Aging, and changed the titles of various other officers within the Administration on Aging. In addition, the technical amendments deferred the effective dates of certain provisions of the Act, and extended the date for holding a White House Conference on Aging to May 31, 1995.

**The 2000 Amendments**

In the Fall of 2000, after nearly six years of effort, the US Senate and House of Representatives approved the 2000 Amendments (HR 782) to the Older Americans Act of 1965. On November 13, 2000, President Clinton signed PL 106-501 into law, re-authorizing the OAA through 2005. The 2000 Amendments retained a number of critical provisions to help the nation's most vulnerable elders to secure essential rights, protections and opportunities. These include: retaining legal assistance as one of the priority services under Title III-B, retaining in Title IV a national legal assistance support system, and retaining major portions of Title VII, the Elder Rights Title, including Chapter 4 on State Legal Assistance Development.

With the 2000 Amendments, Congress reaffirmed its commitment to elder rights and legal assistance. This is evidenced, most notably, by the preservation of the Legal Assistance Developer in Title VII and the maintenance of legal assistance as a priority service in Title III. The Legal Assistance Developer remains the one person who must conceptualize a statewide vision of the delivery of legal assistance to the most vulnerable elderly in the state and then implement it. Similarly, by preserving legal assistance as a priority service in Title III-B, Congress reaffirmed the importance of legal assistance and assured it would be funded for years to come.

Prior to the 2000 Amendments, the OAA was silent on whether legal assistance providers were required to provide their clients with an opportunity to contribute to the cost of services. In a new section titled "Consumer Contributions," the 2000 Amendments clarified whether contributions for legal assistance were permitted or even encouraged. States are now generally permitted to implement cost sharing measures for services, except for certain excluded services, such as ombudsman, elder abuse prevention, and legal assistance. Voluntary contributions are also permitted provided that the method of solicitation is non coercive. Lastly, the 2000 Amendments reworked some of the language dealing with waivers for funding the priority services. Area agencies still may request the State agencies for waivers of the requirement that a certain proportion of Title III-B funds be expended on each of the three priority services, but generally state and area agencies must still show that the need is otherwise being met.

The 2000 Amendments also retained major portions of Title VII, the Elder Rights title. States are still required to provide leadership in improving the quality and quantity of legal assistance and advocacy through development and coordination of a comprehensive system for vulnerable elder rights protection. This system includes the long-term care ombudsman, elder abuse prevention, the legal services developer, and outreach, counseling, and assistance programs.

On the following pages are fourteen questions and answers about the requirements of the Older Americans Act regarding legal assistance and elder rights.

**B. Fourteen Questions And Answers About Legal Assistance Under The Older Americans Act**

Introductory Note

Chapter 1 of the *Comprehensive Guide* has been revised and updated to reflect the changes made by the 2000 Amendments to the Older Americans Act (OAA). After nearly six years of effort to reauthorize the Act, Congress passed these amendments in the fall of 2000 by the enactment of HR 782.

Note that the legislative history regarding the 2000 Amendments is sparse. The House did not issue a report; only the Senate Committee on Health, Education, Labor and Pensions (HELP) issued a Report on the Older Americans Act 2000 Amendments, Report # 106-300, September 7, 2000. We have referenced legislative history from past versions of the OAA, such as the 1982, 1987, and 1992 Amendments. We have also referenced the most recent Regulations available for the OAA which were promulgated in 1988 for the 1987 Amendments.

Upon issuance of future Regulations or Amendments to the OAA, the *Comprehensive Guide* will be updated again to reflect these changes.

Referenced sections of the 2000 Amendments and 1988 Regulations appear in their entirety on the final pages of this chapter.

*Disclaimer & Note:* At the time this analysis was undertaken in 2001, an official compilation of the Older Americans Act as Amended in 2000 was not available. To assist the many organizations who would benefit from having a complete, consolidated version of the Act which includes the amendments adopted by Congress in 2000, The Center for Social Gerontology prepared its own “unofficial” compilation of the current Act. TCSG relied on this “unofficial” compilation in preparing this analysis. Because it is an official compilation, it is possible that there will be some mistakes in it, and therefore in this analysis. Further, for this reason, all citations refer only to the Older Americans Act Sections. Parallel citations to the codified OAA in the U.S. Code were not available. The codified version of the Older Americans Act prior to the 2000 Amendments is found at 42 U.S.C. §3001 et seq.

For those wishing to view the entire unofficial compilation, it can be found at TCSG’s web site: <http://www.tcsg.org/law/oaa/reauth.htm> However, because it is unofficial, it may contain errors, and TCSG takes no responsibility for any problems these errors may cause.

1. Is legal assistance still a priority service in the Older Americans Act?

**1.a) Answer**

Legal assistance has been a priority service since 1975 when the priority services were first created under the OAA. In 1975, there were four priority services: transportation, in-home, residential repair, and legal services. In 1978, the four were reduced to three: access, in-home and legal services, and these three have been the priority services since 1978.

The 2000 Amendments retained legal assistance as one of the three categories of priority services under Part B, Supportive Services,and thereby reaffirmed the importance of legal assistance under the OAA. The retention of legal assistance as a priority service is significant because of the importance placed on the priority services under the OAA, and the requirement that each of the priority services be funded by the area agencies. For instance, the area agencies on aging are required to consider the priority services when developing an area plan. The area plan must assure that an “adequate proportion” of Title III-B funds allotted to a given area will be expended for the delivery of each of the three categories of priority services. *OAA §306(a)(2).* Also, the State plan must provide that the State agency will specify a “minimum proportion” of Title III-B funds received by each area agency that is considered “adequate” and that is to be expended to provide each of the three categories of priority services. *OAA §307(a)(2)(C).* Furthermore, by preserving legal assistance as a priority service under Title III-B “Supportive Services,” the 2000 Amendments reaffirmed the importance of legal assistance and assured that it would be funded for years to come.

Note: See Question 4 regarding waivers of the requirement that area agencies must fund legal assistance and the other two priority services at least at the minimum level established by the State agency.

**1.b) Statute**

*See* OAA § 306(a)(2); §307(a)(2)(C).

**1.c) Legislative History**

*(1975 Amendments)*

*The hearings before the Subcommittee on Aging have underscored the need to expand the provision of legal services to the elderly. Perhaps more than any other group, the elderly rely upon complex public and private programs and institutions for their daily subsistence. Many have no experience at dealing with the governmental programs and large bureaucracies upon which they have become largely dependent.*

*Superimposed upon the lives of the elderly is a vast array of complex statutory, regulatory, and decisional law. Their shelter may be provided or secured under Federal or state public or subsidized housing laws, relocation laws, and zoning laws. Their health is often dependent upon Medicare, Medicaid, laws regulating nursing homes, and laws relating to prescription drugs. Their nutrition is often secured by the Title VII Nutrition program, the Food Stamp program, or other Federally established nutrition programs. The source of their incomes may be Social Security, Supplemental Security Income under title XVI of the Social Security Act, other Federal retirement benefit programs, or private pensions. Finally, the dignity of their personal freedom and control of their personal and real property is subject to the complex laws of guardianship, conservatorship, and involuntary commitment. They must have someplace to turn for adequate and effective legal assistance in dealing with a vast complex of crucial legal issues if they are to take full advantage of the Governmental programs designed to benefit the elderly.*

*But, in far too many instances and far too many areas, our nation's elderly lack adequate legal services. Testimony before this Committee showed that although comprising over 20% of the nation's poor, the elderly represent only 6% of the client load of the average legal services program funded by the Community Services Administration – the successor to the Office of Economic Opportunity. Consequently, the Committee is convinced that there is a critical need to expand the provision of legal services specifically designed to meet the legal needs of older Americans. In addition, the situation of a non-destitute elderly person with respect to legal representation may be even more acute than that of an elderly poor person. The former has too much income or resources to qualify for free legal services and yet often cannot afford to hire a private attorney. Moreover, even if resources are available to pay a private attorney, such attorneys may be unavailable since the intricacies of the programs governing an elderly person's life are unfamiliar to many in the private bar.*

S Rep No 255, 94th Cong, 1st Sess 24-25 (1975).

**2. What is “legal assistance” and what types of delivery systems fall within its definition?**

2.a) Answer

The definition of legal assistance was not altered by the 2000 Amendments. The term “legal assistance” still

1. *means legal advice and representation provided by an attorney to older individuals with economic or social needs; and*
2. *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.* OAA §102(31) (Emphasis added)

Several provisions within the definition of “legal assistance” merit closer examination.

First, legal assistance is still the only service definition in the OAA that includes a targeting requirement. Subpart A emphasizes targeting by requiring that legal assistance be provided to “*older individuals with economic or social needs.*”

Second, the 2000 Amendments kept *“legal advice and representation provided by an attorney*” at the beginning of the definition as an independent phrase. This placement indicates that advice and representation *by an attorney* is still a necessary component of any legal assistance program. In Subpart B, the word “direct” was retained to describe the supervision of paralegals and law students by an attorney. It is our contention that while the definition of legal assistance may include services by paralegals, law students, and even nonlawyers “where permitted by law” (e.g. under Titles II (OASDI), XVI (SSI), XVIII (Medicare), and XIX (Medicaid) of the Social Security Act), a delivery method that utilizes nonlawyers alone is not sufficient. The definition stresses at the outset that advice and representation by an attorney is an essential component of legal assistance as defined in the Act.

2.b) Statute

*See* OAA §102(31).

2.c) Legislative History

*(1987 Amendments)*

*The Committee also wishes to note that the use of nonlawyers, where permitted by federal and State law, can be effective in meeting the expanding legal assistance needs of older persons, particularly to discover and assist older persons regarding public benefit problems. While direct attorney supervision of nonlawyer advocates is not required, the Committee believes that the support and utilization of this network by title III-B funded lawyers and other lawyers should be encouraged. The Commissioner should encourage their utilization, and make provision for training and support to nonlawyers*. S Rep No 136, 100th Cong, 1st Sess 52 (1987).

*(1984 Amendments)*

*The Committee bill makes minor modifications to the legal assistance program under title III of the Act, substituting the term legal assistance for the term “legal services” in current law, and clarifies that if the grantee is not a Legal Services Corporation project, it must coordinate its services with Legal Services Corporation projects which may be located in the same planning and service area, but makes no substantive change in the provisions of the Act.*

*The Committee is pleased by recent indications of an expanded effort on the part of the private bar to provide legal services to low-income persons, but recognizes that with reductions in a variety of Federal programs funding legal services, including a somewhat diminished amount of funds under title III of the Act being devoted to legal services activities, the need for programs to address the special legal problems of many older persons remains.* S Rep No 467, 98th Cong, 2d Sess 12 (1984). See also Conf Rep No 1037, 98th Cong, 2nd Sess 35-36 (1984).

**3. How much must be spent by the area agencies for provision of legal assistance?**

**3.a) Answer**

The 2000 Amendments made no substantive changes to how much must be spent by the area agencies on providing legal assistance. The Amendments retained legal assistance as one of three priority services in the Act, and retained the requirement that an “adequate proportion” of Title III-B funds be expended by all area agencies on aging for delivery of each of the three categories of priority services: access, in-home, and legal assistance. *OAA §306(a)(2)(A-C).* (See Question 4 regarding waivers of this funding requirement.)

What constitutes an “adequate proportion” is determined by each State agency on aging, and the 2000 Amendments made only minor changes in the wording that instructs States to make this determination. The 2000 Amendments deviated slightly from prior language that required States to specify a “minimum percentage” of Title III-B funds to be expended for priority services. Under the 2000 Amendments, the wording is a “minimum proportion.” The State plan must provide that the State agency will

*specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B that will be expended (in the absence of waiver under sections 306(b) or 316) by such area agency on aging to provide each of the categories of [priority services].* OAA §307(a)(2)(C) (Emphasis Added).

TCSG believes there is no real distinction in requiring a State agency to specify a “minimum percentage,” as opposed to a “minimum proportion” (of Title III-B funds to be expended on priority services). The change in wording actually pales in importance to the fact that the State agency must still specify a minimum -- that is a floor, and not a ceiling -- for funding legal assistance. In fact, the wording change to “minimum proportion” effectively links the state provision even more closely with the area agency’s “adequate proportion” requirement. Both are now “proportions” that must be specified by the State and then expended by the area agencies on each of the three priority services, one of which is legal assistance.

Furthermore, the Amendments retained the “maintenance of effort” requirement that the State plan must assure that any Title III-B legal assistance furnished under the plan will be *in addition* to any legal assistance for older persons furnished with funds from other sources (e.g. under Legal Services Corporation funded programs), and that reasonable efforts must be made to maintain existing levels of legal assistance for older people. *OAA §307(a)(11)(D).*

In describing State plan requirements, the 2000 Amendments continue to provide that the State agency will evaluate the need for supportive services (including legal assistance), and determine the extent to which other existing programs do or do not meet such needs. However, there were some small but important changes in both wording and placement of this “needs assessment” provision that have important implications for funding of legal assistance.

The prior language stated that the State agency would evaluate the need for supportive services (including legal assistance) and “determine the extent to which existing public or private programs meet such need.” This language was at §307(a)(3)(A), and was totally separate from the provision requiring the State to specify a minimum percentage of IIIB funds to be expended on the three priority services which was found at §307(a)(22). In the 2000 Amendments, the State requirement to evaluate the need for supportive services is directly linked, by placement, to the requirement to establish a minimum funding level for the priority services. Further the language in the 2000 Amendments describing what the States may consider in assessing the extent to which needs are being otherwise met was broadened to include services by volunteers. The provision describing the needs assessment and linking it to the establishment of funding levels for priority services now reads:

*(2) The* [State] *plan shall provide that the State agency will --*

*(A) evaluate ... the need for supportive services (including legal assistance ... information and assistance, and transporta-tion services) ... within the State;*

*(B) develop a standardized process to determine the extent to which public or private programs and resources (including volunteers and programs and services of voluntary organizations) that have the capacity and actually meet such need; and*

*(C) specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B that will be expended (in the absence of a waiver ...) by such area agency on aging to provide each of the categories of* [priority services]. OAA §307(a)(2)(A-C).

The addition of “*volunteers and programs and services of voluntary organizations*” to what states are to consider in assessing the unmet need for services is significant because this will include consideration of *pro bono* legal services. Given this, the addition of the phrase “*have the capacity and actually meet such need*” is equally significant. All OAA services are to be targeted to those in greatest social and economic need, and this targeting requirement is particularly strong for legal assistance which is specifically defined as being for “ *... older individuals with economic or social needs.*” *OAA §102(31)(A)*

As states assess the unmet need for legal services, it will be very important for them to focus specifically on the needs of those elders in greatest social and economic need. Their most pressing legal needs are likely to center around basic needs for income, shelter, food, and health care and they are likely to need legal assistance with such things as Medicaid, Medicare, food stamps, SSI, etc. In then looking at the availability of services by other public and private agencies and by pro bono volunteers, it will be important to examine the capacity of the pro bono attorneys to effectively handle these kinds of legal issues and to actually do the outreach necessary to reach and meet the needs of those socially and economically needy elders defined in the Older Americans Act.

As indicated in the Legislative History section below, the Senate Health, Education, Labor and Pensions (HELP) Committee recognized the need to differentiate the extent to which pro bono legal services may exist in a State from the extent to which those volunteer services have the capacity and actually meet the needs of the target populations. The HELP Committee report states:

*In evaluating the need for supportive services ... including the use of volunteers, it is the intent of the committee that special attention be paid to those older individuals with the greatest social and economic needs.*  S Rep No 399, 106th Cong, 2nd Sess 6 (2000)

**3.b) Statute**

*See* OAA §102(31)(A); §306(a)(2)(A-C); §307(a)(2)(A-C); §307(a)(11)(D).

**3.c) Legislative History**

*(2000 Amendments)*

*In evaluating the need for supportive services in section 307(a) including the use of volunteers, it is the intent of the committee that special attention be paid to those older individuals with the greatest social and economic needs. Unless special attention is paid, their need for use of alternative resources for supportive services, transportation, and nutrition can be overlooked or may not be accurately assessed. The standardized process to be developed should reach out to these special populations to assess their needs and services that are actually being delivered now.* S Rep No 399, 106th Cong, 2nd Sess 6 (2000).

*(1992 Amendments)*

*New funds appropriated to programs under this title [VII] are intended to expand, not supplant, services made available under this title*. S Rep No 151, 102nd Cong, 1st Sess 104 (1991).

*(1987 Amendments)*

*[E]ach State shall set a minimum proportion of Title III B funds to be expended by each area agency for each type of service (access, in-home, and legal services). If an area agency expends at least the minimum percentage set by the State, the area agency will have fulfilled the requirement to spend an adequate proportion of funds on such services. The minimum percentage is intended to be a floor, not a ceiling. Area agencies on aging are encouraged to devote additional funds to each of these services to meet local needs.* Conf Rep No 427, 100th Cong, 1st Sess 70-71 (1987).

*(1984 Amendments)*

*During the 1981 reauthorization hearings, the committee reached the conclusion that the provision requiring that 50 percent of title III-B funds be spent for the delivery of the three priority areas of services – in-home services; legal services; and "access" services (transportation, outreach, and information and referral) – was too rigid a requirement, and, in the 1981 Amendments, the "50 percent" requirement was struck and a provision that "an adequate proportion" of the allotted amount be expended in the delivery of priority services was substituted. The committee continues to believe that these services should be given priority, and is concerned that current reporting requirements do not result in sufficient information to determine how much is being spent currently on these services. For that reason, H.R. 4785 includes a requirement for annual reporting on funds spent for the priority services.*  H Rep No 737, 98th Cong, 2nd Sess 21 (1984). See also, Conf Rep No 1037, 98th Cong, 2nd Sess 38 (1984).

**4. When will area agencies be granted a waiver regarding funding legal assistance?**

**4.a) Answer**

The 2000 Amendments retained but condensed the waiver provisions for area agencies regarding the funding of legal assistance and the other two priority services. If an area agency wishes to fund legal assistance at a level below that which the State agency has designated as the “minimum proportion” of Title IIIB funds considered to be adequate, the area agency must still request a waiver from the State agency. The 2000 Amendments condensed the waiver provision so that an area agency requesting a waiver for legal assistance or either or the other two categories of priority services now must: 1) demonstrate to the State agency that the services being provided for such category are sufficient to meet the need for such services in the area, and 2) have conducted a timely public hearing upon request. *OAA § 306(b) (Emphasis Added).*

The 2000 Amendments removed the former Section 306(b)(2) completely, and with it, the notice and hearing requirements involved in obtaining a waiver. This means that an area agency requesting a waiver from the State agency no longer must notify the interested parties or conduct a public hearing before making its request to the State agency. A State agency also no longer must publish its intention to grant a waiver 30 days prior to the decision’s effective date, nor must a state provide the Assistant Secretary with a report containing details of the demonstration made by the area agency to obtain the waiver. Instead, the 2000 Amendments shifted the burden to the interested parties to find out about an area agency’s intention to request a waiver before the area agency requests it, and then request a public hearing with an opportunity to testify.

In addition to the waiver provisions regarding area agencies’ funding of the priority services, the 2000 Amendments added a new waiver provision to Title III for State agencies. *OAA §316.* The new provision allows the Assistant Secretary (upon receiving an application and sufficient documentation from a State agency) to waive select provisions of Sections 305 (Organization), 306 (Area Plans), and 307 (State Plans), as well as Section 308(b)(5) (transfer of funds between Part B Supportive Services and Part C Nutrition Services) and Section 309(c) (amount of State allotment used for provision of services). The Assistant Secretary may grant the application for waiver if the accompanying documentation is sufficient to establish that --

*(1) approval of the State legislature has been obtained or is not required with respect to the proposal for which the waiver is sought;*

(2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which waiver is sought;

*(3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all the comments received has been included in the application); and*

*(4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.* OAA § 316(a)(1-4) (Emphasis Added).

While it may appear at first glance that this new state waiver provision could render parts of the state and area plan requirements under the OAA ineffective, keep in mind that the decision to grant a waiver is not automatic. First, the state’s waiver request requires an application and supporting documentation sufficient to establish 1-4 above. Then, only the provisions of Sections 305, 306, and 307 requiring statewide uniformity of programs may be waived*,* and only *“… to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals." OAA §316(b)(1).* Similarly, the Assistant Secretary may only grant a waiver for state or area plan requirements of Sections 306(a) and 307(a) if *“… granting the waiver will promote innovations or improve service delivery and will not diminish services already provided[.]*” *OAA 316(b)(2-3).*

Once the waiver is granted, it is limited in scope. While the duration of the waiver is left to the discretion of the Assistant Secretary, it cannot exceed the duration of the State plan*. OAA §316(c).* Lastly, after a waiver is granted, the State agency must submit a report to the Assistant Secretary evaluating the impact of the waiver on the operation and effectiveness of its programs and services. *OAA §316(d).*

Under Question 3 above (pages I-18 & I-19), we discussed the importance of the targeting provision which is part of the definition of legal assistance in the Act. This targeting provision, which specifically defines legal assistance as being for “ *... older individuals with economic or social needs”* *OAA §102(31)(A)* is equally important for this Question on waivers. Any waiver request by an area agency under Section 306(b) to fund legal assistance at less than the “minimum proportion” specified by the state, will need to show more than that legal services are otherwise available. As part of its demonstration to the State agency that legal services being otherwise provided are sufficient to meet the need, the area agency needs to show that the legal needs of those older persons in social and economic need are being adequately met. Similarly, any request by a State agency to the Assistant Secretary for a Section 316 waiver that would involve legal assistance, would need to consider specifically the probable consequences for the group of older individuals in social and economic need.

**4.b) Statute**

*See* OAA §102(31)(A); §306(b); §316.

**4.c) Legislative History**

*(2000 Amendments)*

*[This section] also allows the Assistant Secretary to waive any provisions of section 305 of the act (State organization); section 306 of the act (area plan requirements); section 307 of the act (State plan requirements); prohibitions on transfers of funds between supportive and nutrition services; and requirements related to State maintenance of effort.*

*The Section establishes conditions under which waivers may be granted, including requirements that the State has obtained, if necessary, approval of the State legislature; has collaborated with area agencies and other affected organizations regarding the waiver request; has made the proposal available for review and comment, including the opportunity for a public hearing upon request; and has given consideration to the probable positive and negative consequences of the waiver, among other things.*

*The section also establishes the duration of waivers and reports to the Assistant Secretary.* S Rep No 399,, 106th Cong, 2nd Sess 28 (2000).

*(1987 Amendments)*

*The waiver provision of Section 306(b)(1) of existing law will [continue to] apply. . . The Conferees also note that they do not intend to require the State agency to hold a separate hearing for each individual or provider who requests such a hearing, but that single hearing at which each individual or provider may testify is sufficient to meet the intent of this section. Furthermore, the hearing may be conducted as part of other hearings being held by the State agency.* Conf Rep No 427, 100th Cong, 1st Sess 71 (1987).

**5. What if a state has no area agencies on aging? Does the State agency have to set a “minimum proportion” of Title III-B funds for delivery of the priority services, including legal assistance?**

**5.a) Answer**

If a State agency is performing the duties and functions of both a State and area agency, then, as State agency, it must set a “minimum proportion” of Title III-B funds for delivery of each of the three categories of priority services. In the 1970’s, when state and area agencies were initially created under the OAA, states were divided into distinct planning and service areas with one area agency on aging was designated for each planning and service area within the state. *OAA §305(a)(1)(E).* Some states with small populations and/or small geographic areas, designated their entire state as a single planning and service area. A state is allowed to continue as the single, statewide planning and service area if it made the designation and received approval from the Assistant Secretary on or before October 1, 1980. A state that is the planning and service area for the entire state then must perform the functions of both the State agency and area agency on aging for the entire state. *OAA §305(b)(5)(A).*

A number of states are currently taking on the dual role of State agency and area agency for their entire state. An area agency on aging must “… *have the ability to develop an area plan and to carry out, directly or through contractual arrangements, a program in accordance with th*e *plan within* *the planning and service area.*” *OAA §305(c)(5) Emphasis Added.* Therefore, a State agency acting as the sole area agency on aging for an entire state should develop and carry out both an area plan and a State plan. The area plan would assure that an “adequate proportion” of Title III-B funds will be expended for the delivery of legal assistance, while the State plan would assure that the State agency will specify a “minimum proportion” of Title IIIB funds that the area agency will expend to provide legal assistance. The State plan would be submitted to the Assistant Secretary for approval under OAA §307(a), and the area plan would be submitted to the State agency under OAA §306(a).

It may appear that it is somewhat redundant for the State agency to develop an area plan and a State plan, and set both an “adequate proportion” and a “minimum proportion,” but there is no real alternative. *OAA §307(a); §306(a).* If the State agency sets no “minimum proportion” (because it has no area agencies to set one for) then priority services, like legal assistance, could go unfunded. On the other hand, it could make perfect sense for the State office on aging to function as the area agency on aging because the functions of the two agencies are intertwined, and many of their obligations are reciprocal. The challenge for a state with such a dual role is that it maintain enough “separateness of function” such that its role as area agency does not get swallowed up in its role as State agency.

**5.b) Statute**

*See* OAA §305(a)(1)(E); §305(b)(5)(A); §305(c)(5); §306(a); §307(a).

**6.** **Must State agencies have a Legal Assistance Developer, and what is the role of the Developer?**

**6.a) Answer**

Under Title III of the 2000 Amendments, each state is still required to *“… assign personnel (one of which is to be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State."* *OAA §307(a)(13).* This language was not altered by the 2000 Amendments, and it reaffirms that more than one person is perhaps needed at the state level to provide state leadership and to perform the specific duties of the Legal Assistance Developer. (Further discussion of what is involved in the state providing leadership on legal assistance is included in Questions 7 and 8 below.)

In Title VII, however, the 2000 Amendments did make some changes to Chapter 4, “State Legal Assistance Development” where Section 731(a) was removed entirely and Section 731(b) was substantially reduced. It is our belief that what remains is the core of the Legal Assistance Developer’s work. Under Title VII, each state must still provide a State Legal Assistance Developer and the services of other personnel sufficient to ensure

1) State leadership in securing and maintaining the legal rights of older individuals;

*2) State capacity for coordinating the provision of legal assistance;*

*3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;*

*4) State capacity to promote financial management services to older individuals at risk of conservatorship;*

*5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and*

*6) State capacity to improve the quality and quantity of legal services provided to older individuals.* OAA §731.

The above list is evidence of the wide-ranging responsibilities that must be undertaken by the Legal Assistance Developer. The developer is responsible for broadly defined activities, such as providing state leadership in securing the legal rights of older persons, as well as coordinating the provision of legal assistance to older persons within the state. The developer must also provide technical assistance to area agencies, legal providers, and others to coordinate the provision of legal assistance to older people and to make sure legal assistance is targeted to those older persons in the greatest social and economic need. The developer also has more narrowly defined responsibilities, such as focusing special attention on substantive areas of the law like promoting financial management services to older persons at risk of conservatorship, and maintaining the rights of older persons at risk of guardianship. Under the 2000 Amendments, the Legal Assistance Developer remains the one person in the state who must conceptualize a statewide vision of the delivery of legal assistance to the most vulnerable elderly in the state and then implement it.

It should be noted that the 2000 Amendments call on the Assistant Secretary to “*develop guidelines and a model job description for choosing and evaluating legal assistance developers* ...” *(§202(a)(23).* The requirement that the Administration on Aging develop such guidelines and job description was first added to the Functions of Assistant Secretary in the 1992 Amendments when Congress placed strong emphasis on the important state leadership role of legal services developers. The requirement that AoA develop a model job description outlining the many important duties of developers was retained in the 2000 Amendments. As of the summer of 2001, AoA has not developed these guidelines/job description. (TCSG and the National Association of Legal Services Developers have developed a model job description which can be obtained from TCSG.)

**6.b) Statute**

*See* OAA §202(a)(23); §307(a)(13); §731.

**6.c) Legislative History**

*(2000 Amendments)*

*The Committee intends that States and their legal assistance developers should continue to develop the quality and quantity of legal assistance available to older individuals. Particular focus should continue on issues of elder abuse, neglect, and exploitation; the rights of older individuals living in institutions; those who have cognitive impairments and are therefore at risk of institutionalization or guardianship; access to Social Security, Medicare, and Medicaid; and prevention and remediation of scams and schemes targeted to the elderly.* S Rep No 399, 106th Cong, 2nd Sess 16 (2000).

*(1992 Amendments)*

*The Committee believes that the Aging Network, through the statewide leadership of State agencies on aging have crucial roles to play in promoting and protecting the rights of older individuals, particularly those who are vulnerable due to such factors as their economic status, frailty including dementia, and lack of knowledge about rights and avenues for redress of grievances. The Committee bill authorizes a State Elder Rights and Legal Assistance Development program to establish and emphasize the State agency on aging as the focal point for policy review, analyses, and advocacy at the State level on matters affecting the rights of the elderly. In addition to carrying out specific programs under Title VII, the Committee expects that States will provide leadership in assuring that state and local systems which have responsibilities related to guardianships, protective services and other surrogate decision making mechanisms, age discrimination, pension and health benefits, insurance, consumer protection, public entitlements, and dispute resolution alternatives, and other concerns, are responsible and effective in meeting the needs of elders and in protecting their rights. The Committee bill also builds upon the Act's current requirements that State agencies on aging must provide coordination of the furnishing of legal assistance, and provide advice, technical assistance, and training related to the provision of legal assistance. The Committee compliments state agencies on aging for their commitment to providing such services through legal services developers first established under AoA-funded activity assistance grants in the mid-nineteen seventies. The Committee expects that States will build upon and enhance those efforts under this program. In recognition of the unique nature of legal assistance services, the Committee emphasizes the importance of States working closely with area agencies on aging and legal assistance providers in enhancing and monitoring the quality and quantity of legal assistance including the development of statewide standards for delivering legal assistance. It is the Committee's intent that such activities will increase access by older individuals to legal assistance and other advocacy and elder rights services.* S Rep No 151, 102d Cong, 1st Sess 107 (1991).

**7. What “other obligations” do State agencies have under the OAA with regard to legal assistance?**

**7.a) Answer**

In addition to having a Legal Assistance Developer, the important “other obligations” for State agencies were retained by the 2000 Amendments. The core Title III requirement that the State agency serve as an “effective and visible advocate” for older individuals was preserved: reviewing and commenting on all State plans, budgets, and policies which affect older persons, and providing technical assistance to any agency, organization, association or individual representing the needs of older people. OAA §305(a)(1)(D).

The 2000 Amendments also retained the strong state requirements regarding delivery of legal assistance. The State agency is still required to coordinate legal assistance within the state, provide technical assistance in the provision of legal assistance to older persons in the state, and support the furnishing of training and technical assistance for legal assistance for older individuals. OAA §307(a)(11)(C). The State agency is also required to evaluate the need for legal assistance, develop a standardized process to determine the extent to which existing programs and resources have the capacity and actually are meeting the need for legal assistance, and establish a “minimum proportion” of Title IIIB funds to be expended by each area agency in the absence of a waiver. *OAA §307(a)(2)(A-C).*

As noted in Question 3 above, the Amendments also retained the “maintenance of effort” requirement. That is, the State agency must assure, to the extent practicable, that any legal assistance furnished with Title III-B funds will be *in addition* to any legal assistance for older persons furnished with funds from other sources (e.g. under Legal Services Corporation funded programs), and that reasonable efforts will be made to maintain existing levels of legal assistance for older people. *OAA §307(a)(11)(D).*

The 2000 Amendments also retained the 1992 Amendments addition of priority legal issues, which requires the State plan to contain *“… assurances that area agencies on aging will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination*.” *OAA §307(a)(11)(E).*

The other state obligations retained by the 2000 Amendments include1) assuring that the AAA’s attempt to involve the private bar, including pro bono and reduced fee services, 2) assuring that legal programs serve those in social or economic need, 3) providing for coordination, advice and TA on the provision of legal assistance, and 4) supporting the furnishing of training and technical assistance. *OAA §307(a)(11)(A-C).*  Lastly, the state has the responsibility to assure that the area agencies are performing their “other obligations” as described in Section 307(a)(11) and as discussed below in the next question.

**7.b) Statute**

*See* OAA §305(a)(1)(D); §307(a)(2)(A-C); §307(a)(11)(A-E).

**7.c) Legislative History**

*(2000 Amendments)*

*In evaluating the need for supportive service in section 307(a) including the use of volunteers, it is the intent of the committee that special attention be paid to those older individuals with the greatest social and economic needs. Unless special attention is paid, their need for use of alternative resources for supportive services, transportation, and nutrition can be overlooked or may not be accurately assessed. The standardized process to be developed should reach out to these special populations to assess their needs and services that are actually being delivered now.* S Rep No 399, 106th Cong, 2nd Sess 5 (2000).

*(1992 Amendments)*

*The Committee intends that this new title [VII] will encourage the State, area agencies on aging, and others in the aging network to better coordinate various federal, state and local laws. It is the Committee's expectation that improved and new programs incorporated or established under this title will result in more focused, better coordinated, and more effective advocacy activities of State Units on Aging and the States' aging networks.*

S Rep No 151, 102nd Cong, 1st Sess 103 (1991).

*The Committee believes that the Aging Network, through the statewide leadership of State agencies on aging have crucial roles to play in promoting and protecting the rights of older individuals, particularly those who are vulnerable due to such factors as their economic status, frailty including dementia, and lack of knowledge about rights and avenues for redress of grievances. The Committee bill authorizes a State Elder Rights and Legal Assistance Development program to establish and emphasize the State agency on aging as the focal point for policy review, analyses, and advocacy at the State level on matters affecting the rights of the elderly. In addition to carrying out specific programs under Title VII, the Committee expects that States will provide leadership in assuring that state and local systems which have responsibilities related to guardianships, protective services and other surrogate decision making mechanisms, age discrimination, pension and health benefits, insurance, consumer protection, public entitlements, and dispute resolution alternatives, and other concerns, are responsible and effective in meeting the needs of elders and in protecting their rights. The Committee bill also builds upon the Act's current requirements that State agencies on aging must provide coordination of the furnishing of legal assistance, and provide advice, technical assistance, and training related to the provision of legal assistance. The Committee compliments state agencies on aging for their commitment to providing such services through legal services developers first established under AoA-funded activity assistance grants in the mid-nineteen seventies. The Committee expects that States will build upon and enhance those efforts under this program. In recognition of the unique nature of legal assistance services, the Committee emphasizes the importance of States working closely with area agencies on aging and legal assistance providers in enhancing and monitoring the quality and quantity of legal assistance including the development of statewide standards for delivering legal assistance. It is the Committee's intent that such activities will increase access by older individuals to legal assistance and other advocacy and elder rights services.* S Rep No 151, 102d Cong, 1st Sess 107 (1991).

**8. Who may provide legal assistance/with whom may area agencies contract? And what “other obligations” do area agencies have regarding legal assistance under the OAA?**

8.a) Answer

Requirements for AAAs in Contracting with Legal Assistance Providers

The 2000 Amendments retain previous requirements regarding who area agencies may contract with to provide legal assistance and also retain several “other obligations” of area agencies regarding legal assistance. These requirements are enumerated in the State Plan section of the Act (307), and the State agency is responsible for assuring that area agencies comply.

Under the 2000 Amendments, area agencies must (1) enter into contracts with providers of legal assistance who can demonstrate the experience and capacity to deliver legal assistance under the Act, and (2) include in those contracts provisions to assure that legal providers will be subject to any Legal Services Corporation Act regulations determined appropriate and adopted as OAA regulations by the Assistant Secretary for Aging. *OAA §307(a)(11)(A).*

Area agencies must select Title III-B legal assistance providers whose programs are designed to provide legal assistance to older persons with social or economic need, and who have agreed -- if the provider is not a Legal Services Corporation (LSC) project -- to coordinate services with existing LSC projects in the area in order to concentrate the use of IIIB funds on older persons with the greatest such need. *OAA §307(a)(11)(B).*

Overall, the area agency is responsible for making sure that the legal assistance provider they select is the “… *entity best able to provide ...”* legal assistance services to older persons in economic or social need. *OAA §307(a)(11)(B).*  It should be noted that, as in the 1992 Amendments, the 2000 Amendments state that the area agency’s assessment and determination of whether the selected provider is the “best entity” is to be made *“ ... pursuant to standards for services promulgated by the Assistant Secretary.” (§307(a)(11)(B).* The requirement that the Administration on Aging “*develop guidelines for area agencies on aging to follow in choosing and evaluating providers of legal assistance*” was added to the Functions of Assistant Secretary in 1992 and was retained in the 2000 Amendments. *(§202(a)(22).* As of August 2001, AoA has not developed these guidelines. In TCSG’s opinion, the development of specific guidelines for AAAs to follow in choosing and evaluating legal assistance providers will be extremely valuable. In our work with the law and aging network over the past three decades, we continue to hear that many AAAs find it difficult to know which is the best entity to provide legal services, and they are seeking guidance. Additionally, AAAs often lack the staff with the necessary expertise to effectively monitor and evaluate the quality of legal services provided. The guidelines will be a valuable tool to assist in these efforts.

Furthermore, area agencies must still select providers who will give priority to legal issues involving income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse neglect, and age discrimination. *OAA §307(a)(11)(E).* This was added in 1992, and legislative history informs us that the list of issues grew out of Congress’ concern over a reported lack of targeting by AAA-funded legal programs. The 1991 Senate Committee Report states: “*It is the Committee’s expectation that* [the listing] *will ensure that services are targeted to those in greatest social and economic need.” S Rep No 151, 102d Cong, 1st Sess 91 (1991).*

Area agencies must also make efforts to assure that any legal assistance providers they fund will use the Title III-B funds to provide services that are *in addition* to any legal assistance for older persons furnished with funds from other sources (e.g. with Legal Services Corporation funds). Existing levels of legal assistance for older persons funded through other sources should be maintained, and Title IIIB funds should be used to supplement, not supplant, other resources for this critical service. *OAA §307(a)(11)(D).*

The Regulations promulgated under the 1987 Amendments (the most recent regulations) also provide specifications regarding the legal provider an area agency must select. They state that an area agency must award funds to the provider that most fully meets the following criteria:

*(1) has staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization;*

*(2) has capacity to provide effective administrative and judicial representation in these areas;*

*(3) demonstrates the capacity to provide support to other advocacy efforts; for example, the long-term care ombudsman program;*

*(4) demonstrates the capacity to provide legal service to institutionalized, isolated, and homebound older individuals effectively; and*

*(5) demonstrates the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients to not speak English as their principal language.*  45 CFR §1321.71(c)(1-5)*.*

Multiple Legal Assistance Providers

While the OAA does not address the issue of how many legal providers an area agency should contract with, TCSG believes that area agencies should not divide limited funding among multiple legal service providers unless it is necessary to meet the need -- particularly of special target groups -- or if most efficient. For example, where a planning and service area needs to address special ethnic or geographic needs, several legal services providers may be required to provide adequate legal assistance to various target groups or in different geographic areas. However, area agencies must keep in mind when contracting with more than one legal services provider that the sum of the amounts paid to each legal provider must equal at least the minimum proportion of funds specified by the State agency to be expended on legal assistance. *OAA §306(a)(2)(C); §307(a)(2)(C).*

Restrictions on State and Area Agencies as Service Providers

The 2000 Amendments also retained the restriction that state and area agencies may not provide supportive services (including legal assistance) directly. This is true unless the State agency determines that: 1) direct provision by the State or area agency is necessary to ensure an adequate supply of such services, 2) the services are directly related to the State or area agency’s administrative functions, or 3) the service can be provided more economically and with comparable quality by the State or area agency. *OAA §307(a)(8)(A).* Furthermore, if a state or area agency were to provide legal services directly, the agency would still need to meet all the requirements for legal assistance services under the OAA.

Other Obligations of Area Agencies

Under the 2000 Amendments, the area agencies are still required to attempt to involve the private bar in providing legal assistance*. OAA §307(a)(11)(A)(iii).*  This includes involving groups within the private bar to furnish services to older individuals on a *pro bono* and reduced fee basis.

**8.b) Statute**

*See* OAA §202(a)(22); §306(a)(2)(C); §307(a)(2)(C); §307(a)(8)(A); §307(a)(11).

**8.c) 1988 Regulations**

*See*  45 CFR §1321.71(c).

**8.d) Legislative History**

(2000 Amendments)

[This section] modifies the area plan requirements to specify that each area agency will carry out revised State plan requirements regarding priority services: access, in-home, and legal assistance services. These revised provisions specify that the State agency will use uniform procedures to evaluate the need for supportive services (including legal assistance, information and assistance, and transportation services), nutrition services, and senior centers; develop a process to determine the extent to which public or private programs and resources (including volunteers and programs and services of voluntary organizations) have the capacity and actually meet such need. The area agency must report annually to the State agency regarding expenditures made for the priority services. S Rep No 399, 106th Cong, 2nd Sess 23 (2000).

(1992 Amendments)

Guidelines/Standards for Selection

*In response to concerns that area agencies have not received the technical assistance necessary to develop legal assistance programs and resources which can effectively identify and resolve legal problems of older Americans, the Committee bill requires the Commissioner to develop guidelines for area agencies to follow in choosing and evaluating providers of legal assistance, and expects that such guidelines will be available by December 30, 1992. The Committee strongly urges the Commissioner to consult with appropriate legal resource centers in developing such guidelines.*  S Rep No 151, 102d Cong, 1st Sess 90 (1991).

Direct Provision of Services by Area Agencies on Aging

*Current law prohibits AAAs from providing services directly, but allows State agencies to waive the prohibition under certain circumstances. [This has not been changed by the Amendments]. The law provides sufficient flexibility to accommodate circumstances where waivers may be needed. While it is not the intent of the members of the committees of jurisdiction to encourage the granting of waivers, the members note that the law should not be construed to prevent the granting of waivers to local government-based AAAs with a proven record of providing services of comparable quality more efficiently, and a commitment to contribute significant amounts of local resources to the provision of services for older individuals, or otherwise meet the other waiver conditions set forth in the law.* Cong Rec Vol 138, No 125, S13499 (Sept. 15, 1992).

**9. Who must be served, and which older persons are eligible for legal assistance under the OAA?**

**9.a) Answer**

Requirement to Target Those in Greatest Social and Economic Need

The 2000 Amendments did not make any substantive changes to who must be served or which elderly are eligible for legal assistance. Services are to be provided to older persons in social or economic need. Legal assistance continues to be the only service in the OAA that includes, as part of its definition, a targeting requirement. That is, it is defined as “... *legal advice and representation provided by an attorney to older individuals with economic or social needs.”*  *OAA §102(31).* In addition to this definitional requirement, the Act, overall, continues to strongly emphasize targeting services to those older persons in greatest social and economic need, with particular attention to low-income minorities.

“Greatest Economic Need” is defined as “*the need resulting from an income level at or below the poverty line.” OAA §102(27)*. Poverty line is defined as “*the official poverty line (as defined by the Office of Management and Budget, and adjusted by the Secretary in Accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).” OAA §102(38).*

“Greatest Social Need” is defined in the Act as

“*... the need caused by noneconomic factors, which include--*

*(A) physical and mental disabilities;*

*(B) language barriers; and*

*(C) cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that--*

*(i) restricts the ability of an individual to perform normal daily tasks; or*

*(ii) threatens the capacity of the individual to live independently.* OAA §102(28).

The importance of targeting those in greatest social and economic need dates back to the very early years of the Act, and the requirements have become increasingly strong over time. Legislative history repeatedly indicates the intent of Congress regarding targeting. Many of the strong provisions that exist today were originally added in 1987, and many were further strengthened in 1992.

*1987 Amendments*

To ensure that services are targeted to those with greatest social and economic need, with particular emphasis on low-income minority individuals, the 1987 Amendments mandated that area agencies include in each agreement made with a provider of any service, the requirements that the provider: (1) specify how it intends to satisfy service needs of low-income minority individuals; and (2) attempt to provide services to the population of low-income minority individuals in at least the same proportion as that population bears to the older population as a whole. Other targeting provisions were added to both the State and area plan sections of the Act in the 1987 Amendments. These provisions require assurances that outreach efforts will identify those individuals eligible for services, with emphasis on those in rural areas and those in greatest social and economic need, especially low-income minority individuals, and that such groups will be informed of the availability of assistance. In addition, State and area plans were to include provisions for an evaluation of the effectiveness of these special outreach efforts.

*1992 Amendments*

The 1992 Amendments called for particular targeting of three additional categories of older persons, and required special emphasis on outreach to these groups. These additional groups included: older individuals with severe disabilities, older individuals who have limited English speaking ability, and older individuals with Alzheimer's disease or related disorders. The 1992 Amendments also added a requirement that the caretakers of these older individuals be informed of the availability of assistance.

Title III of the 1992 Amendments specifically addressed targeting for legal services in two ways. First, they required, with respect to legal services, that the State Plan assure that AAAs give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect and age discrimination. The list of priority issues, which remains in the 2000 Amendments, was included to help ensure targeting. Second, the 1992 Amendments placed restrictions on the role of legal services in guardianship cases to ensure that services go to those in greatest social need -- those who have lost or are at risk of losing their autonomy through guardianship.

Congress also added a number of provisions to Title II in 1992, requiring the Administration on Aging and the Secretary of Health and Human Services to measure and evaluate the effectiveness of State and local efforts in targeting the most socially and economically needy. In addition, AoA was directed to conduct a study on ways in which Federal funds might be more effectively targeted to low-income minority older individuals and older individuals residing in rural areas. This study was to be submitted to the House and the Senate. Finally, in reporting on outreach activities, the Assistant Secretary was directed to consider the effectiveness of State and local efforts to target these needy individuals.

Prohibition Against Means Testing

While the Act is clear regarding who should be given priority to receive legal services, the legislative history, the regulations and now the Act are equally clear that the use of income and resources in determining who shall be eligible to receive services is prohibited. The challenge under the 2000 Amendments therefore remains, how to target those older persons in greatest social and economic need without utilizing a “means test.” Regulations promulgated under the 1987 Amendments (which are currently the most recent Regulations available for the OAA) define “means test” as “*the use of an older person’s income or resources to deny or limit that person’s receipt of services…” 45 CFR §1321.3.*

In the past, the prohibition against means testing was specifically addressed in the Regulations, *45 CFR §1321.67(c)* while the Act dealt with it only indirectly in terms of “targeting.” The 2000 Amendments now address it directly in a new Section 315 which allows states to implement “cost sharing” based on income for many OAA services, but strictly prohibits it for the elder rights services -- including legal assistance -- and certain other outreach, nutrition and tribal services. *OAA §315(a)* Only voluntary contributions are allowed for these types of services, and Section 315(b)(3) prohibits the use of a “means test” for any service for which voluntary contributions are accepted.

As indicated in the 1988 Regulations, legal assistance providers may not require an older person to disclose information about income or resources as a condition for providing legal assistance, and providers may only inquire about income while in the process of counseling and representation or to determine additional benefits for which a person may be eligible. *45 CFR §1321.71(d-e)* Providers clearly may not use an older person’s income as a “means test” to determine whether or not to provide the older person with legal assistance.

The tension created by the statutory requirement for preference to those in greatest need and the prohibition against means testing can be a source of confusion and frustration. TCSG believes the approach to resolving this dilemma lies in the provider working with the State and area agencies to identify those persons who are in greatest need, and then establishing deliberate operational procedures to insure that targeted groups will be reached. One of the most important procedures is to establish clear priority areas that reflect the needs of the target populations

Other Requirements Regarding Who Must Be Served

The 2000 Amendments added an emphasis on targeting those *older individuals residing in rural areas* to numerous sections in the OAA. For example, Section 202(a)(27), which formerly required the Administration on Aging (AoA) to evaluate the effectiveness of state and local efforts in targeting the most socially and economically needy, was replaced with a new provision requiring improved rural service delivery. This requires the Assistant Secretary to use research, develop a resource guide, provide training, and submit a report on how the states are improving rural delivery. *OAA §202(a)(27)(A-D).*

The 2000 Amendments still require that State agencies utilize outreach efforts to identify and reach specific target groups of older persons for assistance. The groups to be targeted still include older persons with: greatest economic and social need (with particular attention to low-income minority persons), severe disabilities, limited English-speaking ability, and older individuals with Alzheimer’s disease or related disorders, and now an emphasis has been added targeting older individuals residing in rural areas. *OAA §307(a)(16)(A)(i-vi).*

To further ensure that legal services go to those in greatest social need, namely those who have lost or are at risk of losing their autonomy through guardianship, the 2000 Amendments retained specific restrictions on the role of legal assistance in guardianship cases. Legal providers are limited to (1) representing older persons who are already under guardianship (wards), or (2) providing the defense against guardianship petitions that have been filed against older persons alleged to be incapacitated. Representation of petitioners can only be provided where the petitioners are age 60 and over, and where other adequate representation is unavailable. *OAA §321(a)(6)(B)*

**9.b) Statute**

*See* OAA §102(31); §202(a)(27)(A-D); §307(a)(11)(E); §307(a)(16)(A)(i-vi); §315; §321(a)(6)(B).

**9.c) 1988 Regulations**

*See* 45 CFR §1321.3; 45 CFR §1321.67(c); 45 CFR §1321.71(d-e).

**9.d) Legislative History**

*(1992 Amendments)*

*The Committee is concerned about the availability and accessibility of supportive services for elderly persons who reside in rural communities. . . [T]he needs of rural elderly is an important area of concern which the Committee intends to monitor with the possibility of future legislation to ensure that older individuals in rural parts of the country can fully benefit from the many. . . programs and services provided under the Act. Furthermore, the Committee expects that the Administration, the States, and area agencies on aging, will make every effort to ensure access to needed services by those older individuals, particularly low-income and minority persons, in rural areas.*

*The Committee is concerned about low-income minority elders' participation in Older Americans Act programs and wishes to enhance efforts by the aging network to target these persons. Targeting services to low-income minority elders was an issue of concern throughout the reauthorization of the Older Americans Act. The Committee heard from many in the aging network of the need to strengthen targeting efforts. It is the intent of the Committee that efforts to provide resources to low-income minority older persons be improved in each planning and service area.*

S Rep No 151, 102d Cong, 1st Sess 89 (1991).

*The Committee believes that the Aging Network, through the statewide leadership of State agencies on aging have crucial roles to play in promoting and protecting the rights of older individuals, particularly those who are vulnerable due to such factors as their economic status, frailty including dementia, and lack of knowledge about rights and avenues for redress of grievances.* S Rep No 151, 102d Cong, 1st Sess 107 (1991).

*In response to concerns that many area agencies on aging have not established legal assistance programs which include sufficient outreach, targeting, and community education components, these provisions ensure that area plans for legal assistance give priority to problems related to income, health care, long-term care, nutrition, housing and utilities, guardianship defense, abuse and neglect, and age discrimination. It is the Committee's expectation that these provisions will ensure that services are targeted to those in greatest social and economic need*. S Rep No 151, 102d Cong, 1st Sess 91 (1991).

*(1984 Amendments)*

*The House amendment defines for the purposes of Section 306(a)(5)(A) the terms "greatest economic need" and "greatest social need." As used in this section, social and cultural isolation means isolation within a community resulting directly or indirectly from an individual's ethnic heritage, nationality or race. The Senate bill contains no comparable provision. Conference agreement: Senate recedes.* Conf Rep No 1037, 98th Cong, 2d Sess 37 (1984).

*The Act currently requires State agencies on aging and area plans to assure that preference will be given to providing services to older persons with the greatest economic or social needs. Further, State and area plans are required to include proposed methods for carrying out this preference. [Sections 305(a)(2)(E) and 306 (a)(5)(A) respectively.] The committee bill amends these provisions to specify that in serving those persons with the greatest economic or social need, State and area agencies give particular attention to the needs of low-income minority older persons*.

*The Committee is concerned about the findings of a 1982 report by the U.S. Commission on Civil Rights on minority participation in Older Americans Act programs. The Commission report cited a number of barriers to minority participation in Older Americans Act programs. The Commission report cited a number of barriers to minority participation in services sponsored under the Act, such as location of programs outside areas where minority older persons live, lack of transportation services, inadequate knowledge of minority language and cultural differences on the part of staff serving minority groups, and limited outreach to minority groups.*

*The committee intends that the new language added by the bill will draw attention to the Commission's findings and give added impetus to the aging network to improve its efforts in the areas identified by the Commission.* H Rep No 737, 98th Cong, 2d Sess 20 (1984).

*(1978 Amendments)*

*The conferees wish to emphasize that in carrying out its responsibility to concentrate on the elderly with the greatest need, no project shall, in any way, give a means test or asset test to any applicant; no applicant shall be questioned about his or her means or assets; and no applicant should be directed to seek services through a Legal Services Corporation project*. Conf Rep No 1618, 95th Cong, 2nd Sess 65 (1978).

*Concentration on the elderly with the greatest need should be effectuated through such means as location of offices, referral of ineligible applicants form Legal Services Corporation projects, development of expertise in certain areas of the law, or general guidelines which the project may post or give to an applicant providing information on the nature of the clientele usually served there and those eligible for services at the Legal Services Corporation project.* Conf Rep No 1618, 95th Cong, 2nd Sess 65 (1978).

**10. Are contributions for legal services permitted or encouraged under the OAA?**

10.a) Answer

Prior to the 2000 Amendments, the Act was silent on the question of voluntary contributions for Part B Supportive Services, including legal assistance; the 2000 Amendments addressed the issue. As discussed in Question 9 above, the Amendments added a new Section 315 entitled “Consumer Contributions,” which addresses both cost sharing and voluntary contributions. Section 315(a) allows States -- for the first time in the history of the Act -- to implement cost sharing for certain OAA services. However, it specifically prohibits cost sharing for certain services, including the elder rights services -- ombudsman, elder abuse prevention, and legal assistance. *OAA §315(a)(1-2)*.

The new Section 315 also addresses the issue of voluntary contributions for OAA services, stating that

*(1) In General -- Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act provided that the method of solicitation is noncoercive.*  OAA §315(b)(1). Emphasis Added.

Prior to the 2000 Amendments, the OAA addressed voluntary contributions only with respect to Title IIIC Nutrition Services, and was silent on whether providers of legal assistance and other Title IIIB Supportive Services were required to provide their clients with an opportunity to contribute voluntarily to the cost of service. The 2000 Amendments thus clarify that voluntary contributions are allowed for legal assistance*,* provided that the method of solicitation is “noncoercive” (which is not defined by the OAA and may need to be fleshed out in future regulations). *OAA §315(b)(1).* The Amendments further require area agencies to consult with the relevant service providers and older individuals in the planning and service area to determine the best method for accepting voluntary contributions*. OAA §315(b)(2).*

As discussed in Question 9, it is noteworthy that area agencies and service providers are strictly prohibited from “means testing” for any service for which contributions are accepted and from denying services to any person who does not contribute to the cost of the service. *OAA §315(b)(3).* The area agencies must ensure that each service provider will

*A) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;*

*B) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;*

*C) protect the privacy and confidentiality of each recipient with respect to the recipient’s contribution or lack of contribution;*

*D) establish appropriate procedures to safeguard and account for all contributions; and*

*E) use all collected contributions to expand the service for which the contributions were given.*  OAA §315(b)(4).

The 2000 Amendments leave it up to the area agencies to determine how exactly to seek voluntary contributions for legal assistance. Certain parameters are set: the method must be “noncoercive,” confidentiality must be maintained, and a “means test” may not be utilized. Otherwise, it is up to the area agencies to consult with service providers and older individuals in their planning and service area to determine the best method for soliciting and accepting the voluntary contributions. It should be pointed out however, that Congress expressed real concern about contributions, particularly for elder rights services, and stated they may not be appropriate for certain services and situations. The Senate HELP Committee states in its Report --

*The committee expects that States, area agencies on aging, service providers, and older adults will collaboratively examine the best methods of offering the opportunity to voluntarily donate or contribute to services. ... Also, each Older Americans Act funded service should be analyzed individually. For example, an approach appropriate for a congregate meal site or transportation service may not be appropriate for a telephone reassurance or long-term care ombudsman program. States, area agencies on aging, and service providers may determine that voluntary contributions for some services or situations, such as elder abuse, neglect, or exploitation, are not appropriate and will not be solicited.* S Rep No 399, 106th Cong, 2nd Sess 6-9 (2000). Emphasis Added.

Also noteworthy is the requirement that all collected contributions must be used to expand the service for which the contributions were given. It necessarily follows that any voluntary contributions collected from a legal assistance client must be used to expand legal assistance. *OAA §315(b)(4)(E).*

**10.b) Statute**

*See* OAA §315(a)(1-2); §315(b)(1-4).

**10.c) Legislative History**

*(2000 Amendments)*

*The Department of Health and Human Services Office of the Inspector General reported in 1996 that 36 States have implemented cost sharing for services funded at the State or local level. States report that with cost sharing for State and local services, they have expanded both the amount of services and the numbers of people receiving services. The committee understands the need of State and local programs to increase flexibility and for coordination between Older Americans Act programs and programs funded at the State and local levels. In order to expand vital services and to facilitate flexibility, the bill includes a provision to permit States to implement cost sharing for all services provided under the Older Americans Act except for the following services: 1) information and assistance, outreach, benefits counseling, or case management services; 2) ombudsman, elder abuse prevention, legal assistance, or other consumer protection services; 3) congregate and home-delivered meals; and 4) any services delivered through tribal organizations.*

*The committee acknowledges that significant concerns have been raised regarding the inclusion of cost sharing for Older Americans Act services. However, the committee believes that substantial safeguards have been included in order to protect older individuals. Older individuals with income at or below the Federal poverty line are exempted from cost sharing, and States may set the threshold income level above the Federal poverty line. States may not consider any asset or property other than the income when defining who is exempt from cost sharing, when creating the sliding scale to implement cost sharing or when seeking contributions. . . .*

*. . .*

*The committee is aware of the importance that voluntary participant contributions have played and continue to play in providing additional resources for senior meal programs and other Older Americans Act services resulting in program expansion. For this reason, the committee has included language in the bill that explicitly allows both the acceptance and solicitation of voluntary contributions, so long as the solicitation methods are noncoercive. This provision of the bill is intended to furnish flexibility to local meal programs and other service providers in developing and implementing voluntary financial contribution methods that are appropriate to the particular programs and populations served.*

*It is the committee's intent to allow senior meal programs, at their option, to provide clients written information about voluntary contributions. The committee recognizes noncoercive methods to include, but not be limited to, the provision of written information to clients. This information may be in the form of individualized client benefit summaries or reminders, which may include the number of meals of services received within a specific time period, the actual cost of providing those meals, and a suggested contribution for those services. All solicitation materials should make clear that contributions are entirely voluntary, that there is no obligation to contribute, and that services will not be denied or curtailed if contributions are not made. Whether a participant chooses to make a voluntary contribution and the amount of any such contribution shall be kept confidential.*

*The committee expects that States, area agencies on aging, service providers, and older adults will collaboratively examine the best methods of offering the opportunity to voluntarily donate or contribute to services. Those methods need to take into account methods currently being used for Federal, State, or locally funded services; how cost sharing is to be implemented; and how older individuals using multiple services by one or more providers might be approached. Also, each Older Americans Act funded service should be analyzed individually. For example, an approach appropriate for a congregate meal site or transportation service may not be appropriate for a telephone reassurance or long-term care ombudsman program. States, area agencies on aging, and service providers may determine that voluntary contributions for some services or situations, such as elder abuse, neglect, or exploitation, are not appropriate and will not be solicited.*

*The committee is particularly aware of concerns that the number of low-income and/or minority older individuals receiving services under the act may decline with the implementation of cost sharing. To ensure that this does not happen, before cost sharing is implemented, each State and area agency on aging must develop plans designed to make sure that participation in cost shared services does not decrease. . . . The Assistant Secretary also shall take corrective action in accordance with section 315(d), if the Assistant Secretary finds that there is a disparate impact on low-income minority older individuals in any State or region within the State regarding the provision of services.* S Rep No 399, 106th Cong, 2nd Sess 6-9 (2000). Emphasis Added.

*(1984 Amendments)*

*CONTRIBUTIONS FOR SERVICES*

*The Committee bill amends current title III language requiring the State plan to assure that each nutrition project permit recipients of grants or contracts to "charge participating individuals for meals furnished" under the program. The Committee bill changes this language to clarify that nutrition projects may solicit voluntary contributions for services and deletes the reference to charging for meals. The Committee wishes to reemphasize that programs authorized under the Older Americans Act have never depended upon income as a criterion for eligibility to participate, and nothing in S. 2603 imposes any kind of income test as a determinant of eligibility.*

*The Committee recognizes and commends the recent efforts of the Commissioner on Aging and State and area agencies on aging in increasing the level of contributions for services. At the same time, the Committee wishes to emphasize the voluntary nature of contributions and that the manner of collecting contributions by title III service providers should not in any way discourage or prevent older persons from participating in programs authorized by the Act. Any process of soliciting contributions must protect the privacy of each older person and services may not be denied any older person due to failure to make a contribution toward the cost of services.*

S Rep No 467, 98th Cong, 2d Sess 18 (1984).

**11. What types of data must be collected regarding the use of, and level of support for, legal assistance?**

**11.a) Answer**

The 2000 Amendments retained the majority of the data collection provisions under the OAA, and also retained the protections of confidentiality, particularly for legal assistance clients. The prior data collection provisions at Section 202(a)(19) were redesignated as Section 202(a)(16), but they still require the Administration on Aging to collect statistical data on the programs and activities carried out with funds provided by the OAA*.* The Administration must collect statistical data on such things as:

• the aggregate amount of funds expended to provide specific services,

• the number of individuals who received the service,

• number of units of service provided, and

• the extent to which area agencies met the requirement to expend an “adequate proportion” of IIIB funds for the three priority services, including legal. *OAA §202(a)(16)(A-C).*

Also, under the new, redesignated Section 202(a)(19), the Administration on Aging must conduct strict monitoring of state compliance with OAA requirements in order to prohibit conflicts of interest and to maintain the integrity and public purpose of services provided and service providers under the OAA. *OAA §202(a)(19).* The 2000 Amendments also redesignated Section 202(a)(27) as Section 202(a)(24). This provision had previously required the Administration on Aging to conduct a study to determine ways in which Federal funds might more effectively target low income minority older individuals; the new Section 202(a)(24) requires the Administration on Aging to establish a pension counseling and information program and report to Congress on it.

The 2000 Amendments also retained other key data collection provisions, such as the previous Section 202(a)(29), which is now renumbered as Section 202(a)(26). It requires the Administration on Aging to --

. . . design and implement, for the purposes of compliance with paragraph (19)[[2]](#footnote-2), uniform data collection procedures for use by State agencies[[3]](#footnote-3), including

*A) uniform definitions and nomenclature;*

*B) standardized data collection procedures;*

*C) a participant identification and description system;*

*D) procedures for collecting information on gaps in services needed by older individuals, as identified by service providers in assisting clients through provision of supportive services; and*

*E) procedures for the assessment of unmet needs for services under this Act[.]* OAA §202(a)(26).

The collected data is to be compiled and submitted by the Administration on Aging in a full report to the President and the Congress not later than 120 days after the close of each fiscal year. *OAA §207(a).* The report still requires specifics on targeting, such as an analysis of information regarding the effectiveness of the state and area agencies in targeting services to older individuals in greatest economic and social need, with particular attention to low-income minority individuals, low-income individuals and frail individuals, and now with a focus also on older individuals residing in rural areas. *OAA §207(a).* Overall, the central focus is still retained by the 2000 Amendments: Congress and the President must be able to obtain reliable information on the success the OAA’s programs are having in reaching their target populations – those in greatest social and economic need, with an emphasis on low-income minority older persons and older persons residing in rural areas.

Lastly, the 2000 Amendments added a new provision on Performance Outcome Measures. Section 202(f) now requires the Assistant Secretary (in collaboration with a representative group of State agencies, tribal organizations, area agencies, and providers of services) to *“… develop and publish by December 31, 2001, a set of performance outcome measures for planning, managing, and evaluating activities performed and services provided under [the OAA].” OAA §202(f)(1).* The Assistant Secretary is required to review performance outcome measures currently in use by state and area agencies, and then develop a proposed set of measures that is to be piloted and evaluated at the state and local levels. *OAA §202(f)(2)(A-D).* It is TCSG’s belief that Performance Outcome Measures do not replace more traditional reporting, but rather they are a complement to traditional reporting. If carefully planned and implemented, Performance Outcome Measures have great potential for delivering more meaningful information on the impact of legal assistance on the lives and well-being of the most vulnerable older people.[[4]](#footnote-4)

It is important to note that throughout its concerns and desires for better data, Congress has consistently recognized the importance of the older individual's right to privacy and of the need to maintain strict confidentiality in the area of legal assistance. Thus, the 2000 Amendments retain provisions specifying that State and area agencies are prohibited from requiring a legal assistance provider to reveal confidential information, including identifying information, about clients. (See Question 12 for a more detailed discussion of confidentiality.) However, given that Congress' main concern is the need for reliable information on the success of Older Americans Act programs in reaching and serving target populations -- those in greatest social and economic need, in particular low-income minority older persons -- there is no reason that identifying information about legal services clients should have to be revealed. Information about numbers and types of clients being served and the types of services those clients are receiving can be supplied by legal providers without having to reveal any identifying information.

History of Congressional Concern Over Inadequate Data and Concerns About Confidentiality of Client Information

When enacting both the 1992 and 1987 Amendments, Congress expressed serious concern over the lack of reliable data made available to them by the Administration on Aging and took steps to try to correct the inadequacy. The greatest underlying concern expressed by both the House and Senate was the need for reliable information about the success of Older Americans Act programs in reaching and serving target populations -- those in greatest social and economic need, in particular low-income minority older persons.

The House Committee Report on the 1992 Amendments summarized the basis for concern as follows:

*At the same time that our population of senior citizens is growing and increasing the demand for services, Federal and State governments are facing tighter budget constraints. In such a climate, it is imperative that the limited resources available be managed in the most effective way possible. In particular, it is critical that limited resources be targeted to serve those elderly citizens who are in greatest social and economic need, as mandated by the Act. Without reliable data on the clients being served and the nature of services provided, it is impossible to determine whether this mandate is being met.* H Rep No 199, 102d Cong, 1st Sess 44 (1991).

The House Report on the 1992 Amendments went on to caution:

*In designing a description and identification system for participants under the Act, great care must be given to balancing the information acquired for program purposes, with the essential need to protect the right of privacy of individuals receiving services. Efforts which result in the discouragement of individuals from participating in program services under the Act must be avoided.*

*\* \* \**

*... The Commissioner shall endeavor to ensure that the system which will be designed does not impose unnecessary burdens on network agencies. It is not the purpose of these provisions to require an additional level of reporting requirements on States and area agencies on aging and service providers. Rather, it is the intention of the committee that data collection procedures will be streamlined and that consideration will be given to collecting only that data which serves a useful purpose for planning, monitoring, and evaluating programs, and by methods that are not cumbersome to those providing the data.* H Rep No 199, 102d Cong, 1st Sess 44 (1991).

Similar concerns and cautions were expressed on the Senate side. The Senate Committee Report on the 1992 Amendments states:

*The quality and usefulness of the data currently collected by the Administration on Aging has been questioned throughout the reauthorization of the Older Americans Act. The clarity and accuracy of the data are pivotal to many other OAA issues, especially targeting services to low-income, minority elders. The unreliability of current data makes it impossible to determine the degree to which low-income, minority, frail and other such categories of elders are being served. . . . The Committee is particularly concerned about the usefulness of the unduplicated count of participants as a measure of participation and directs AoA . . . to assess whether the measure should continue to be used.* S Rep No 151, 102d Cong, 1st Sess 86 (1991).

In 1987, the Senate also cautioned against burdensome reporting requirements and emphasized the need for confidentiality in legal services reporting. The Senate Committee's report on the 1987 Amendments states:

*The reporting requirements for legal assistance services providers are to be uniform nationally, and as consistent as possible with those used by the Legal Services Corporation While the committee wishes to protect the identity of legal assistance clients, . . . this provision is not intended to exempt legal services from routine reporting requirements.* S Rep No 136, 100th Cong, 1st Sess 50 (1987).

**11.b) Statute**

*See* OAA §202(a)(16); §202(a)(19); §202(a)(24); §202(a)(26); §202(f); §207(a).

**11.c) Legislative History**

(2000 Amendments)

*Section 201 also requires the Assistant Secretary to develop and publish by December 31, 2001, performance outcome measures to be used for planning, managing, and evaluating activities under the act. The Assistant Secretary is required to use data collected by State and area agencies on aging, and by service providers in developing these measures. This section also specifies the process for developing performance outcome measures, including review of measures currently in use, development of a proposed set of measures, pilot testing, evaluation of the testing, and recommendations for modification.* S Report No 399, 106th Cong, 2nd Sess 21 (2000).

(1992 Amendments)

*The Committee was greatly disturbed by testimony ... on the poor quality of data collected by the Administration on Aging. In March 1991, the General Accounting Office completed a comprehensive review of the Administration on Aging's current information system. In sum, the GAO found that the current system is incapable of generating reliable information on who is being served by the Administration on Aging programs and what services are being provided to individual program participants. Problems . . . include flaws in the Administration on Aging data collection instrument as well as weaknesses in the methodology used by the Administration on Aging to collect data. In particular, it was reported that data collected on minority participation, service utilization, and numbers of participants are invalid and unreliable due to the lack of uniform definitions and nomenclature, both within states and nationally; and the lack of standardized data collection procedures and the absence of technical assistance provided to states, area agencies on aging, and service providers.*

*... Other methodological problems include: 1) the absence of clear guidelines on how the minority and income status of participants should be determined, and 2) the lack of standardized, national data collection procedures ....*

*. . .*

*[I]t is imperative that the limited resources available be managed in the most effective way possible. In particular, it is critical that limited resources be targeted to serve those elderly citizens who are in greatest social and economic need, as mandated by the Act. Without reliable data on the clients being served and the nature of the services provided, it is impossible to determine whether this mandate is being met.*

*In designing a description and identification system for participants under the Act, great care must be given to balancing the information acquired for program purposes, with the essential need to protect the right of privacy of individuals receiving services. Efforts which result in the discouragement of individuals from participating in program services . . . must be avoided . . .*

*...The Commissioner shall endeavor to ensure that the system which will be designed does not impose unnecessary burdens on network agencies. ... it is the intention of the committee that data collection procedures will be streamlined and that consideration will be given to collecting only that data which serves a useful purpose for planning, monitoring, and evaluating programs, ....* H Rep No 199, 102d Cong, 1st Sess 43-44 (1991).

*The quality and usefulness of the data currently collected by the Administration on Aging has been questioned throughout the reauthorization of the Older Americans Act (OAA). The clarity and accuracy of the data are pivotal to many other OAA issues, especially targeting services to low-income, minority elders. The unreliability of current data makes it impossible to determine the degree to which low-income, minority, frail and other such categories of elders are being served. The Committee urges the AoA to collect unambiguous, accurate, reliable data nationwide and provide technical assistance to those who are responsible for collecting the data throughout the aging network. The Committee is particularly concerned about the usefulness of the unduplicated count of participants as a measure of participation and directs AoA . . . to assess whether the measure should continue to be used.*

*In response to concerns that burdensome reporting requirements, ... the Committee expects the Task Force established by Section 207(d) to examine current reporting requirements under the Act and make recommendations for streamlining any duplication with reporting requirements of other Federal, State, and private programs. It is the expectation of the Committee that the Commissioner will devise appropriate means to alleviate any burdens which current reporting requirements may place upon service providers. ....*

*... The Committee believes that information on activities, service utilization, and kinds of services provided is crucial for the congressional budget, appropriations, and oversight processes. The Committee also believes that information on functions, staffing patterns, and funding sources is crucial for planning within the aging network.* S Rep No 151, 102d Cong, 1st Sess 90 (1991).

**12. Does the OAA address the issue of attorney-client confidentiality?**

**12.a) Answer**

The 2000 Amendments continued to specifically recognize the vital importance of confidentiality in the relationships between legal providers and their clients. They did not make changes to any of the three sections that mention attorney-client privilege. *OAA §§ 306(d); 307(f); 705(b).* The OAA still provides that area agencies, states, and State agencies are prohibited from requiring any provider of legal assistance to reveal any information that is protected by the attorney-client privilege.

Legislative history from the 1987 Amendments makes it clear that information Congress intends to protect includes any information that would reveal to the state or area agency the identity of clients. *Rep No 97, 100th Cong 1st Sess 122 (1987).* Legislative history also indicates that prohibited information-collecting does not include information needed for the purposes of evaluation, planning, or needs assessment, since this information could be obtained without disclosure of identifying information, such as the names and addresses of Title III-B clients.

**12.b) Statute**

*See* OAA §306(d); §307(f); §705(b).

**12.c) Legislative History**

*(1987 Amendments)*

*The bill provides that States and state agencies on aging may not require legal assistance providers under the Act to reveal any information that is protected by the attorney-client privilege. Agencies would not be prohibited from collecting any information they need for the purposes of evaluation, planning or needs assessment. That kind of information may be readily obtained without the disclosure of the names and addresses of clients served with Title III funds.*

*The Committee's intent in including the new confidentiality provisions is to clarify that names, addresses and telephone numbers of clients serviced with Older Americans Act funds will remain privileged information. The Committee understands that some legal assistance providers may be reluctant to contract with area agencies without this assurance. Many older individuals might be hesitant to ask for the legal advice and counsel they need if they thought others would have access to their identifying information. This assurance of confidentiality makes it easier for older persons to seek the assistance they need to resolve their legal problems, and it makes it easier for legal assistance providers to serve them in good faith.* H Rep No 97, 100th Cong, 1st Sess 12 (1987).

**13. Are there specific restrictions and regulations applicable to legal assistance providers under the OAA?**

**13.a) Answer**

The 2000 Amendments leave unchanged the provision of the Act dealing with regulations applicable to legal assistance providers. This requires legal assistance providers to be subject to those regulations under the Legal Services Corporation (LSC) Act (other than restrictions and regulations governing eligibility for legal assistance under the LSC Act and governing membership of local governing boards) determined by the Assistant Secretary for Aging to be appropriate to legal assistance under the Older Americans Act and adopted as OAA regulations. *OAA §307(a)(11)(A)(ii).*

As noted, the most recent regulations promulgated for the OAA were issued in 1988 for the 1987 Amendments to the Act. The Administration on Aging is currently in the process of drafting regulations for the 2000 Amendments, and TCSG will update this information when new regulations are issued. For the present, we provide information on the existing Regulations from 1988. The entire text of those Regulations can be found on the final pages of this Chapter; the official version can be found at 45 CFR §1321.71.

The OAA Regulations promulgated under the 1987 Amendments provide a fairly long listing of restrictions/regulations adapted from those of LSC, and adopted by the Assistant Secretary to apply to OAA legal assistance providers. However, the listing is preceded by a qualifying statement that: “*Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney’s professional responsibilities to a client.”* 45 CFR §1321.71(b). The list includes: (1) limits on providing legal assistance in fee-generating cases; (2) prohibited political activities; (3) prohibitions on lobbying; (4) prohibited demonstrations, boycotts, and strikes; and (5) limitations on the use of funds to pay dues to organizations engaged in activities prohibited by the regulations.

Some explanation of the regulations is found in the Supplementary Information to the proposed 1988 regulations in Vol. 53, No. 60, Federal Register of March 29, 1988, pages 10111-12. That explanation states --

*Section 307(a)(15)(A) of the Act requires that the State plan contain an assurance that any recipient of funds for legal assistance ". . .will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act. . . as determined appropriate by the Commissioner." This provision was first included in the Act in the 1987 amendments. Accordingly, the title III regulations which were issued in 1980 drew upon the regulations of the Legal Services Corporation (LSC) in covering the provision of legal services under the Older Americans Act. However, based on the Commissioner's statutory responsibility to determine which LSC regulations were appropriate to Title III, the treatment of legal services in the 1980 regulations was limited so as to be proportionate to the coverage of other services provided under Title III. In 1985, when the current Title III regulations were issued, a different approach to the treatment of legal services was adopted. At that time, the coverage of legal services was significantly expanded with the result that legal assistance regulations constituted approximately one-quarter of the entire Title III regulations. This extensive coverage was disproportionate to the coverage of other services provided under Title III. It should be stated that even in this extended discussion of legal assistance, many of the LSC regulations were not included in the Title III regulations.*

*After reassessing the current regulations in preparation for revisions to accommodate the 1987 amendments to the Act, it was concluded that the extensive discussion of legal assistance was inappropriate for the following reasons: (1) Under regulatory reform unnecessary regulations in other areas of the Title III program have been reduced; (2) While legal assistance is important, it is one among many services which are provided with Title III funds; and (3) The detailed definitions of lobbying activities set forth in current LSC regulations (issued July 29, 1987 at 52 FR 28434) are not needed to carry out the purposes of Title III.*

*Since the States are provided the greatest possible flexibility in the manner in which other services are provided, the extent of regulatory detail in the treatment of legal assistance has been reviewed and commensurately reduced. The revised regulation seeks to assure that Title III legal assistance funds are used solely to carry out the purposes of the Act and not for extraneous activities, such as lobbying and other political activities. Thus, the intent of these regulations is the same as that of the LSC regulations but offered without the same level of detail.* Vol. 53, No. 60, Federal Register, March 29, 1988, pages 10111-12.

**13.b) Statute**

*See*OAA §307(a)(11)((A)ii).

**13.c) Regulations**

*See* 45 CFR §1321.71(f)-(k).

**14. Does the OAA provide for a national support system for legal assistance/law and aging?**

**14.a) Answer**

Title IV of the 2000 Amendments retained and strengthened the requirement for a National Support System on Law and Aging. Section 411 provides the general authority to the Assistant Secretary to make grants for Title IV training, research, program evaluation, development of “best practice” models for service delivery, and provision of technical assistance in developing and delivering services. It states that *"the Assistant Secretary may make grants to and enter into contracts with States, public agencies, private nonprofit agencies, institutions of higher education, and organizations, including tribal organizations…" OAA 411(a) (Emphasis Added).*

While this authority gives the Assistant Secretary discretion as to funding many Title IV activities, there are a number of activities that Congress has said must be funded, including national support for legal assistance. The 2000 Amendments clearly state such a support system must be funded. Section 420 provides

*a) PROGRAM AUTHORIZED - The Assistant Secretary shall make grants and enter into contracts, in order to*

*1) provide a national legal assistance support system (operated by one or more grantees or contractors) of activities to State and area agencies on aging for providing, developing, or supporting legal assistance for older individuals, including—*

*A) case consultations;*

*B) training;*

*C) provision of substantive legal advice and assistance; and*

*D) assistance in the design, implementation, and administration of legal assistance delivery systems to local providers of legal assistance for older individuals; and*

*2) support demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs.*

*b) ASSURANCES – Any grants or contracts made under subsection (a)(2) shall contain assurances that the requirements of section 307(a)(11)* [State plan requirements for legal assistance] *are met.* OAA §420(a-b) (Emphasis Added).

To assure that the entities selected to provide the national legal assistance support are equipped to provide effective, high quality support services, Congress further specified in the 2000 Amendments --

*c) ASSISTANCE – To carry out subsection(a)(1), the Assistant Secretary shall make grants to or enter into contracts with national nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to States, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.* OAA §420(c)

The 2000 Amendments retained the four components of a National Legal Assistance Support System: case consultation; training; provision of substantive legal advice; and assistance with delivery systems, that is, assistance with the design, implementation, and administration of legal assistance delivery. Each activity is a valuable resource in developing systems of legal assistance for older people, and in improving the quality and accessibility of such services, as part of the overall system of services for older people. The National Support Centers in Law and Aging, funded under the Administration on Aging, provide a wide range of assistance, including case consultation to Title III legal assistance providers, training for professionals concerning elder rights, substantive legal advice on issues important to older individuals, and working with state and area agencies to expand and improve delivery of legal assistance services and the targeting of those services to those in greatest social and economic need.

**14.b) Statute**

*See* OAA §§ 411(a); §420(a-c).

**14.c) Legislative History**

*(2000 Amendments)*

*Section 401 amends the purpose statement of title IV as follows: to expand the Nation's knowledge and understanding of the older population and the aging process; to design, test, and promote innovative ideas and best practices in programs and services for older individuals; to train personnel in the field of aging; and to increase awareness by all citizens to assume personal responsibility for their own longevity.*

*Section 401 authorizes the Assistant Secretary to make grants to, and enter into contracts with, States, public agencies, private nonprofit agencies, institutions of higher education, and tribal organizations in order to carry out education and training, applied social research, program evaluation, demonstration programs, and technical assistance.* S Rep No 399, 106th Cong, 2nd Sess 30 (2000).

*Section 401 amends Section 424 of the act to require the Assistant Secretary to award funds to national nonprofit organizations experienced in providing support and technical assistance to States, area agencies, ombudsmen, elderly abuse prevention programs, and other organizations that assist older individuals with legal rights activities (in addition to legal assistance providers listed in current law).* S Rep No 399, 106th Cong, 2nd Sess 32 (2000).

**C. Selected Provisions from the Older Americans Act**

**Title I -- Declaration of Objectives; Definitions**

\* \* \*

**Sec. 102. Definitions**

Sec. 102. For the purposes of this Act --

\* \* \*

(27) The term "greatest economic need" means the need resulting from an income level at or below the poverty line.

(28) The term "greatest social need" means the need caused by noneconomic factors, which include--

(A) physical and mental disabilities;

(B) language barriers; and

(C) cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that--

(i) restricts the ability of an individual to perform normal daily tasks; or

(ii) threatens the capacity of the individual to live independently.

\* \* \*

(31) The term ``legal assistance''‑‑

(A) means 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.

\* \* \*

(38) The term "poverty line" means the official poverty line (as defined by the Office of Management and Budget, and adjusted by the Secretary in Accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

\* \* \*

**Title II -- Administration on Aging**

\* \* \*

**Sec. 202. Functions of Assistant Secretary**

Sec. 202. (a) It shall be the duty and function of the Administration to—

\* \* \*

(16) collect for each fiscal year, for fiscal years beginning after September 30, 1988, directly or by contract, statistical data regarding programs and activities carried out with funds provided under this Act, including‑‑

(A) with respect to each type of service or activity provided with such funds‑‑

(i) the aggregate amount of such funds expended to provide such service or activity;

(ii) the number of individuals who received such service or activity; and

(iii) the number of units of such service or activity provided;

(B) the number of senior centers which received such funds; and

(C) the extent to which each area agency on aging designated under section 305(a) satisfied the requirements of paragraph (2) and (4)(A) of section 306(a);

\* \* \*

(19) conduct strict monitoring of State compliance with the requirements in effect, under this Act to prohibit conflicts of interest and to maintain the integrity and public purpose of services provided and service providers, under this Act in all contractual and commercial relationships;

\* \* \*

(22) develop guidelines for area agencies on aging to follow in choosing and evaluating providers of legal assistance;

(23) develop guidelines and a model job description for choosing and evaluating legal assistance developers referred to in *sections 307(a)(13) and 731*;

(24) establish and carry out pension counseling and information programs described in section 215;

\* \* \*

(26) design and implement, for purposes of compliance with paragraph (19), uniform data collection procedures for use by State agencies, including‑‑

*(Note: The reference above to “paragraph (19)” should reference paragraph (16) on data collection. TCSG expects this will be corrected in a technical amendment in the future.)*

(A) uniform definitions and nomenclature;

(B) standardized data collection procedures;

(C) a participant identification and description system;

(D) procedures for collecting information on gaps in services needed by older individuals, as identified by service providers in assisting clients through the provision of the supportive services; and

(E) procedures for the assessment of unmet needs for services under this Act; and

(27) improve the delivery of services to older individuals living in rural areas through—

A) synthesizing results of research on how best to meet the service needs of older individuals in rural areas;

B) developing a resource guide on best practices for States, area agencies on aging, and service providers;

C) providing training and technical assistance to States to implement these best practices of service delivery; and

D) submitting a report on the States’ experiences in implementing these best practices and the effect these innovations are having on improving service delivery in rural areas to the relevant committees not later than 36 months after enactment

\* \* \*

Sec. 202. (f)(1) The Assistant Secretary, in accordance with the process described in paragraph (2), and in collaboration with a representative group of State agencies, tribal organizations, area agencies on aging, and providers of services involved in the performance outcome measures shall develop and publish by December 31, 2001, a set of performance outcome measures for planning, managing, and evaluating activities performed and services provided under this Act. To the maximum extent possible, the Assistant Secretary shall use data currently collected (as of the date of development of the measures) by State agencies, area agencies on aging, and service providers through the National Aging Program Information System and other applicable sources of information in developing such measures.

(2) The process for developing the performance outcome measures described in paragraph (1) shall include--

(A) a review of such measures currently in use by State agencies and area agencies on aging (as of the date of the review);

(B) development of a proposed set of such measures that provides information about the major activities performed and services provided under this Act;

(C) pilot testing of the proposed set of such measures, including an identification of resource, infrastructure, and data collection issues at the State and local levels; and

(D) evaluation of the pilot test and recommendations for modification of the proposed set of such measures.

\* \* \*

**Sec. 207. Reports**

Sec. 207. (a) Not later than one hundred and twenty days after the close of each fiscal year, the Assistant Secretary shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this Act. Such annual reports shall include‑‑

(1) statistical data reflecting services and activities provided to individuals during the preceding fiscal year;

(2) statistical data collected under section 202(a)(19);

(3) statistical data and an analysis of information regarding the effectiveness of the State agency and area agencies on aging in targeting services to older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low‑income minority individuals, older individuals residing in rural areas, low‑income individuals, and frail individuals (including individuals with any physical or mental functional impairment); and

(4) a description of the implementation of the plan required by section 202(a)(17).

\* \* \*

**Title III -- Grants for State and Community Programs on Aging**

**Part A -- General Provisions**

\* \* \*

**Sec. 305. Organization**

Sec. 305. (a) In order for a State to be eligible to participate in programs of grants to States from allotments under this title ‑‑

(1) the State shall, in accordance with regulations of the Assistant Secretary, designate a State agency as the sole State agency to‑‑

\* \* \*

(D) serve as an effective and visible advocate for older individuals by reviewing and commenting upon all State plans, budgets, and policies which affect older individuals and providing technical assistance to any agency, organization, association, or individual representing the needs of older individuals; and

(E) divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5)(A), designate the entire State as a single planning and service area), in accordance with guidelines issued by the Assistant Secretary, after considering the geographical distribution of older individuals in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance, the distribution of older individuals who have greatest economic need (with particular attention to low‑income minority individuals and older individuals residing in rural areas) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low‑income minority individuals and older individuals residing in rural areas) residing in such areas, the distribution of older individuals who are Indians residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of supportive services programs, the location of units of general purpose local government within the State, and any other relevant factors; . . .

\* \* \*

Sec. 305. (b)

\* \* \*

(5)(A) A State which on or before October 1, 1980, had designated, with the approval of the Assistant Secretary, a single planning and service area covering all of the older individuals in the State, in which the State agency was administering the area plan, may after that date designate one or more additional planning and service areas within the State to be administered by public or private nonprofit agencies or organizations as area agencies on aging, after considering the factors specified in subsection (a)(1)(E). The State agency shall continue to perform the functions of an area agency on aging for any area of the State not included in a planning and service area for which an area agency on aging has been designated.

\* \* \*

Sec. 305. (c) An area agency on aging designated under subsection (a) shall be—

\* \* \*

(5) in the case of a State specified in subsection (b)(5), the State agency;

and shall provide assurance, determined adequate by the State agency, that the area agency on aging will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area or within any unit of general purpose local government designated as a planning and service area the State shall give preference to an established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to carry out the area plan.

\* \* \*

**Sec. 306. Area Plans**

Sec. 306. (a) Each area agency on aging designated under section 305(a)(2)(A) shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two‑, three‑, or four‑year period determined by the State agency, with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 307(a)(1). Each such plan shall—

\* \* \*

(2) provide assurances that an adequate proportion, as required under section 307(a)(2), of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services—

(A) services associated with access to services (transportation, outreach, information and assistance, and case management services);

(B) in-home services, including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(C) legal assistance;

and assurances that the area agency on aging will report annually to the State agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded;

\* \* \*

Sec. 306. (b) Each State, in approving area agency on aging plans under this section, shall waive the requirement described in paragraph (2) of subsection (a) for any category of services described in such paragraph if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area and had conducted a timely public hearing upon request.

\* \* \*

Sec. 306. (d) An area agency on aging may not require any provider of legal assistance under this title to reveal any information that is protected by the attorney‑client privilege.

\* \* \*

**Sec. 307. State Plans**

Sec. 307. (a) Except as provided in the succeeding sentence and section 309(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Assistant Secretary a State plan for a two‑, three‑, or four‑year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Assistant Secretary may by regulation prescribe. If the Assistant Secretary determines, in the discretion of the Assistant Secretary, that a State failed in 2 successive years to comply with the requirements under this title, then the State shall submit to the Assistant Secretary a State plan for a 1‑year period that meets such criteria, for subsequent years until the Assistant Secretary determines that the State is in compliance with such requirements. Each such plan shall comply with all of the following requirements:

\* \* \*

(2) The plan shall provide that the State agency will—

(A) evaluate, using uniform procedures described in section 202(a)(29), the need for supportive services (including legal assistance pursuant to 307(a)(11), information and assistance, and transportation services), nutrition services, and multipurpose senior centers within the State;

(B) develop a standardized process to determine the extent to which public or private programs and resources (including volunteers and programs and services of voluntary organizations) that have the capacity and actually meet such need; and

(C) specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B that will be expended (in the absence of a waiver under sections 306(b) or 316) by such area agency on aging to provide each of the categories of services specified in section 306(a)(2).

\* \* \*

(4) The plan shall provide that the State agency will conduct periodic evaluations of, and public hearings on, activities and projects carried out in the state under this title and title VII, including evaluations of the effectiveness of services provided to individuals with greatest economic need, greatest social need, or disabilities, with particular attention to low-income minority individuals and older individuals residing in rural areas.

\* \* \*

(8)(A) The plan shall provide that no supportive services, nutrition services, or in-home services will be directly provided by the State agency or an area agency on aging in the State, unless in the judgment of the State agency –

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

(ii) such services are directly related to such State agency's or area agency on aging's administrative functions; or

(iii) such services can be provided more economically, and with comparable quality, by such State agency or area agency on aging.

\* \* \*

(11) The plan shall provide that with respect to legal assistance—

(A) the plan contains assurances that area agencies on aging will (i) enter into contracts with providers of legal assistance which can demonstrate the experience or capacity to deliver legal assistance; (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act (other than restrictions and regulations governing eligibility for legal assistance under such Act and governing membership of local governing boards) as determined appropriate by the Assistant Secretary; and (iii) attempt to involve the private bar in legal assistance activities authorized under this title, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individuals with social or economic need and has agreed, if the grantee is not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Services Corporation projects in the planning and service area in order to concentrate the use of funds provided under this title on individuals with the greatest such need; and the area agency on aging makes a finding, after assessment, pursuant to standards for service promulgated by the Assistant Secretary, that any grantee selected is the entity best able to provide the particular services;

(C) the State agency will provide for the coordination of the furnishing of legal assistance to older individuals within the State, and provide advice and technical assistance in the provision of legal assistance to older individuals within the State and support the furnishing of training and technical assistance for legal assistance for older individuals;

(D) the plan contains assurances, to the extent practicable, that legal assistance furnished under the plan will be in addition to any legal assistance for older individuals being furnished with funds from sources other than this Act and that reasonable efforts will be made to maintain existing levels of legal assistance for older individuals; and

(E) the plan contains assurances that area agencies on aging will give priority to legal assistance related to income, health care, long‑term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.

\* \* \*

(13) The 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.

\* \* \*

(16) The plan shall provide assurances that the State agency will require outreach efforts that will‑‑

(A) identify individuals eligible for assistance under this Act, with special emphasis on‑‑

(i) older individuals residing in rural areas;

ii) older individuals with greatest economic need (with particular attention to low‑income minority individuals and older individuals residing in rural areas);

(iii) older individuals with greatest social need (with particular attention to low‑income minority individuals and older individuals residing in rural areas);

(iv) older individuals with severe disabilities;

(v) older individuals with limited English‑speaking ability; and

(vi) older individuals with Alzheimer's disease or related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(B) inform the older individuals referred to in clauses (i) through (vi) of subparagraph (A), and the caretakers of such individuals, of the availability of such assistance.

\* \* \*

(19) The plan shall include the assurances and description required by section 705(a). [*Regarding Elder Rights Plans*]

\* \* \*

Sec. 307. (f)Neither a State, nor a State agency, may require any provider of legal assistance under this title to reveal any information that is protected by the attorney‑client privilege.

\* \* \*

**Sec. 315. Consumer Contributions**

Sec. 315. (a) Cost Sharing --

(1) In General -- Except as provided in paragraphs (2) and (3), a State is permitted to implement cost sharing for all services funded by this Act by recipients of the services.

(2) Exception -- The State is not permitted to implement the cost sharing described in paragraph (1) for the following services:

(A) Information and assistance, outreach, benefits counseling, or case management services.

(B) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.

(C) Congregate and home delivered meals.

(D) Any services delivered through tribal organizations.

\* \* \*

Sec. 315. (b) Voluntary Contributions --

(1) In General -- Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act provided that the method of solicitation is noncoercive.

(2) Local Decision -- The area agency on aging shall consult with the relevant service providers and older individuals in agency’s planning and service area in a State to determine the best method for accepting voluntary contributions under this subsection

(3) Prohibited Acts -- The area agency on aging and service providers shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service.

(4) Required Acts -- The area agency on aging shall ensure that each service provider will--

(A) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;

(B) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(C) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution;

(D) establish appropriate procedures to safeguard and account for all contributions; and

(E) use all collected contributions to expand the service for which the contributions were given.

\* \* \*

### Sec. 316. Waivers

Sec. 316. (a) IN GENERAL- The Assistant Secretary may waive any of the provisions specified in subsection (b) with respect to a State, upon receiving an application by the State agency containing or accompanied by documentation sufficient to establish, to the satisfaction of the Assistant Secretary, that—

(1) approval of the State legislature has been obtained or is not required with respect to the proposal for which the waiver is sought;

(2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which the waiver is sought;

(3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all the comments received has been included in the application); and

(4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.

Sec. 316. (b) REQUIREMENTS SUBJECT TO WAIVER- The provisions of this title that may be waived under this section are—

(1) any provision of sections 305, 306, and 307 requiring statewide uniformity of programs carried out under this title, to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals;

(2) any area plan requirement described in section 306(a) if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this Act;

(3) any State plan requirement described in section 307(a) if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this Act;

(4) any restriction under paragraph (5) of section 308(b), on the amount that may be transferred between programs carried out under part B and part C; and

(5) the requirement of section 309(c) that certain amounts of a State allotment be used for the provision of services, with respect to a State that reduces expenditures under the State plan of the State (but only to the extent that the non-Federal share of the expenditures is not reduced below any minimum specified in section 304(d) or any other provision of this title).

Sec. 316 (c) DURATION OF WAIVER- The application by a State agency for a waiver under this section shall include a recommendation as to the duration of the waiver (not to exceed the duration of the State plan of the State). The Assistant Secretary, in granting such a waiver, shall specify the duration of the waiver, which may be the duration recommended by the State agency or such shorter time period as the Assistant Secretary finds to be appropriate.

Sec. 316. (d) REPORTS TO SECRETARY – With respect to each waiver granted under this section, not later than 1 year after the expiration of such waiver, and at any time during the waiver period that the Assistant Secretary may require, the State agency shall prepare and submit to the Assistant Secretary a report evaluating the impact of the waiver on the operation and effectiveness of programs and services provided under this title.

**Sec. 321.**

**Title III, Part B -- Supportive Services and Senior Centers**

**Program Authorized**

Sec. 321. (a) The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 307 for any of the following supportive services:

\* \* \*

(6) services designed to provide to older individuals legal assistance and other counseling services and assistance, including—

(A) tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage;

(B) representation—

(i) of individuals who are wards (or are allegedly incapacitated); and

(ii) in guardianship proceedings of older individuals who seek to become guardians, if other adequate representation is unavailable in the proceedings; and

(C) provision, to older individuals who provide uncompensated care to their adult children with disabilities, of counseling to assist such older individuals with permanency planning for such children;

\* \* \*

### Title IV -- Training, Research, and Discretionary Projects and Programs

\* \* \*

### Sec. 411. Program Authorized

Sec. 411. (a) IN GENERAL- For the purpose of carrying out this section, the Assistant Secretary may make grants to and enter into contracts with States, public agencies, private nonprofit agencies, institutions of higher education, and organizations, including tribal organizations, for—

(1) education and training to develop an adequately trained workforce to work with and on behalf of older individuals;

(2) applied social research and analysis to improve access to and delivery of services for older individuals;

(3) evaluation of the performance of the programs, activities, and services provided under this section;

(4) the development of methods and practices to improve the quality and effectiveness of the programs, services, and activities provided under this section;

(5) the demonstration of new approaches to design, deliver, and coordinate programs and services for older individuals;

(6) technical assistance in planning, developing, implementing, and improving the programs, services, and activities provided under this section;

(7) coordination with the designated State agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(2)(A)(i)) to provide services to older individuals who are blind as described in such Act;

(8) the training of graduate level professionals specializing in the mental health needs of older individuals; and

(9) any other activities that the Assistant Secretary determines will achieve the objectives of this section.

\* \* \*

**Sec. 420. Demonstration and Support Projects for Legal Assistance for Older Individuals.**

Sec. 420. (a) PROGRAM AUTHORIZED- The Assistant Secretary shall make grants and enter into contracts, in order to--

(1) provide a national legal assistance support system (operated by one or more grantees or contractors) of activities to State and area agencies on aging for providing, developing, or supporting legal assistance for older individuals, including--

(A) case consultations;

(B) training;

(C) provision of substantive legal advice and assistance; and

(D) assistance in the design, implementation, and administration of legal assistance delivery systems to local providers of legal assistance for older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal assistance to older individuals with social or economic needs.

Sec. 420. (b) ASSURANCES- Any grants or contracts made under subsection (a)(2) shall contain assurances that the requirements of section 307(a)(11) are met.

Sec. 420. (c) ASSISTANCE- To carry out subsection (a)(1), the Assistant Secretary shall make grants to or enter into contracts with national nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to States, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.

\* \* \*

**Title VII -- Allotments for Vulnerable Elder Rights Protection Activities**

**Subtitle A -- State Provisions**

**Chapter 1 -- General State Provisions**

**Sec. 701. Establishment.**

The Assistant Secretary, acting through the Administration, shall establish and carry out a program for making allotments to States to pay for the cost of carrying out vulnerable elder rights protection activities.

**Sec. 702. Authorization of Appropriations.**

Sec. 702. (a) Ombudsman Programs. -- There are authorized to be appropriated to carry out chapter 2, such sums as may be necessary for fiscal year 2001, and such sums as may be necessary for subsequent fiscal years.

Sec. 702. (b) Prevention of Elder Abuse, Neglect, and Exploitation. -- There are authorized to be appropriated to carry out chapter 3, such sums as may be necessary for fiscal year 2001, and such sums as may be necessary for subsequent fiscal years.

Sec. 702. (c) Legal Assistance Development Program. -- There are authorized to be appropriated to carry out chapter 4, such sums as may be necessary for fiscal year 2001, and such sums as may be necessary for subsequent fiscal years.

\* \* \*

**Sec. 705. Additional State Plan Requirements.**

Sec. 705. (a) Eligibility. -- In order to be eligible to receive an allotment under this subtitle, a State shall include in the State plan submitted under section 307-

(1) an assurance that the State, in carrying out any chapter of this subtitle for which the State receives funding under this subtitle, will establish programs in accordance with the requirements of the chapter and this chapter;

(2) an assurance that the state will hold public hearings, and use other means, to obtain the views of older individuals, area agencies on aging, recipients of grants under title VI, and other interested persons and entities regarding programs carried out under this subtitle;

(3) an assurance that the State, in consultation with area agencies on aging, will identify and prioritize statewide activities aimed at ensuring that older individuals have access to, and assistance in securing and maintaining, benefits and rights;

\* \* \*

(7) a description of the manner in which the State agency will carry out this title in accordance with the assurances described in paragraphs (1) through (6).

Sec. 705. (b) Privilege.—Neither a State, nor a State agency, may require any provider of legal assistance under this subtitle to reveal any information that is protected by the attorney‑client privilege.

\* \* \*

**Chapter 4 -- State Legal Assistance Development Program**

**Sec. 731. State Legal Assistance Development**

### 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 the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;

(4) State capacity to promote financial management services to older individuals at risk of conservatorship;

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

**D. Selected Provisions from the 1988 Regulations:**

45 CFR §1321.3 Definitions.

"Means test," as used in the provision of services, means the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

45 CFR §1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client [sic] privilege.

45 CFR §1321.71 Legal Assistance

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement from out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity.

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

**Overview of Actors Involved in**

**Developing and Delivering Legal Assistance**

**to Older Persons**

(last edited 02/02/04 sps)

**Introduction**

This chapter will address -- at the national, state, and local levels -- the roles in development and delivery of legal assistance to older persons of key components of the law and aging networks. It will discuss the Administration on Aging (AoA) and its national legal support centers, Legal Services Corporation, State units on aging, legal services developers, long-term care ombudsmen, area agencies on aging, local legal assistance providers, and the private bar. Although these are not the only entities impacting legal assistance, they are the major forces involved in guiding, funding, developing, and delivering legal advocacy for older persons.

Prior to addressing these individual components, it may be useful, for those readers not familiar with the aging network, to review briefly the overall network, and chart the flow of authority and funding.

**A. Overview of the Aging Network**

The aging network as it exists today was created by the 1973 Amendments to the Older Americans Act of 1965 (the Act). The '73 Amendments brought major changes in calling for creation of a network of State and area agencies on aging charged with establishing a comprehensive coordinated system of services to meet the needs of older Americans. Services are provided with funds authorized under Title III of the Act. These funds are distributed by AoA to the States, on the basis of State plans and according to a formula which considers numbers and percentages of older persons in the States. The State agencies, in turn, fund their area agencies; and the area agencies then enter into grants and contracts for provision of services needed in their planning and service area that are not otherwise available.

The chain of authority and funding for the network, as specified by Congress in the Older Americans Act, is basically as follows:

(Chart begins on next page) PRESIDENT

↓

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

↓

ADMINISTRATION ON AGING/COMMISSIONER ON AGING

(Washington, D.C.)

Recommends policy; develops Older Americans

Act regulations; allocates and administers national OAA

funds; national research, training, model projects, etc.

↓

REGIONAL OFFICES OF THE ADMINISTRATION ON AGING

(10 Regions)

Provide technical assistance to states

↓

STATE UNITS/OFFICES ON AGING

STATE LEGAL SERVICES DEVELOPERS &

STATE LONG-TERM CARE OMBUDSMEN

(50 states plus, D.C., Puerto Rico, Guam, American Samoa,

Virgin Islands, Trust Territory of the Pacific Islands and

Commonwealth of the Northern Mariana Islands)

Submit state plans to AoA and administer state plans and funds allocated from AoA; provide leadership and undertake a wide range of functions related to advocacy, planning, coordination, information sharing, etc.

↓

AREA AGENCIES ON AGING

(Planning and Service Areas within States)

Assess needs; identify gaps and plan services at local level;

enter into grants and contracts for provision of services such as

transportation, home health care, nutrition programs, legal services, etc.

↓

LOCAL SERVICE PROVIDERS

Receive funds from the area agencies to provide

services needed by older persons

**B. The Network at the National Level**

**1. The Administration on Aging (AoA)**

The key component in legal assistance for older persons at the national level is the Administration on Aging (AoA). It sets policy for the network at the state and local levels and funds national grantees to provide support and assistance to the network. Given its leadership role in guiding the evolution of legal assistance, the history of AoA's activities will be explored in some depth on the following pages.

Creation and Structure of AoA: AoA was created in 1965 with passage of the Older Americans Act. It is headed by a Commissioner appointed by the President, and is housed within the Department of Health and Human Services (HHS). AoA has overall responsibility for administering the Act and distributing funds in accordance with its requirements. The majority of these funds are authorized under Title III of the Act, and are distributed to States and thereafter to area agencies and service providers. AoA does retain certain funds (primarily under Title IV) for its own operations and for making direct grants and contracts for research, training, and demonstration programs.

Regional AoA offices have been established in the ten HHS Regions throughout the country. The regional offices are responsible for reviewing and monitoring state activities. In addition, they provide technical assistance and communicate AoA national policy.

AoA is responsible for numerous functions specified in the Act, including: serving as the effective and visible advocate for the elderly within the Federal government; coordinating research and implementation of programs; providing technical assistance to States and political subdivisions; collecting and disseminating information; stimulating more effective use of resources; and monitoring and evaluating programs developed pursuant to the Act. 42 U.S.C. ñ3011(a). The Commissioner has authority to issue regulations and policies which interpret and implement the Act.

Since its creation, AoA has fostered the evolution throughout the country of an integrated network of programs and services to meet the needs of older people. That "network" plans and provides numerous essential programs such as nutrition services, transportation, information and referral, housing assistance, and legal services.

History of AoA's Role in the Development of Law and Aging: Since the early 1970s, AoA has provided leadership to expand the aging network beyond its programmatic and service functions into advocacy activities. Under Commissioner Arthur Flemming -- President Nixon's 1973 appointee -- AoA became increasingly active in working with Congress and administrative and regulatory agencies to promote responsiveness to the needs of the older population. AoA also began to take specific steps toward increasing legal advocacy efforts at the state and local levels.

The Early Years: 1965 - 1974

Prior to 1970, there was minimal recognition of the need for legal services for the elderly. *Legal Problems Affecting Older Americans, A Working Paper* published by the U.S. Senate Special Committee on Aging and related hearings held in 1970 and 1971[[5]](#footnote-5)provided the first evidence that legal needs were not being met. While some free legal services were available to elderly poor through local Legal Services Corporation offices, very few older people had access to these services. The Introduction to the Committee's working paper stated: "The elderly comprise nearly one in three of all the poor but have received only a tiny fraction of legal services proportionate to their numbers."

Programs with particular focus on older persons' rights and benefits were almost non-existent. For the segment of the older population that could afford private attorneys, the lack of law school courses and training materials on substantive issues particularly affecting older persons (Social Security, Medicare, etc.) effectively limited assistance from the private bar. The Senate Committee concluded that special service programs needed to be developed, and that lawyers needed training in areas of law particularly affecting older persons.

AoA took its initial step to address legal training and model project needs following passage of the 1973 Amendments, which mentioned legal as a social service that could be provided under Title III. This involved funding three grants. One was to the National Senior Citizens Law Center in Los Angeles to convene a conference of attorneys working in Title III-funded projects. Another was to Legal Research and Services for the Elderly of the National Council of Senior Citizens (NCSC) to provide technical assistance to three state agencies; and the third was to George Washington University Law School for a clinical law program to serve the elderly.

AoA's first systematic effort to support development of legal services was in 1975. It was the result of a $9 million increase in Title III appropriations, $1 million of which was for model projects to strengthen legal representation. To maximize the impact of these funds, AoA took the approach of supporting a limited number (eleven) of projects.[[6]](#footnote-6) Seven projects were to provide technical assistance to State and area agencies and develop resource materials to train lawyers and paraprofessional staff. Four innovative service delivery model projects were also funded.

The Rapid Growth Years: 1975 - 1983

As AoA's eleven projects were being implemented, Congress gave increased consideration to legal services in the 1975 Amendments to the Act. They specified legal as one of four priority service areas under Title III, and required that every State plan include provision of some or all of the four services. They also provided in Title IV A that the Commissioner might make grants to assist in training lawyers and paralegals. In June 1976, AoA made six awards responsive to Title IV A.[[7]](#footnote-7) While these went primarily to grantees funded previously under the model projects program, their focus was on materials development and training events for lay advocates, paralegals, law students, and lawyers.

In June 1976, AoA initiated a plan for creation of a legal services development program in the State agencies on aging. AoA invited States to apply for Section 308 funds to "put State Agencies in a leadership position for the development of a legal services capability . . ." AoA-PI-76-31, June 23, 1976. To support States in developing their proposals and subsequent activities, AoA announced continuation of five of the original eleven Model Projects specifically for technical assistance purposes.[[8]](#footnote-8) In the application guidelines for States (AoA-TA-76-42), AoA set forth its plan of having a staff person (an attorney) in each State agency whose general function was to develop and promote legal services. Specific activities of this "legal services developer" were outlined.[[9]](#footnote-9) (Developers are discussed on pages II -18 through 21.) Nine-month projects were to begin in January 1, 1977 and end September 30, 1977.

Difficulties with start up, particularly with hiring attorneys on State agency staffs, resulted in delays. Many developers did not begin working until shortly before September 30. Convinced, however, of the importance of developing State leadership in this area, AoA reserved $1.5 million to continue the program from 10/1/77 thru 9/30/78. AoA also decided to continue the technical assistance national grantees to provide continuity and time to review and assess the type of assistance needed by States. The five grantees were extended through March of 1978. Throughout this period, AoA continued to fund legal training and materials development projects under Title IV A.

At this time, developers and others began to raise questions about the role of the national grantees, their remoteness, and possible duplication and overlap in their activities. These questions pointed to the need for AoA to develop a coordinated national strategy for the total legal services effort. In order to develop such a strategy, AoA set up an Office of Legal Programs and hired an attorney to help devise the strategy.

At this same time, the 1978 Amendments to the Act gave great impetus to development of legal services by establishing three priority services -- access, in-home, and legal services -- and requiring each of the 670 area agencies to spend at least 50% of its Title III B funds on these priorities, with "some funds" to be spent on each. This meant that, at a time when few AAAs had experience with legal services and when state legal services developers were just beginning, the area agencies were suddenly required by Congress to expend substantial funds to develop a complex service program about which relatively little was known.

Authorization for AoA to use Title IV funds for training lawyers and paralegals remained in the 1978 Amendments. In addition, a Section 423 was added to provide for special demonstration projects for legal services. It stated:

(a) The Commissioner may make grants and enter into contracts. . in order to--

(1) support legal research, technical assistance, training, information dissemination, and other support activities to agencies, organizations, institutions, and private law firms that are providing, developing, or supporting pro bono or reduced fee legal services to older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal services to older individuals with social or economic need.

…

(c) From the sums appropriated . . . for each fiscal year, not less than $5,000,000 shall be reserved to carry out the provisions of this section." (*emphasis added*) Pub. L. No. 95-478

This $5 million authorization allowed AoA to take significant steps in providing national leadership in the area of legal services.

It is important to note here that paralleling the development of legal advocacy was the development of long-term care advocacy.[[10]](#footnote-10) In light of growing evidence about shortcomings of nursing homes and escalating costs for care, concerted efforts were begun in 1972 to develop a system of advocacy to address such problems. Congress first made funds available through HEW's Health Services Administration to establish five nursing home ombudsman demonstration projects. Four contracts went to State agencies and a fifth went to National Council of Senior Citizens, which utilized Michigan's Citizens for Better Care (CBC) to test the effectiveness of a non-government related agency operating with volunteer ombudsmen.

The ombudsman demonstration program was transferred to AoA in 1973; and based on demonstration results, the program was greatly expanded in 1975. That year, the Commissioner invited all State agencies to submit proposals for grants to develop ombudsman projects to generate community-based programs for identifying and dealing with nursing home complaints. The 1978 Amendments greatly expanded and strengthened the ombudsman program. The major activities described in the current chapter on page 21 -- which continue to be the cornerstones of ombudsman duties -- were set forth in the 1978 Amendments. AoA set up a separate section to assist states with their ombudsman programs.

While the legal and ombudsman programs evolved rapidly but separately, problems -- resulting, in part, from lack of coordination between them -- became apparent. With respect to the institutionalized elderly, the ombudsman program lacked the structural linkage between lay advocate volunteer programs and legal programs needed to bring together specialized talents of both groups for maximal advocacy. With respect to legal services, AoA, its national legal support projects, and the state developers quickly recognized the complexity involved in developing legal delivery programs. Local programs were uneven in their quality, their focus of service, expertise of staff, and so forth. Coordination with the entire aging network and ombudsman programs was not being maximized; and lawyer and paralegal talents were not being efficiently used. The training and technical assistance efforts of AoA's national legal services grantees were often remote and unable to gain the state and local perspective and access needed to provide effective assistance.

With the tremendous growth in numbers and types of legal delivery programs brought about by the 1978 Amendments, commensurate growth in development of best-practice models, evaluation and quality control, and up-to-date training materials on substantive areas of law was critical.

In late 1978, AoA responded to these problems and needs with the Older Americans Advocacy Assistance (OAAA) Program. The OAAA program was intended to continue and enhance AoA's support for State agency leadership in legal and ombudsman services. It combined legal and ombudsman efforts "into a common framework in order to maximize their interrelationship, improve coordination, and more effectively deal with the concerns of institutionalized and non-institutionalized vulnerable elderly" (AoA-PI-78-12, June 7, 1978). The OAAA program was described as:

. . . a comprehensive system of State and community-based advocacy services designed to maximize the capacity of the aging network and older persons to secure:

(a) access to the existing rights, benefits and entitlements under Federal, State and local laws essential to the freedom and enjoyment of a full life for institutionalized and non-institutionalized older persons; and

(b) favorable changes and/or the development of new rights, benefits, and entitlements for institutionalized and non-institutionalized older persons. (AoA-PI-78-12, June 7, 1978)

AoA set up a new unit (the Advocacy Assistance Unit) in its Office of Special Programs to work on this effort. It issued guidance in the form of Program Instructions to State agencies each year from 1978 to 1984. The states prepared proposals and received OAAA grants for state legal services developers and ombudsmen to undertake the efforts indicated in the Program Instruction.

As part of the OAAA system, AoA funded five Bi-Regional Support Centers[[11]](#footnote-11) to provide technical assistance to states. AoA divided the country into bi-regional areas in an effort to address the problems of remoteness and duplication of effort that had been experienced with its national grantees. The Bi-Regional Centers provided support and assistance to State and area agencies and their advocacy programs and to state legal services developers and ombudsmen. AoA instructed all Bi-Regional Centers to provide assistance in the form of written materials, legal research, legislative and litigation assistance, direct consultation, workshops and training. Funds for the OAAA effort at the state and bi-regional levels came from the $5 million authorized in Section 423 of Title IV.

During this period, AoA also accomplished several important organizational tasks at the federal level. First, on January 18, 1977, AoA and the Legal Services Corporation (LSC) signed a Statement of Understanding intended to enhance cooperative working relationships between the aging network and LSC programs throughout the country to increase access to legal services for the elderly. The Statement of Understanding emphasized activities that LSC field programs could undertake, without substantial funding increases, to reach poor older persons -- such as outreach and community education in senior centers, nutrition sites, housing projects for the elderly, nursing homes, etc. Second, AoA funded and housed in its Advocacy Assistance Unit three persons who were employed by LSC. These persons focused exclusively on the OAAA effort.

The 1981 Amendments completely rewrote Title IV and the specific language on training lawyers and paralegals was deleted. Section 423 was revised and became Section 424 -- Special Demonstration Projects on Legal Services -- which stated:

(a) The Commissioner shall make grants to and enter into contracts. . . to

(1) provide support activities to State and area agencies on aging providing, developing, or supporting legal services to older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal services to older individuals with social or economic need. Pub. L. No. 97 - 115 (amended 1984).

AoA stopped funding the bi-regional centers and, from 1982 through 1984, funded several organizations to provide national support, including the National Senior Citizens Law Center, the American Bar Association Commission on Legal Problems of the Elderly, and Legal Counsel for the Elderly of the AARP.

The Current AoA Initiative: 1984 - Present

AoA ended the OAAA program when Congress, as part of the 1984 Amendments, moved funds for state legal services developers from Title IV to Title III, State administrative funds. In addition, the 1984 Amendments changed the language of Section 424 so that it now calls for the Commissioner to provide a "national legal assistance support system . . . to State and area agencies on aging for providing, developing, or supporting legal assistance for older individuals . . ." 42 *U.S.C.* §3032i (do we need to put P/L here? Omitted) That language remained in the 1987 Amendments. AoA has addressed the current requirements of Section 424 by issuing RFPs and funding national legal support projects as part of the coordinated discretionary funds program. This current AoA initiative is described below.

**2. The AoA-Funded National Legal Assistance Support System**

This national legal support system, as described in the Act, involves a two-pronged effort:

(1) with respect to substantive legal issues, it is to provide case consultations, training, and substantive legal advice; and

(2) with respect to delivery of legal services, it is to provide assistance in the design, implementation, and administration of delivery systems.

The Act requires AoA to enter into contracts "with national nonprofit legal assistance organizations experienced in providing support, on a nationwide basis, to local legal assistance providers." (42 U.S.C. §3032I (2000). In order to select appropriate and qualified organizations, AoA has issued requests for proposals for support projects as part of the HDS Coordinated Discretionary Funds Program each year since FY 1985. For FY 1986, 1987, and 1988, the following four organizations were funded to provide national support:

1. American Bar Association (ABA) Commission on Legal Problems of the Elderly -- funded to provide materials, training, and technical assistance on private attorney involvement in delivery of services and some substantive law issues such as home equity conversion;
2. The Center for Social Gerontology (TCSG) -- funded to provide assistance on delivery issues by producing a best practice exchange newsletter, a handbook on evaluation, and a *Guide to Delivery of Legal Assistance*; and to develop manuals and provide training on guardianship and alternatives, age discrimination, and Social Security;
3. Legal Counsel for the Elderly (LCE) of AARP -- funded to provide state-specific training in selected states on various substantive issues and provide national support in Protective Services Law; and
4. National Senior Citizens Law Center (NSCLC) -- funded to provide materials, training, advice, technical assistance, and case consultation on numerous substantive areas of law and produce an evaluation manual that complements TCSG's.

Four other organizations were also funded for some of these years. They were:

1. National Association of State Units on Aging (NASUA) -- funded to provide national support to long-term care ombudsman programs;
2. National Bar Association (NBA) -- funded to improve availability and delivery of legal services to elderly Black Americans;
3. National Clearinghouse for Legal Services (Clearinghouse) -- funded through a subcontract with NSCLC and then directly to provide computer-assisted legal research to Title III legal providers; and
4. Pension Rights Center -- funded to provide training, advice, materials and technical assistance on pension issues and to develop a network of lawyers to assist plaintiffs in pension rights cases.

The Current National Legal Support System: In issuing its request for proposals (RFP) in December 1987, AoA indicated that its goal was to fund a true national support system as called for in the Act, rather than discrete support projects. While the funded organizations had been providing valuable support and had made efforts to coordinate among themselves, there was no true system of support. AoA was concerned that there was confusion about what the various support centers were doing and producing, and that important assistance available from them was not being fully utilized by the aging network. Thus in negotiating with the current national legal support grantees, AoA staff made concerted efforts to ensure that there would be joint planning and coordination among the various grantees.

Also, in issuing the RFP, AoA specified that its goal was to develop leadership at the State agency level. It stated:

For the next two years, AoA will direct its Title IV legal assistance grant resources toward strengthening the State role in the national system and, in particular, the leadership capacity of State Agencies on Aging to:

1. Develop responsive Statewide systems of legal assistance;
2. Link these systems with the broader array of services and service systems needed to promote the independence and dignity of older persons; and
3. Assist Area Agencies on Aging in the integration of legal assistance programs for older people with existing community based service delivery systems. 52 F.R. 49293 (Dec. 30, 1987).

AoA awarded funds to six national organizations for fiscal years 1989 and 1990 pursuant to this RFP. While there is some overlap in topics addressed by the support centers, each has a different focus and primary audience. The six centers and their projects are:

1. ABA Commission continues to focus its efforts on private attorney involvement in the delivery of legal services, and also informs State agencies of developments in protective services and assists in developing linkages with mediation and dispute resolution systems;

* TCSG expands upon its work with State and area agencies, legal services developers, and providers by conducting Technical Assistance visits regarding delivery of services issues, helping design high-quality, cost-effective delivery systems, continuing to publish "Best Practice Notes," and providing assistance and case consultations;
* LCE continues its assistance to providers by operating the National Support Center in Protective Services, recruiting AARP members to volunteer in legal assistance and representative payee programs, developing legal hotlines for older persons, and working with States to develop their capacity to conduct training on legal issues and advocacy skills;
* NBA continues providing technical assistance to NBA chapters and State agencies to coordinate delivery of legal services to elderly Black Americans and encouraging recruitment of Black attorneys to provide free legal assistance;
* ~~Clearinghouse provides free to legal services developers and legal program staff subscriptions to Clearinghouse Review, computer assisted legal research, and copies of decisions, pleadings and other materials; and~~
* NSCLC continues providing advice, technical assistance, case consultation, litigation assistance, materials, and training to providers and developers, and also assists State and area agencies, developers and providers with delivery systems.

For a more complete discussion of each of these national support centers and the resources available from them, please refer to Chapter XII of this manual.

Directly related to the national legal support system, AoA has also funded several other national resource centers:

* National Aging Resource Center on Elder Abuse (NARCEA) is operated by the American Public Welfare Association, National Association of State Units on Aging (NASUA) and University of Delaware and serves as a comprehensive source of information, data, and technical assistance. Its activities focus on enhancement of knowledge and skills in program development, agency management, and service delivery, along with an increase in public awareness of elder abuse issues; and
* National Center for State Long-Term Care Ombudsman Resources is operated by NASUA and the National Citizens' Coalition for Nursing Home Reform to enhance skills, knowledge and management of the State Long-Term Care Ombudsman programs by providing technical assistance, training, and materials related to program operations and by serving as a resource for State agencies on aging.

**3. The Legal Services Corporation (LSC) and its National Support Centers**

Creation and Structure of LSC: The Legal Services Corporation (LSC or the Corporation) is a quasi-governmental, private, non-profit organization established by Congress in 1974 (Pub. L. No. 93 - 355) to provide financial support to legal services providers nationwide. LSC funds can be used only to serve low-income persons in civil matters. It is the successor to the former Office of Economic Opportunity poverty law program started in 1965. The legal services program was removed from the executive branch after it became apparent in the late sixties that a structural change was necessary to insulate it from partisan political pressures. The Corporation is governed by an 11-member Board of Directors, appointed by the President. No more than six members may be of one political party, and at least two members must be eligible clients.

With funds appropriated by Congress, the Corporation distributes grants to legal services field programs operating in neighborhood offices throughout the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Micronesia. Most LSC-funded field programs are staffed by full-time attorneys and paralegals. Most do not have sufficient resources to meet all legal needs of the eligible population, thus they often establish priorities that reflect community needs and consider the availability of other sources of legal assistance. Some programs practice in limited areas of the law, such as housing, health care, and public benefits.

All LSC field programs are required to spend 12.5% of their LSC allotment on development of private attorney involvement in delivery of pro bono (free) legal services to the poor. This private attorney involvement has enabled some programs to expand case priorities and assist people in areas which otherwise would not be covered.

Local LSC programs may obtain funds from other sources to serve specialized needs. Many receive funds to serve older persons from area agencies under Title III of the Older Americans Act. Under such an arrangement, the LSC program typically provides support services, in-house supervision and training, office space, and overhead to the senior citizen program. In addition, Title III staff have access to a number of Corporation-sponsored training programs and to the specialized expertise of its national support centers.

The LSC National Support Centers. The LSC support centers provide special assistance to legal staff in LSC field programs. The solutions to most problems faced by local offices, like those encountered in private practice, do not establish important precedents or change the law. For some complex problems, however, an individual attorney -- faced with hundreds of cases each year -- cannot respond adequately without specialized help. The Corporation has, therefore, established support centers to provide that type of assistance to its legal staff around the country.

One LSC support center, the National Senior Citizens Law Center (NSCLC) focuses exclusively on issues affecting the elderly, and has also received funding from the Administration on Aging since 1973. NSCLC concentrates on legal problems such as Medicare, age discrimination, nursing home law, and Social Security. Other LSC support centers specialize in substantive areas, such as health and housing law, that can also be useful in representing senior citizens. One -- National Clearinghouse for Legal Services -- publishes a monthly journal on poverty law issues and provides computer assisted legal research. Many of the LSC-funded support centers are discussed in Chapter XII of this manual.

**4. The Private Bar at the National Level**

Although the private bar is not commonly thought of as part of the law and aging network, it should be so considered for a number of reasons. At the national level, the American Bar Association (ABA) has encouraged private lawyers to devote time and resources to the provision of pro bono (free) or reduced cost legal services for the poor and elderly. Through its Commission on Legal Problems of the Elderly, the ABA develops materials and provides assistance to private and public practitioners of elderlaw. In addition, the ABA Young Lawyers Division, Committee on Delivery of Legal Services to the Elderly focuses on the legal problems and needs of the elderly. Another national lawyers group, the National Bar Association, has developed an initiative to serve the legal needs of Black minority elderly.

**C. The Network at the State Level**

*1. The State Unit/Agency on Aging*

Creation and Structure of State Units: In order to receive funds under the Older Americans Act, all states must establish an identifiable unit within state government which is responsible for execution of programs funded under the Act. Thus all states have a State unit on aging (SUA or State agency). In some states, the SUA is part of an umbrella human services agency. In others, it is a freestanding commission, council, or department.

The SUA has extensive responsibilities and functions detailed in the Older Americans Act, such as:

(A) develop a State plan to be submitted to the Commissioner for approval . . . ;

1. administer the State plan within such State;
2. be primarily responsible for the coordination of all State activities related to the purposes of this Act;
3. serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly and providing technical assistance to any agency, organization, association, or individual representing the needs of the elderly; . . . 42 U.S.C. §3025(a)(i) (2003).

The SUA designates subdivisions (area agencies) within the state (or, in some cases, the entire state) to undertake planning and contract for services to meet the needs of older persons at the local level. The SUA also adopts a formula for distribution of Older Americans Act funds which reflects "the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals." 45 *C.F.R*. §1321.37(a).

The regulations promulgated under the 1987 Amendments to the Act on August 31, 1988 (53 F.R. 33767) contain, for the first time, a mission statement for all State units on aging. The portion of that statement which is relevant to this discussion provides:

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible. 45 *C.F.R*. §1321.7(a). (*emphasis added*)

SUA Responsibilities Regarding Legal Assistance: In addition to the general responsibilities discussed above, the SUAs have specific obligations related to legal assistance. These statutory requirements as well as some ways that states have demonstrated initiative in areas beyond the requirements of the Act are discussed below.

Since passage of the 1984 Amendments, each SUA must "assign personnel to provide State leadership in developing legal assistance programs for older individuals throughout the State." 42 *U.S.C.* §3027(a)(13). Such personnel, commonly referred to as "legal services developers," are discussed in this chapter on pages 18-21. Provision of training, technical assistance, and support to legal assistance providers within the States is generally coordinated by the developers.

State agencies also have responsibility for assuring that area agencies enter into contracts with legal providers that can demonstrate experience or capacity to deliver legal services and will attempt to involve the private bar in legal services activities; and they must assure that no legal services will be furnished unless the grantee is the entity best able to provide the services. Most State agencies are involved in the provider selection process through provision of technical assistance regarding requests for proposals and contracts, or through review of area plans submitted by area agencies. Some states, however, are beginning to take a more proactive stance in the area by establishing statewide standards and policies governing area agency selection of providers. These standards both explain and expand upon the minimal qualifications set forth in the Act and its regulations.

Since 1978, the Act has required SUAs to assure that legal services furnished under Title III are in addition to any legal services for older persons furnished with funds from other sources and that reasonable efforts are made to maintain existing levels of legal assistance for older individuals. 42 U.S.C. §3027(a)(11)(D) (2000).

The Act has also contained varying requirements about the amount of funding that area agencies must provide to legal and other Title III programs. The 1978 Amendments specified that at least 50% of Title III B funds be spent on three priority services (access, in-home, and legal), and that "some funds" be spent for each such service. Pub. L. No. 95 - 478. Under the 1981 Amendments, area agencies had to provide an "adequate proportion" of Title III B funds to the three priority services, and that "some funds" had to be spent on each. Pub. L. No. 97 - 115. Since the 1984 Amendments, the requirement has been that an "adequate proportion" be expended for each of the three priority services. 42 U.S.C. §3026(a)(2), Pub. L. No. 98 - 459. In response to this requirement, a few state agencies voluntarily adopted minimum percentage levels of Title III funding and/or maintenance of effort requirements for legal assistance.

As a result of the 1987 Amendments, all SUAs are now required to establish for their area agencies a minimum percentage of Title III B funding to be allocated to each of the three priority services. 42 U.S.C. §3027(a)(22). The expenditure of this minimum percentage, in the absence of a waiver, satisfies the "adequate proportion" requirement. 42 U.S.C. §3026(a)(2)(C) (?). State agencies may grant waivers to area agencies that can demonstrate that needs for services are being adequately met and therefore do not wish to spend the minimum percentage. State agencies must however hold public hearings prior to granting an area agency a waiver if requested by an individual or service provider; and a State's decision to grant a waiver must be justified to the Commissioner on Aging. 42 U.S.C. §3026(a)(5)(C). 42 U.S.C. §3027(a)(6).

State agencies must also evaluate the need for legal and other supportive services. Recently, two SUAs (Wisconsin and Nevada) received Title IV grants from AoA to conduct legal needs assessments as components of demonstration projects. In Tennessee, the State bar association committee on the elderly and the legal services developer worked together and received a special mini-grant from the American Bar Association to perform a legal needs assessment in certain communities. Some area agencies include questions on legal needs in their general needs assessment instruments after obtaining technical assistance on the issue from their legal services developer.

Many SUAs have adopted uniform service definitions for legal and other Title III B services, but recently a few State agencies have demonstrated initiative by developing uniform statewide reporting systems. Some of these systems have included data on the value of legal services provided that can be used by the SUA to "sell" legal assistance to state legislatures and other funders.

State agencies also develop policies and standards on issues important to legal providers, such as confidentiality and client contributions. They also monitor the area agencies to ensure that both the AAAs and providers are complying with the Act, its regulations, and any applicable state laws, regulations or policies.

Some State agencies, through the legal services developer, have established close working relationships with the state bar association. This involvement has resulted in more knowledgeable and productive bar associations and bar committees on the elderly. The associations have become more sensitive to the needs of elderly clients and, often in conjunction with the SUAs, have sponsored continuing legal education courses on issues affecting older persons, bar journal editions on the elderly, law week educational activities, and resource manuals for older persons.

**2. The State Legal Services Developer**

Under the Older Americans Act, every State agency must have the capacity to undertake certain functions with respect to legal assistance. The Act describes these in the following terms:

(11)(C) the State agency will provide for the coordination of the furnishing of legal assistance to older individuals within the State, and provide advice and technical assistance in the provision of legal assistance to older individuals within the State and support the furnishing of training and technical assistance for legal assistance for older individuals;

•••

(13) the plan shall provide assurances that each State will assign personnel to provide State leadership in developing legal assistance programs for older individuals throughout the State (42 U.S.C. ñ3027(a)(15)(C) and (18)).

These subsections of the Act refer to responsibilities usually fulfilled by someone in the position entitled "Legal Services Developer." As noted above, that position was created in each State agency when, in a 1976 Program Instruction, AoA established a plan whereby each SUA would hire an attorney to develop and promote legal services (AoA-TA-76-42). Until 1984 the developer positions were funded through grants issued by AoA. Under the 1984 Amendments, State agencies became responsible for funding the developer position from Title III State administration monies. In many states the developer is on the State agency staff; in some states the State agency contracts with another organization to provide the developer functions.

The developer position understandably varies greatly from state to state. (Even the job title varies: while in most states the title is "Legal Services Developer" (LSD), in Tennessee the title is "Legal Assistance Coordinator," and in Georgia it is "Elderly Law Specialist.") A review of various LSD job descriptions, however, reveals one constant: the job of the developer is a formidable one. The typical developer is required to play numerous roles and to have both broad and specialized knowledge of laws and policies affecting older Americans. At various times, the developer may be called upon to act as administrator, legislator, negotiator, diplomat, legal scholar, public speaker, writer, teacher, data-gatherer, head-hunter, reporter and one-person client referral service. The developer must stay abreast of changes in state and federal legislation and regulations affecting the delivery of legal services to older persons, as well as in the many substantive areas of law affecting them - from ADEA to Medicare to food stamps to estate planning to nursing home issues. In most states, the developer serves as the focal point of all activities and programs related to the legal needs of older persons. The following discussion outlines basic duties of legal services developers and highlights some variations in their roles.[[12]](#footnote-12) It also will summarize the job qualifications, which vary somewhat from state to state.

Common Duties of Legal Services Developers: While developer job descriptions vary from state to state, some common duties appeared in almost all of the job descriptions which have been submitted to TCSG. In general, all developers participate in the following types of activities: planning and policy development; coordinating legal assistance programs with the rest of the aging network; providing technical assistance on both delivery and substantive issues; and planning and conducting training. These responsibilities are fulfilled through the following specific tasks:

* identifying the legal needs of older persons and the resources available to meet those needs;
* developing and implementing the State plan on aging, with particular attention to the legal assistance component;
* developing standards, policies, and procedures for the operation of legal assistance programs for older persons;
* participating in the contracting process between area agencies and legal assistance providers;
* evaluating the performance of legal assistance providers;
* collecting data and reporting on legal assistance programs for AoA;
* serving as liaison to, and coordinating the activities of, legal services organizations, State and area agencies, and the AoA;
* staying abreast of changes in laws, regulations, and guidelines affecting legal assistance program development and implementation;
* providing technical assistance, including research assistance, to Title III legal services providers, state and local agencies, and others regarding laws, regulations, and guidelines affecting legal assistance program implementation; and
* coordinating with national support centers, state and local bar associations, and other aging organizations to plan and conduct training programs for legal assistance providers, volunteer attorneys, and others in the aging network.

Other Duties: Beyond these essential functions, developers' responsibilities can vary a good deal. Some developers have numerous additional duties; others have relatively few. In some cases, these "other" duties expand the role of the developer substantially beyond the OAA requirements. Just a few of these other responsibilities are listed below. In various states, developers may be called upon to perform one, a few, or most of the following functions:

* draft legislation, comment on proposed legislation, or testify before legislative committees;
* draft regulations or comment upon proposed regulations;
* serve on task forces or bar association committees;
* assist law schools in developing courses or clinics concerned with the legal problems of older persons;
* develop *pro bono* programs and recruit *pro bono* attorneys;
* conduct client referral;
* develop, publish, and disseminate materials on laws affecting older persons;
* identify potential sources of funding for legal assistance programs and prepare grant proposals; and
* identify and develop other resources, such as volunteer organizations.

In addition, developers in some states must work closely with or provide legal back-up to one or more particular programs or offices that address special problems of older persons. These may include the state long-term care ombudsman program, Medicare advocacy program, protective services program, or elder abuse prevention program.

Many of these other duties may substantially interfere with the program development and technical assistance activities required of the developer by the Act. Thus, when contemplating addition of any of these other duties to a developer's job description, a State agency should carefully analyze the status of its legal programs and the needs of its AAAs and providers. A SUA may want to impose additional duties upon the developer *only after* certain program development activities (e.g., provider selection and operating standards, policy manuals, uniform reporting system, etc.) have been completed.

Job Qualifications: States also differ in the level of education and amount of experience required of their developers. In some states, the position is open to any licensed attorney, regardless of experience, but with a preference for applicants with concern for and familiarity with legal services for the elderly. In others, an applicant must both be a licensed attorney and have a certain number of years experience in general practice or legal services. Still other States do not require the developer to be an attorney, but do require a bachelor's degree in a field such as sociology or gerontology, or equivalent work experience.

LSD job responsibilities indicate a need for strong communication, negotiation, and interpersonal skills. This is reflected in the requirements of almost all job descriptions reviewed by TCSG. Other important skills and qualities enumerated in the job descriptions include: ability to perform legal analysis, general problem-solving ability, writing ability, ability to discuss legal matters with lay persons, organizational skills, and willingness to travel.

State agencies must be cognizant of the legal assistance program models existing in their states, as well as the needs and level of sophistication of those programs, before determining whether the LSD should be a lawyer and the amount of experience required. It is not the role of the developer to supervise the legal work of providers. For example, programs staffed by non-lawyers should have legal advice, case review, and representation by qualified lawyers built into the delivery system so that the developer is not relied upon for such activities. Nevertheless, there are reasons other than regular technical assistance why a State agency might decide that the developer should be an experienced lawyer (e.g. providing training or legislative and regulatory analysis, evaluating performance by providers, etc.). On the other hand, a non-lawyer developer might not be given a may "other" responsibilities and thus might have more time to devote to the program development activities mandated by the Act. Just as the duties of the developer may shift depending on the developmental stage and priorities of the legal assistance program, the need for the developer to be a lawyer may fluctuate due to the same factors.

**3. The Office of the State Long-Term Care Ombudsman**

Creation of the Ombudsman Program: Every State agency must "establish and operate, . . . an Office of the State Long-Term Care Ombudsman. . . and shall carry out through the Office a Long-Term Care Ombudsman program. . . ." 42 *U.S.C.* §3027(a)(19). This language reflects some of the changes made by the 1987 Amendments to strengthen the ombudsman program.

Duties of the State Long-Term Care Ombudsman: The Office must be headed by a full-time State Ombudsman who has numerous responsibilities set forth by federal and, in most instances, state law. These duties include:

* investigating and resolving complaints made by or on behalf of residents of long-term care facilities;
* providing for training of staff and volunteers;
* promoting development of citizen organization participation in the ombudsman program;
* preparing an annual report regarding the types of problems experienced and complaints received by or on behalf of long-term care facility residents and containing policy, regulatory and legislative recommendations to address those problems and complaints;
* analyzing and monitoring development and implementation of Federal, State and local laws, regulations and policies regarding long-term care facilities, and recommending any changes deemed appropriate;
* providing information about the problems and concerns of long-term care facility residents to public agencies, legislators, and others; and
* coordinating long-term care ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness.

In addition, it is important for the State Ombudsman and Legal Services Developer to work closely. Linkages between the two enable them -- and their programs -- to be perceived as an advocacy unit. This relationship benefits both programs as it enhances access to legal assistance for long-term care facility residents.

**4. The Private Bar at the State Level**

There are now 34 state bar association committees related to the legal needs of the elderly. Many of these committees have produced valuable products and projects such as (1) special state bar journal editions dedicated to the legal rights of the elderly; (2) handbooks and manuals for senior citizens on laws and resources; (3) manuals and newsletters for attorneys practicing in the area of elderlaw; (4) continuing legal education sessions on topics of importance to older clients; (5) drafting of legislation related to issues such as guardianship reform and nursing home patients' rights; (6) manuals and pamphlets about nursing home admissions contracts; (7) a variety of community education programs for older persons; and (8) programs providing direct services to older clients for no charge or a reduced fee.

State bar associations and their committees on the elderly have also played important roles in efforts to increase funding for legal assistance programs and to pass legislation on issues affecting older persons.

**D. The Network at the Local Level**

*1. The Area Agency on Aging (AAA)*

General Discussion of Area Agencies on Aging: The 1973 Amendments to the Act created the area agencies on aging (AAAs) -- also called planning and service areas (PSAs) -- which plan, coordinate, implement and oversee a system of comprehensive Older Americans Act programs within their respective local communities. Area agencies also "serve as the advocate and focal point for the elderly within the community by monitoring, evaluating and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly." 42 U.S.C. §3026(a)(5)(B). Some States do not have AAAs because the State is designated as a single planning and service area. Nevertheless, these States must fulfill the same responsibilities as AAAs.

The services which AAAs plan, fund, coordinate, and monitor include transportation, nutrition, health, social services, legal assistance, nursing home advocacy and other programs deemed necessary. The Act prohibits AAAs from directly providing services unless the State agency determines that AAA provision of services is necessary to assure an adequate supply of such services, or where such services of comparable quality can be provided more economically by the area agency on aging. 42 *U.S.C.* §3027(a)(8)(A)(iii). After determining the needs of the community for services, AAAs provide grants and contracts to other entities within the community to operate programs, and then coordinate and monitor those service providers.

AAA Responsibilities for Legal Assistance: Each AAA must spend "an adequate proportion" of its Title III B funds for the delivery of legal assistance. 42 *U.S.C.* §3026(a)(2). An "adequate proportion" is now defined as at least the minimum percentage of Title III B funds which a State agency requires an AAA to spend in the absence of a waiver. 42 *U.S.C.* §3027(a)(22). An AAA may be granted a waiver of this funding requirement if, after a public hearing, it is able to demonstrate to the State agency, that services being provided in the area are sufficient to meet the need for legal assistance in the area. 42 *U.S.C.* §3026(b)(1)-(2). The amount of funding granted by the AAA for the provision of legal assistance may determine the delivery model which may be used and services which may be provided.

An area agency also has great impact on the legal assistance program through its role in the selection of the service provider. Within the parameters imposed by the Act and its regulations, area agencies have flexibility and can shape the focus of the program through requests for proposals and establishment of selection criteria. See Chapter I pp. 17-18, 27-29 for the statutory and regulatory language related to selection of a legal assistance provider and Chapter VII for a discussion of requests for proposals.

Ideally, area agencies and legal providers work as partners to enhance the delivery of services to older persons. To guide the provider in targeting clients, AAAs share demographic information and provide technical assistance about the development of methods by which priority of services is determined. AAAs help providers expand access to services through private attorney volunteerism by lending their clout to the recruitment process. For example, it may be helpful for the AAA director to speak about the aging network and needs of the elderly at a bar association meeting. Area agencies may also help providers increase law school involvement in aging issues by encouraging development of clinics or classes on problems affecting the elderly.

Area agencies play an important role in developing and enhancing relationships between legal and non-legal service providers. Many AAAs require all providers to sign cooperative agreements with each other. Some AAAs have regular provider meetings at which problems and issues are discussed. These regular contacts often lead to better rapport and greater knowledge of each provider's services. This can lead to an improved referral system as providers know each other and know what services are provided by each agency.

**2. The Title III Legal Assistance Provider**

This entire Guide is devoted to the role of the legal assistance program as a provider of legal advice, counseling, education, and representation to older persons. However, the role of the legal assistance program may extend beyond the traditional notions of advocacy usually associated with lawyer and paralegal services. This extended role is the subject of this section.

The successful delivery of legal assistance to the elderly is largely dependent on the program's coordination with other service providers. Legal assistance providers visit senior centers and nutrition sites in order to inform participants of program services and to educate participants about their rights so that legal problems may be prevented or recognized. Legal providers offer training on how to recognize legal problems and new laws affecting the elderly to other service providers who then utilize that knowledge to assist more clients. Clients are referred to legal programs by other providers, such as long-term care ombudsmen and protective services workers, and the legal program often gives legal advice relating to a provider's role or client's problem to other service providers.

In addition, legal providers often volunteer their time and knowledge to other service providers, community agencies and advocacy groups related -- directly or indirectly -- to the provision of legal assistance. For example, legal providers around the nation are actively involved in long-term care ombudsman programs, health planning agencies, housing coalitions, consumers rights organizations, guardianship reform taskforces, etc. Such efforts enhance the comprehensiveness of the legal assistance delivery system.

**3. The Private Bar at the Local Level**

In recognition of the growing elderly population and its legal needs, an increasing number of local bar associations are developing committees on the legal problems of the elderly. These committees are providing, on a local basis, services and educational and informational projects similar to those offered by the state bar association committees.

Even in locales where no committee on the elderly exists, bar asociations serve the elderly through special community education activities held during Law Day/Law Week celebrations (e.g., television shows, Law Fairs, Town Hall meetings, public benefits check-ups, etc.). In addition, the Young Lawyers sections of local bar associations often have committees or special projects related to delivery of services to the elderly.

In many areas, special panels of private lawyers willing to volunteer their time or provide reduced-fee services to older persons have been established by local bar associations. These panels can supplement and expand the services of the legal assistance provider.

Private attorneys are increasingly becoming involved in nursing home advocacy. They are representing nursing home residents or their families in fee-generating cases which cannot be handled by the legal assistance program. This effectively supplements both the legal and ombudsman programs. Furthermore, a private attorney's lawsuit for monetary damages may have a greater impact on a nursing home than any action that could be brought by a legal assistance program.

Legal Problems Affecting Older Americans, A Working Paper, Special Committee on Aging, U.S. Senate, August, 1970, U.S. GPO 47-949 Washington, D.C., and Legal Problems Affecting Older Americans, A Hearing, Special Committee on Aging, U.S. Senate. Part 1 - St. Louis, MO, August 11, 1970, and Part 2 - Boston, Mass., April 30, 1971. U.S. GPO, Washington, D.C.

2 The Eleven Projects funded in July, 1975 were:

Technical Assistance and Materials Development Projects

(1) Legal Services for the Elderly Poor, Presbyterian Senior Services Technical Assistance to State and Area Agencies and other elderly service staff in Region II.

(2) Legal Research and Services for the Elderly, NCSC ($249,607) Technical assistance to Regions I, III and IV; development of bibliography and a manual on law and aging.

(3) National Senior Citizens Law Center ($225,000) Technical Asistance to Regions V - X; publication of weekly newsletter.

(4) Connecticut Aging Legal Services ($33,706) Technical Assistance to legal services programs and social services agencies in Connecticut to promote coordinated statewide network of law offices.

(5) University of Michigan Law School ($91,032) Technical assistance and materials development for Michigan's State and area agencies on aging; training manuals, workshops, videotapes for aging services staff, legal aid lawyers, private attorneys and law students.

(6) Louisiana Center for the Public Interest ($70,432) Technical assistance to Lousiana's State and Area agencies to develop lawyer referral system and community organization; direct services to elderly utilizing interdisciplinary approach to provide social and legal services.

(7) National Paralegal Institute ($150,000) Promotion of use of senior paralegals; design of training curricula and course materials; technical assistance in establishing of paralegal programs.

Innovative Service Delivery Projects

(8) California State Office on Aging ($121,000) Demonstration of Statewide delivery system, utilizing and training social services staff and seniors as paralegals and arranging for attorney supervision.

(9) NRTA/AARP ($85,000) Demonstration of model for low-cost legal services by almost exclusive emphasis on public entitlements and training of elderly volunteers as staff.

(10) George Washington University Law School ($75,860) Training of seniors as paralegals in year-long classroom and clinical setting; operation of law student clinical program.

(11) Senior Adults Legal Assistance ($47,322) Operation of offices in Palo Alto area providing legal services for elderly through volunteer attorneys, elderly paralegals and law students; development of community education programs.

3 The following is a brief description of the six Title IV A awards:

(1) George Washington University Law School ($171,172) Focus on continued training of elderly paralegals and law students. Emphasis on development of substantive materials for traditional law school curricula and efforts to "export" the program to other law schools.

(2) Senior Adults Legal Assistance ($60,000) Development and dissemination of multidisciplinary training materials for law schools, gerontology departments, and others; course on Legal Problems of Elderly taught at Stanford and Santa Clara Law Schools.

(3) University of Michigan ($68,089) Continued training and materials development activities. Materials for community colleges and gerontological centers for training non-lawyers, continuing legal education programs for practicing attorneys, and law schools for training students through clinical programs.

(4) National Paralegal Institute ($199,690) Design curriculum and demonstrate 10-day training for Community Service Advisors in 3 Regions. Effort complemented technical assistance activities under continued Model Projects funding.

(5) Louisiana Center for the Public Interest ($137,929) Emphasized training of law and social work students and aging services workers through utilization of socio-legal approach for direct service delivery. Focus on dissemination of law/social work model.

(6) Antioch Law School ($68,861) Development of 12-volume competency-based curriculum on Law and Aging; materials stress knowledge, skills, and performance necessary for law students and lawyers to provide effective services.

4 The five grantees were: (1) Legal Services for the Elderly Poor ($80,000) (Region II); (2) National Senior Citizens Law Center ($277,918) (Regions V-X); (3) Legal Research and Services for the Elderly ($346,759) (Regions I, III, IV); (4) National Paralegal Institute ($190,000) (Use of paralegals); and (5) NRTA/AARP ($135,450) (Use of older volunteers).

5 Activities first defined by AoA for Legal Services Developers in August1976 (AoA-TA-76-42) were:

(1) Working with Area Agencies to help design legal services programs and assist them in developing plans for implementation of such programs by public or private agencies;

(2) Assisting, working through Area Agencies, Legal Services Corporation offices and/or legal aid programs to expand services and outreach efforts to eligible elderly clients and to design and secure funding for programs to serve all older persons;

(3) Assisting Area Agencies in involving the private bar in increasing legal representation;

(4) Stimulating law schools and other educational institutions to provide research, law related training, and/or direct client services to the elderly;

(5) Designing and coordinating, through State and Area Agencies, legal and aging training for State and Area Agency staff and grantees, paralegals, lawyers, and older persons;

(6) Providing, working through Area Agencies, assistance in developing legal backup to the nursing home ombudsman programs at the area level; and

(7) Working with the State Agency, Area Agencies and other interested parties on research, drafts, testimony, advocacy and monitoring for legislation at all levels that benefit the elderly. Areas of particular legislative concern could include for example, SSI, Social Security, food stamps, Medicaid, Medicare, veterans benefits, public and private pensions, nursing homes, real property taxation, federal taxation, housing, and welfare.

6 The Bi-regional contractors were Boston University for Regions I and II, the National Paralegal Institute for Regions III and IV, the Institute of Gerontology of The University of Michigan for Regions V and VII, the Center for Public Interest for Regions VI and VIII, and the National Paralegal Institute of California in Regions IX and X.

7 Comparing formal job descriptions, however, does not adequately convey the sometimes vast differences in developers' day-to-day responsibilities. For an illustration of these differences, see "Legal Services Developers Talk About Their Jobs," Best Practice Notes Vol. 1, No. 3, pp. 2-5 (TCSG, Feb. 1987).

**ASSESSING LEGAL NEEDS OF OLDER PERSONS**

(Updated December, 1992)

**A. Introduction**

**1. Importance of Legal Services to Older Persons**

Our society holds as a basic tenet that all persons shall be assured equal access to our system of justice. This encompasses not only representation in the courts but also representation before administrative bureaucracies, and less formalized use of lawyers and other trained advocates.

Nonetheless many of our nation's most vulnerable persons have limited access to legal services and thus to the system of justice. Individuals with *few financial resources*, those with *physical or mental disabilities*, and those *reliant on public resources* are most at risk of being unable to secure needed legal services. America's elderly are particularly likely to fall within one of these categories.

A 1987 report by the Villers Foundation[[13]](#footnote-13) notes that older persons have the highest poverty rate among major age groups after children. Data indicate that 3.5 million older individuals have incomes below the official poverty line for the aged, which is lower than the poverty line for other age groups. If the same poverty standard were used, the number of officially poor older persons would rise to 3.9 or 4.2 million -- between 14.3 and 15.2 percent of the elderly population. In addition to the 3.5 million officially poor, 8 million older Americans live close to poverty. The Villers report notes that if poverty among older persons were measured in the same manner as for the non-elderly, nearly half the entire older population would be characterized as poor or economically vulnerable.[[14]](#footnote-14) Unfortunately, problems associated with poverty often require legal advice or representation. Yet, poverty inhibits or prevents use of traditional legal assistance -- *i.e.* use of private attorneys.

Increasing age is also associated with greater likelihood of physical or mental impairment,[[15]](#footnote-15) which increases both the chance that legal services will be needed, and the difficulty of obtaining needed services. Physical impairments may limit access to services. Mental impairments may prevent an understanding of the need for services.

Finally, America's older population relies heavily on government benefit programs. Dangers of benefit denial, termination, overpayment, etc. often lurk around the next corner. Resolution of such problems frequently requires the assistance of legal advocates.

**2. What Do We Know About Legal Needs of Older Persons?**

Although all of the above information strongly suggests that older persons -- especially poor and socially needy older persons -- have substantial legal needs, there are currently little reliable data to support this conjecture.

State and area agencies on aging periodically undertake needs assessment surveys. These must, however, be very broad -- addressing the entire range of service needs of older persons. They are also typically undertaken with limited resources, which means that agency staff rather than experts in survey research must design and conduct the survey. Even beyond these limitations, assessing legal needs is more complex than assessing need for many other services, such as home repair or transportation. The reason is that many older persons do not recognize their problems or needs as being legal in nature, and would therefore answer a general question about whether they need help with legal problems in the negative. This means that unless questions are very carefully crafted by someone who understands the nature and range of issues that may require legal assistance, responses to questions about legal needs will not be meaningful.

Beyond results of state and area agency needs assessments, what little data there are comes from surveys of indigent persons. From these surveys of indigents, it has been inferred that the need for legal assistance among older persons greatly exceeds its current availability.[[16]](#footnote-16) These surveys reveal an average incidence of 1.2 legal problems per indigent household per year.[[17]](#footnote-17) And as the Villers report notes, an estimated 3.5 million elderly are below the poverty line. Projections from the primary funders of legal services for older persons indicate that only 250,000 receive such services each year.[[18]](#footnote-18) Assuming all 250,000 are poor, this would leave 3,250,000 indigent older persons not receiving needed legal assistance. This does not include the legal needs of the 8 million older Americans close to poverty.

Clearly these statistics suggest there are substantial unmet legal needs among our most vulnerable older population. This conclusion is generally supported by the experiences of legal services attorneys, paralegals, social workers, ombudsmen and others who come into regular contact with older persons.

**3. Why Is It Important to Undertake Legal Needs Assessment?**

Primary funding for legal services for older persons comes from the Older Americans Act (OAA). In fact, recognizing that the elderly have important legal needs, Congress, in 1975, established legal services as one of three priority services under the Title III-B (supportive services) program. It has continued to be a designated priority service; and today the OAA requires each area agency to expend an "adequate proportion" of Title III-B funds for each priority service, including legal.

Despite the emphasis in the OAA on funding legal services, OAA resources to meet needs of older persons are very limited and an increase in funding for legal requires decreasing funds for other valuable services. Given this reality, two factors become crucial in trying to meet legal needs.

• **First**, it is essential **to plan** and deliver services with OAA funds that are as effective and cost efficient as possible, and that meet the most pressing needs of the most vulnerable older persons.

• **Second**, it is important to protect existing legal assistance funding and **to generate continued or additional funding** beyond Title III dollars.

A legal needs assessment is an invaluable tool to help accomplish both of these objectives.

Given the importance of data on needs and the failure of surveys thus far to assess legal needs of older persons, the purposes of this chapter are (1) to encourage State and area agencies and legal providers to undertake needs assessments specific to legal needs; and (2) to provide some general guidelines for proceeding with such an undertaking.

**4. Definition, Overview of Discussion, and Caveats**

The term "needs assessment" is used very broadly throughout this chapter. It is used to refer to a formal, scientifically formulated questionnaire directed at a randomly selected and scientifically weighted sample. It is also used to refer to a less formal approach to assessment of needs.

The following discussion begins by exploring the various goals and possible reasons for doing a legal needs assessment. It then turns to an exploration of the strengths and weaknesses of both formal, scientific needs assessments and informal needs assessments. Because informal assessments are generally less costly and therefore more feasible, the discussion first focuses on informal methods for gathering information about legal needs. After that, it turns to "scientific" needs assessment surveys and discusses the findings of previous "scientific" assessments aimed at indigent persons as they relate to legal needs of the elderly, and examines methods and design of "scientific" needs assessments. It concludes with a brief description of two recent efforts to formally assess legal needs of older persons.

At the outset of this discussion, a caveat is in order. It is important to note that the authors are not survey researchers, and they do not have the expertise to take the reader through a step-by-step examination of survey methodology and analysis techniques involved in a "scientific" needs assessment.[[19]](#footnote-19) If a formal, "scientific" needs assessment is to be undertaken, the assistance of someone with expertise in survey research methods should be enlisted, if results are to be meaningful. The scope of this chapter is limited to a discussion of broad issues involved in assessing legal needs. The authors try to highlight important considerations, suggest strategies, and provide basic guidelines for undertaking a legal needs assessment.

When contemplating the undertaking of a legal needs assessment, it is essential to be very clear about its goal. Having a clear understanding of the purpose of the assessment, what information will be gleaned from it, and how that information will be used is critical to its success. A clear understanding of the goal allows the potential assessor to evaluate the costs and benefits of various survey methods. Because the gathering of data involves substantial costs -- especially when done in a formal scientific manner -- if the purpose does not clearly justify the cost of a scientific needs assessment, less formal means should be used. Informal legal needs assessment can be very effective and provide highly valuable and useful information, if such assessment is thoughtfully and creatively undertaken with a constant focus on goals.

The primary goals of legal needs assessment are described in the next section.

**B. Goals/Purposes of a Legal Needs Assessment**

Prior to planning and designing any needs assessment, the goals and reasons for undertaking it must be discerned. There are two primary goals of a legal needs assessment: (1) to establish the importance and magnitude of the need for legal services in order to generate funding and support; and (2) to provide data for planning purposes.

Determining whether the goal of a needs assessment is to "market" legal assistance and gain support and funding, or to aid program planning is critical; for the goal/purpose must drive the survey design. The types of questions to be asked, the make-up of the population sample to be surveyed, the methodology, and so forth must be related to the goal if results are to be useful for the intended purpose. Support can often be generated with gross data about total need. Planning requires data that can perhaps be gathered in an informal manner but which must be fairly specific in describing factors that give rise to need and the exact nature of that need.

**1. Needs Assessment to Generate Funding and Support**

One primary goal of needs assessment is to convince policymakers and funders of the importance of legal services to older persons and thereby increase the amount of funding available to provide services. Historically, legal assistance has not been recognized as an important area for services by many in the aging network, since the need for, and benefits of, legal services are not readily apparent. Thus it has typically been undervalued and underfunded. Furthermore, in pursuing and enforcing clients' rights, legal providers must, in some cases, challenge government and agency actions -- at times, even the actions of their funding agency. Such challenges can easily dampen agency enthusiasm for legal services. Also, legislators and funders are subject to a variety of pressures and influences, and must make difficult choices about how to disburse limited funds. The interest groups that are able to make the strongest case for the importance of their cause are likely to benefit in the allocation of funds. Thus, for all of the above reasons, it is critical that we have facts and figures to demonstrate:

• how important legal assistance is;

• why it is important;

• what issues are particularly important; and

• what particular categories of older persons can be most helped.

It is clear in tracing the history of legal assistance in the Older Americans Act that lack of data on older persons' need for legal services has been a consistent problem and a serious impediment to support and funding. This is illustrated by historical example. In 1977, Senator Edward Kennedy introduced Senate Bill 1282 to amend the Older Americans Act. This bill proposed the creation of a separate legal services section under Title III, authorizing the Commissioner to make grants to States specifically for legal services delivery projects. Senate Bill 1282 would have authorized $20 million for FY '78, $25 million for FY '79, and $30 million for FY '80. The bill was referred to the Senate Committee on Human Resources, Subcommittee on Aging. At hearings on the bill, Senator Thomas Eagleton, Chairman of the Subcommittee, challenged the need for a separate section because he saw no evidence of unmet need for legal services.[[20]](#footnote-20) As a result of the lack of data on needs, the opportunity for a specific authorization was lost. Fifteen years after Senator Eagleton raised the question about need, data quantifying older persons' needs in this area still do not exist.

This goal of needs assessment is particularly important today. In the 1987 Amendments to the Older Americans Act, the State agencies on aging were assigned responsibility to define "adequate proportion" for priority services in the state *i.e.*, to establish a percentage minimum of Title III B service dollars that each area agency must spend on each of the three priority services -- access, in-home, and legal. It is very important as states establish and revise these percentages of funding for legal services, that they have an appreciation for the magnitude of need for the service.

**2. Needs Assessment to Guide Program Planning**

A second major reason for undertaking legal needs assessment is to gather data for planning service delivery. Planning includes both an examination of client needs in order to address the most pressing needs, and an examination of program structure to ensure that needs are met as effectively and cost efficiently as possible.

Planning in order to address the most pressing needs is stressed in the targeting provisions of the Older Americans Act. Recognizing the reality of insufficient funding to meet all needs of older persons, Congress requires in the Act that preference be given to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals.[[21]](#footnote-21) (See Chapter V for a discussion of targeting.) Planning based on an assessment of needs is critical if targeting is to be accomplished, and the right services are to reach the right people.

The second aspect of planning focuses on programmatic elements of providing legal assistance. What is the best model for delivering legal services? Are service needs being met by another provider? How much staff is needed to provide services? What skills and qualifications must staff have to provide the most effective and cost efficient services? How much can paralegals be used to meet needs? Is the cost of an additional attorney justified? How much effort does the program need to devote to outreach and publicity? What manner of outreach and publicity will be most effective?

The importance of needs assessment in program planning is reflected in numerous provisions of the OAA requiring evaluation of need for services and stressing coordination of services funded under the Act with other available services, *e.g.* --

(*3)(A) . . . the State agency will evaluate the need for supportive services (including legal assistance and transportation services) . . . within the State and determine the extent to which existing public or private programs meet such need. . . .*

*\* \* \**

*(15) The* [State] *plan shall provide that with respect to legal assistance--*

*\* \* \**

*(B) . . . no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individuals with social or economic need and has agreed, if the grantee is not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Services Corporation projects . . . to concentrate the use of funds provided under this title on individuals with the greatest* [social or economic] *need;*

*\* \* \**

*(D) . . . legal assistance furnished under the* [State] *plan will be in addition to any legal assistance for older individuals being furnished with funds from sources other than this Act and that reasonable efforts will be made to maintain existing levels of legal assistance for older individuals;*[[22]](#footnote-22)

To plan services that reach those in greatest need and that are also cost-efficient and effective, it is necessary to understand the needs of the population to be served, and their use of legal resources. This means collecting data about the scope and nature of legal needs -- *i.e.* legal issue areas and potential client populations where needs are greatest, where gaps in current services exist, where people are turning for legal services, etc. A systematic needs assessment can provide such data, including:

• the total size of the need. (To plan effectively, the need must first be quantified in gross.);

• the range of legal needs;

• the relative seriousness and prevalence of various legal needs. (To prioritize services to handle the most critical needs, there must be an evaluation of the seriousness of various legal needs.);

• where people go for help with legal problems and how they learn of available services. (Services cannot meet needs if older persons are not aware of the services or are unable or reluctant, for whatever reasons, to seek out such services.); and

• the characteristics of older persons with legal problems. (It is important to know if certain characteristics about an older person -- *e.g.*, age, race, income level, educational level, disability, reliance on public benefits, housing situation, family size, etc. -- make them more susceptible to various legal problems.)

Throughout the process of any needs assessment, decisions about how to proceed should be linked back to the goal and reasons for undertaking the needs assessment.

The next two sections of the discussion turn to the general strengths and weaknesses of "scientific" needs assessment and informal needs assessment.

**C. "Scientific" Needs Assessment: Strengths and Weaknesses**

We use the term "scientific" needs assessment to indicate a survey design which gathers data from a group of respondents selected randomly from the entire pool of eligible participants. By using a selection process in which everyone in the population has an equal or nearly equal chance of inclusion in the sample, self-selection biases can be avoided and findings can be generalized to the entire eligible population. A general discussion of the pros and cons of scientific needs assessments is useful, as such assessments have very important advantages and disadvantages.

The primary benefit of undertaking a "scientific" needs assessment is the reliability of data collected and the extent to which findings can be generalized. A scientific study offers a degree of certainty that information collected is representative of the entire potential client population. As a staff member of the now defunct National Social Science and Law Center, a former Legal Services Corporation Support Center engaging in scientific surveys of legal needs, stated: *"It greatly reduces biases of various kinds, such as the bias of subject self-selection which is common to many of the less scientific assessments.*"[[23]](#footnote-23)

Bias occurs where the manner in which respondents are identified or solicited has the potential to render survey responses that are not representative of the entire eligible population. For example, an assessment of former clients presents problems of self-selection bias. The respondent pool, through its prior use of legal services, has demonstrated that it recognizes legal problems, knows of the legal services program, and has the means (in terms of ability to find transportation or physical ability to travel) to avail itself of program services. These individuals have characteristics which are likely not to be representative of the entire potential client population and which may skew survey results. Thus a careful **sampling procedure** which **allows generalization from the findings** of a survey is **the key** to scientific needs assessment.

The primary and often crucial disadvantage to undertaking a scientific legal needs assessment is cost. It can be extremely costly. For example, a 1985 telephone interview study of 500 Colorado adults cost $25,000.[[24]](#footnote-24)

Recently the Maryland Legal Services Corporation spent approximately $50,000, in addition to staff time, to carry out a scientific legal needs assessment of Maryland's poor. The assessment included a telephone survey of 800 low-income households; an in-person survey of 182 persons without telephone service; and a mail survey of several hundred individuals including judges, bar association leaders, public and non-profit human services organization directors, and managing attorneys of legal services offices.[[25]](#footnote-25)

Scientific needs assessments are costly because they necessarily involve the use of professional researchers, trained interviewers, and sophisticated data analysis. The cost elements of a survey can be broken down roughly among: (1)"up-front" costs (costs of such things as planning, organization, sampling, instrument design, and pre-testing); (2) data collection costs (interviewer training, screening for eligible households, interviewing, supervision, postage, travel costs and/or telephone charges depending on the type of survey, and the cost of field editing of returns); and (3) analysis phase costs (data entry and other data processing, statistical analysis, report writing, copying, and so on).[[26]](#footnote-26)

It may be possible, through creative use of resources, to reduce some of the usual costs of a scientific needs assessment. For example, in Middle Tennessee, the Committee for Legal Services to the Elderly of the Young Lawyers Division of the Nashville Bar Association conducted a legal needs assessment of older persons using trained volunteers from the Young Lawyers Division of the Bar to conduct in-person interviews with a sample of older persons in their own homes. They were thereby able to limit their expenses mainly to those involved in paying the research consultant who helped them design the study and the person who coordinated its operation.

However, the use of volunteers has its own set of difficulties and drawbacks. Volunteers will need considerably more training and supervision than experienced paid employees, and tend to be limited in the amount of time and effort they can put into a project, or the amount of responsibility they can take on. In fact, some researchers advise against ever using volunteers in studies of this kind. Nevertheless, there are situations where lack of resources makes it impossible to hire a full staff of paid researchers, and where a judicious and careful use of volunteers can help gather information that otherwise could not be obtained.

A final caveat about "scientific" needs assessments. The most scientific sample of survey respondents does not avoid problems inherent in all social research -- problems in constructing an objective survey tool and an objective survey design, and problems in interpreting responses. Performance of a needs assessment is not an exact science. The empirical data gathered derives its meaning from the form and content of the survey and the theoretical beliefs of survey interpreters. As form and content vary, so do the results. Similarly the same data may be interpreted differently in light of theoretical presuppositions of the interpreter. This is one more reason why the sizable cost must be carefully weighed against goals and anticipated benefits of formal needs assessments.

**D. Informal Needs Assessment: Strengths and Weaknesses**

For many, the cost of undertaking a "scientific" needs assessment is prohibitive and cannot be seriously considered; or expenditure of such substantial funds in order to obtain data about needs cannot be justified when compared to other program needs. This should not, however, mean that efforts to assess legal needs will be abandoned. Instead, consideration should be given to alternative, creative, informal means to gather information about legal needs. For while an informal approach is not scientific and cannot provide conclusive results, it can provide some very valuable information that can be useful both in planning and to establish the importance of legal assistance for older persons.

Also, given the many ways in which bias can creep into "scientific" studies, the information gained from a carefully conceived and executed informal needs assessment is likely to have as much validity and reliability as what is learned from many "scientific" studies. This is particularly true given the frequency with which "scientific" studies are conducted with too few resources or by individuals who do not have expertise in survey research methodology.

**E. Informal Needs Assessment: Some Methods**

In the foregoing discussion, we have mentioned some of the informal methods for assessing legal needs. They include surveying former clients (either legal services clients or clients of other Title III services) by mail, by phone, in-person, or by distribution of questionnaires at locations where older persons gather; and surveying organizations and individuals providing legal and other services to older persons.

Surveys of other service providers -- if they are given information about common areas of legal need -- can be very useful. They can be asked about the legal needs that they become aware of in the course of providing their own service. Surveying other service providers is particularly important in trying to assess needs of the most vulnerable groups of elders, *e.g.*, those in nursing homes, the homebound, etc.

Almost all other Title IIIB and IIIC providers can help if they get some education on how to spot legal issues. Other Title III service providers that might have valuable information include:

-- providers of information and referral;

-- home care, home health, chore and other in-home service providers;

-- staff of nutrition programs and senior centers;

-- staff of case management programs; and

-- long-term care ombudsmen.

Other non Title-III service providers that might be able to contribute to an informal needs assessment include:

-- visiting nurses;

-- clergy;

-- hospital and nursing home social workers and discharge planners;

-- adult protective service workers;

-- police;

-- staff of 202 and public housing for the elderly; and

-- staff of organizations working with special groups -- *e.g.*, the developmentally disabled, the mentally ill, victims of Alzhiemers, minorities, and non-English speakers.

Information from service providers does not have to be gathered by questionnaire. It may be gathered at informal meetings; or it might be gathered by asking them to keep notes on legal problems they encounter and analyzing these notes periodically.

Information and referral (I & R) projects might be a particularly enlightening source of information. All area agencies are supposed to have I & R services (either in-house or contracted out). Records of questions received by I & R programs would be an invaluable source of information about legal and other problems that are being experienced by older persons in a particular community.

The area agency itself is another very important source of information on problems. They hear about some problems from their service providers; and they are also likely to get calls and hear reports about special problems being experienced by older persons in their area, *e.g.*, home repair scams, cancer insurance sales scams, etc. They also have some information from the general needs assessments they conduct in order to develop an area plan.

Another way to do some informal needs assessment would be to think of locations where older persons go that are not necessarily related to services. For example, if approached, Social Security offices might be willing to distribute questionnaires to older persons that come into their offices or to allow legal providers to come into offices to survey older persons. A similar scheme would work at geriatric medical centers, or other places older persons are likely to frequent.

A final suggestion, illustrating the need for creativity, is to do a regular radio talk show, choosing a station and time of day when older persons are known to listen. Each show could focus on a specific problem or issue, followed by a call-in/question period. If records about questions and problems that came up during the call-in period are kept, as well as some basic demographic data on callers (*i.e.*, age, sex, race, etc.) valuable information will be gathered over time. It is important to note, however, that such an approach is likely to result in a significant increase in numbers of older persons requesting legal assistance. A legal program must be prepared to handle this increase, and/or give clear disclaimers throughout the radio presentation, indicating that services the legal program can provide are limited and specifying the method used to determine who will and will not be served.

Very valuable information is also available from the records and experiences of the legal program itself. Compelling arguments can be made for the need for legal services in showing that there is a demand for services that cannot be met by the existing program and funding level. To be able to show this, a legal program should keep information on such things as:

-- the types and numbers of people being turned away;

-- the types and numbers of cases that cannot be accepted;

-- the size of the waiting list and how long people are on the list before they can receive services; and

-- the type of response when any outreach activity is undertaken (*i.e.* to what extent a requests for assistance increase?).

This type of information can be collected and tabulated as part of regular reporting to the area agency funding the legal program. It can then be used to demonstrate need when a proposal is being written or funding is being negotiated.

These suggestions are only the tip of the iceberg. It is important that you think about the resources available in your community and imagine how you might tap into these resources to get the information you need. This may often involve educating other service providers on how to spot issues which have legal ramifications.

**F. Findings of "Scientific" Needs Assessments of Indigent Populations**

While there have been a number of "scientific" assessments of legal needs of indigent populations, until recently no such assessments had been attempted of older populations. There are currently three efforts underway. These include the survey of Middle Tennesseans noted in Section C above. Also, two AoA-supported surveys were undertaken in 1989 -- one in Wisconsin and one on Native American Elders in five states. These are described briefly in Section H below. Beyond these, we have to rely on findings of surveys of indigent persons, as they reflect on the nature and scope of legal problems of indigent and near poor elderly. These results -- and the surveys from which they were derived -- provide a useful starting point in the design of a survey of legal needs of older persons.

Before discussing the results of these surveys, it is important to stress that they must be interpreted in light of the survey tool and design from which they were derived. Both have a tremendous impact on results. The factors to be examined when analyzing results include:

• the survey method (phone, mail, or in-person) used;

• the manner in which the survey population was identified (How representative was the sample? Did it avoid problems of self-selection bias? Did it fail to include an important segment of the possible client population -- *e.g.*, the phoneless?);

• the time period covered by the survey (*i.e.*, 1 year, 2 years, 5 years, the respondent's lifetime); and

• the number, organization, and substance of questions (Were the questions open-ended or specific? How many questions were asked? Were significant issues neglected?).

Set out below are results of various surveys that have categorized and analyzed the sample indigent population by age. These results are set out without an examination of the effect of the above listed factors on them. These factors will be discussed in greater detail in the section on survey design. It is important to note that the findings of these scientific surveys can be used in conjunction with findings of informal surveys. Scientific data that support informal findings can significantly enhance the credibility of informal assessments of legal needs of the elderly.

Maryland. In 1984 a Maryland study surveyed all major providers of legal services to the poor. Providers were asked to indicate the number of cases they had handled in the past year and estimate the number of additional legal problems that they did not address. This study indicated a great disparity between services provided to older persons and the estimated legal needs of older persons. The Title III offices in the study estimated that there were a total of 18,500 legal problems per year which they could not address.[[27]](#footnote-27) Overall, the survey indicated that there were eleven unaddressed legal problems for every older client served.[[28]](#footnote-28) The providers' responses also indicated that the rural elderly needed more assistance with specific areas of law than the urban elderly. These areas included drafting wills and powers of attorney, probating of small estates, and problems regarding placement in nursing homes.[[29]](#footnote-29)

Colorado. A 1986 telephone survey of 500 poor households in Colorado indicated that households headed by persons over 60 had fewer legal problems per household and lower lawyer utilization rates than younger persons.[[30]](#footnote-30) The top problem categories reported by respondents in elderly households were: government benefits, consumer problems, and health.[[31]](#footnote-31)

Massachusetts and New Jersey. The findings of the Colorado study are supported by a Massachusetts telephone survey and a New Jersey in-person survey, both published in 1987. The Massachussetts study found that poor households with older heads had fewer unrecognized legal problems than households with younger heads. Fifty-one was found to be the age at which the prevalence of legal problems became less marked.[[32]](#footnote-32) However, respondents with older heads of household had more legal problems in the area of nursing home care, mental health services, and actual or threatened foreclosure, than did households headed by younger persons.[[33]](#footnote-33) The New Jersey study found that households headed by persons over 60 years of age reported fewer legal problems than households headed by younger persons.[[34]](#footnote-34) Only in the area of public benefits did the New Jersey study find that households headed by older persons had a moderately high incidence of problems.[[35]](#footnote-35)

The Massachussetts study also identified a number of areas in which legal needs of the indigent elderly were not being adequately addressed by existing legal services. These areas included obtaining medical benefits and services, finding nursing home beds, obtaining the full range of public benefits and private pension monies to which individuals were entitled, consumer fraud and other consumer problems, special problems of the institutionalized (particularly in nursing homes), and difficulties obtaining and monitoring conservators and guardians.[[36]](#footnote-36) Survey interpreters felt that, in large part, the prevalence of these problems resulted from problems of access to and availability of legal services -- i.e. lack of transportation and physical access to services and lack of sufficient legal assistance, outreach, and community education.[[37]](#footnote-37)

Three of the studies discussed above indicate a lower prevalence of legal problems among elderly poor than among other age groups of poor persons. These findings might suggest that our previous estimates of unmet legal needs among the elderly poor may be inflated. Remember, however, that the results of these studies were derived from surveys that did not focus on the elderly, and may therefore have overlooked, or only briefly touched on, legal issues most specific to this population. The sampling may have missed some of the potentially most needy older persons, *e.g.* those in long term care institutions. In addition, survey techniques may have inadequately addressed special survey problems of the elderly -- e.g. problems with vision, hearing, or comprehension. The uncertainties of interpreting data from such surveys to generalize about legal problems of older persons illustrates the importance of undertaking a legal needs assessment specifically directed to older persons.

**G. Overview of "Scientific" Needs Assessment Methods and Design**

**1. Three Possible Survey Methods**

In writing this article, TCSG reviewed a number of scientific studies on legal needs of the poor. These studies offer a variety of needs assessment methods.There are three primary methods of conducting a scientific legal needs assessment: (1) a mailed questionnaire which is self-administered by respondents; (2) in-person interviews; and (3) telephone interviews. Each of these methods has drawbacks and advantages which are decribed below.

Mail Survey. Use of a mail survey involves the development and mailing of questionnaires to a randomly selected segment of a comprehensive mailing list. The number mailed must be large enough that a statistically significant number of respondents receive and respond to the survey. The mail survey is probably the least effective way of carrying out a scientifically valid needs assessment, and it has two major drawbacks. First, if the survey is to be without bias and results representative of the entire eligible client population, it is necessary to have access to mailing addresses of the entire eligible population. Finding a cooperative and reliable source for such information is likely to be daunting. Presumably you would need to resort to defined segments of the population. While such defined segments are not entirely representative of the total population, they are certainly better than an undefined segment.

A second problem with the mail survey is the likelihood that questions will be misunderstood or improperly answered because the questionnnaire is self-administered. Respondents are likely to give more complete attention and more careful thought to questions posed and recorded by another person than to questions found on a written questionnnaire. In fact a mail questionnaire is likely to be put aside or ignored altogether, especially if the individual surveyed has vision problems or has difficulty reading or is unable to read, due either to illiteracy or language barriers. Also, for these reasons, a mail survey must be relatively short.

The likelihood that the questionnaire will be ignored raises the specter of another level of self-selection bias. Even if a mail questionnaire is sent to a completely random sample of service-eligible individuals, those individuals who choose to answer the questionnaire may not be representative of the entire sampled population. The sheer fact that they have answered the survey demonstrates their ability to read and understand the survey, as well as their capacity to react to situations or circumstances that require attention. These traits may not be representative of a significant segment of the population.

On the advantages side of the equation, a mail survey is probably the least costly of the "scientific" methods for surveying legal needs.

In-Person Interview. At the other end of the cost spectrum from mail surveys is the in-person interview, usually at the respondent's home. If this method is to be cost effective, residential areas with high concentrations of service eligible persons must be targeted. This requires the help of professional researchers and an examination of demographic data -- usually census data.

The primary advantage of the in-person interview is that time can be spent with the respondent, and therefore more information can be gathered. It has also been argued that more information is yielded because the interviewer is able to observe respondents and their surroundings. On the other hand, this additional information -- because of its subjective nature -- may lessen the objectivity of survey results.

As noted above, this is the most expensive survey model. It has been estimated that it costs twice as much as a phone survey. Because of the high cost of travel, there is constant pressure to limit the number of areas to be sampled. However, by cutting down on the number of sites where interviews are performed, the representativeness of the sample may be significantly lessened.

Another disadvantage of this method is that interviewers may encounter a high rate of refusal because of the intrusive nature of the interview. Many older persons may refuse, out of fear, to allow interviewers into their homes. Even when respondents agree to allow interviewers into their house, they may be reluctant to respond with complete candor to a stranger who is face-to-face with them.

Finally, results may be skewed where interviewers are asked to go into neighborhoods considered to be unsafe. First, it may be difficult to hire qualified interviewers. Second, there is the danger that interviewers will falsely fill out questionnaires to avoid entering such neighborhoods.

Phone Survey. The third and final survey method to be discussed is the telephone interview. This has been described as *"...an increasingly popular method of conducting population surveys, since it affords the advantages of relatively rapid turn-around and relatively low cost."* [[38]](#footnote-38)

A phone survey entails the identification and random selection of phone numbers and the use of trained interviewers. As with in-person surveys, census data is used to identify the survey sample. Both listed and unlisted phone numbers can be generated in exchanges that Census data indicate have high concentrations of service eligible persons. It has been estimated that it is necessary to generate four to six times the number of phone numbers needed for a representative sample.[[39]](#footnote-39) This allows for a high refusal rate, non-working numbers, ineligibles, busy signals, etc.

The most serious drawback to this method is that a pure telephone survey precludes households without phones. This would preclude homeless persons, many institutionalized persons, persons too poor to afford a phone, and some disabled persons -- all of which are groups that are to be targeted for service under the Older Americans Act. The obvious solution to this problem is to add an in-person survey component for persons who don't have phones. This can be done using a method called "snowballing" or "snowball sampling," but this adds a great deal to the cost of the survey.

*This is a way of identifying people with a known characteristic who cannot otherwise be identified or located: you ask some or all of the members of your sample to name someone they know who has the characteristic in question. In this case, we would ask respondents in the phone survey to identify neighbors who did not have phones. The object would be to compile a list of such persons, and subsequently to approach and interview some of them. Eventually, a statistical comparison between households with telephones and the snowball sample of households without them would indicate the extent to which, and the ways in which, the two were different.*

*Of course, the addition of such a snowball sample would involve some expense, and would be justified only to the extent that there was substantial reason to believe that there are essential differences between the two types of households and that these differences are related to the purposes of the survey*.[[40]](#footnote-40)

The second drawback to use of a phone survey is that interviews must be relatively short. This necessarily limits the number of questions that can be asked and the amount of information that can be gathered. It is recommended that a phone interview be no longer than 10-15 minutes in length.[[41]](#footnote-41) By contrast in-person interviews can last as long as an hour.[[42]](#footnote-42)

Just as there is speculation on the psychology of face-to-face interviews, it has also been suggested that the psychology of telephonic communication may adversely affect results of a telephone survey.

*It is, for one thing, generally easier for people to decline to be interviewed on the phone than to decline in the physical presence of an interviewer. Similarly, it is also somewhat easier to give less than straightforward answers, if that should be the respondent's intent. Generally, the controls -- that can be exercised by a skilled interviewer in person are more difficult to employ in a telephone interview. Just how important these considerations are depends on, among other things, the kinds of information being sought. If the interview topic is neutral politically, emotionally, and so on, then these psychological factors will weigh less heavily than otherwise.*[[43]](#footnote-43)

On the other hand, it could be speculated that the mutual anonymity provided by the phone allows interviewers to ask and get responses to more personal questions.

Unlike the in-person model, the cost of the phone interview is not greatly affected by the number of sites surveyed and the distance between those sites. Therefore, a phone survey may allow for a sampling of a greater number and wider range of sites thereby yielding more representative results. In addition, interviewers need not enter unsafe neighborhoods, and thus the danger that they will falsify questionnaires to avoid entering such neighborhoods is removed.

The phone interview also provides greater convenience. If the respondent is not home, or is busy, it is much easier to phone back than to make a later trip back. Similarly, if the respondent turns out to be a non-English speaker, it is relatively easy to shift to a multi-lingual interviewer. The phone interview method also offers the advantage that skilled interviewers can enter data from responses directly into the computer as they conduct the interview.

**2. Designing a Legal Needs Assessment of Older Persons**

In developing a needs assessment, it is crucial to keep in mind its purpose and goal(s). Also, listed below are other factors that must be considered, whether you are undertaking a "scientific" or an informal needs assessment. The manner in which you address these considerations will hinge upon the purpose of the needs assessment. As we discuss them, we will try to give examples of the way in which differing goals will affect the design.

Who will be surveyed? The primary issue here is whether you will try to gather information from a sample of all potential clients, whether you will opt for the less costly alternative of surveying service providers (legal and/or non-legal service providers), or whether you will do a combination. If the primary goal of the needs assessment is to engender support and increased revenues, the data gathered can be rather rough. Legislators, funders, and others to whom you may appeal probably will welcome any data. Since they generally do not have the time or inclination to analyze it, basic data demonstrating need is probably most effective, and such data can be estimated by service providers. Nonetheless, this basic data may be more forceful if it is gathered from potential clients rather than service providers -- some of whom may be beneficiaries of increased resources. If the goal is to do program planning and to identify priority issues, target populations, and gaps in service, it is optimal to survey potential clients. Of course, this does not preclude a survey of service providers in addition to potential clients.

How will the survey population be identified? This question is essential as it determines the scientific validity of the survey sample. Is it large enough? Is it free of bias? Is it representative of the entire eligible population? If the goal is support and funding, it probably is not crucial that the sampling method be scientifically beyond reproach. Legislators, funders, and other resource sources are unlikely to question the size of your sample, or the methods by which it was identified. For purposes of deriving support, a sample of former clients may provide sufficient evidence of need, however, you may wish to consider if past clients will reveal a situation of legal need greater or lesser than a more representative sample of older persons. Furthermore, if past clients are to be surveyed, it is important to ensure that lawyer/client confidentiality is never compromised. For program planning, it is important to identify a sample that is as representative of the eligible client population as possible.

How will the size and scope of the survey population be defined? This consideration addresses the geographic area to be covered and the numbers of respondents needed. Again, these should be resolved in light of survey goals. Whether the area is defined as the legal service provider area, the AAA region, several AAA regions, the state, or the nation, there is a finite number of service providers and a finite, although unidentified, number of potential clients within that area. If you are attempting a "scientific" assessment, you will need to work with a knowledgeable researcher to determine the number needed in your sample and the manner in which the survey population will be identified for results to be meaningful. If a mail or phone survey is contemplated, the sample must be considerably larger than the final respondent pool, to take into account the large number of denials and non-responses that will be encountered. The number of survey participants will also be determined in part by cost factors.

Who can contribute to, facilitate, or fund the assessment? Since cost is a major concern, it is important to talk about how the assessment might be funded. Generally no one source can provide the necessary resources. It will take some creative thinking and hard work to come up with the resources needed. Here is a description of the difficulties of fundraising, as described by researchers involved in the 1986 Colorado study mentioned above.

*Fundraising for the survey was viewed by some as competing with fundraising for direct services. Others saw the conduct of the survey as a necessary effort to increase long-term fundraising and pro bono service capabilities. The legal services programs and [the non-profit social science research firm commissioned to do the study] expended a great deal of time and energy writing proposals and making presentations about the project for nearly a year before its conduct. The key to the success of the fundraising effort was its collaborative nature. In addition to the effort of the program directors, the evaluator, and the legal aid foundation, the legal needs assessment project enjoyed the active suport of bar leaders. Without bar leaders' support and interest in using the survey results for broader fundraising and pro bono purposes, the legal services programs would probably have been unable to raise the money needed to conduct the survey.* [[44]](#footnote-44)

We offer a few additional suggestions for finding funds. Because a legal needs assessment is a discrete and time-limited endeavor, it is a good project for which to seek grant monies. Possible grant sources include foundations and corporations, government agencies and national, state and local bar associations. Another source to explore would be Interest on Lawyers' Trust Accounts (IOLTA) funds. Many states have programs for employing money generated as interest on certain lawyer trust accounts to support the delivery of legal services to the poor. Whether a needs assessment project would qualify for such funds would depend on the particular state regulations with respect to the IOLTA program. (For a complete discussion of fundraising, see Chapter XI of this Guide.)

Who should be involved in the design, implementation, and analysis of the needs assessment? The answer to this question will depend in large part on the community to be assessed. Generally the greater the number of agencies and organizations committed to an assessment, the better it will be. Encouragement of widespread community involvement may lead to contributions of time, staff or money for the performance of the needs assessment. In soliciting participation of others, it is important to think not only about short-term contributions, but about the longer range value of their participation. Involvement may increase feelings of ownership and responsibility for the assessment, thereby decreasing or averting future challenges to the conclusions drawn from it. In addition, cooperation on a needs assessment may carry over into other matters. Joint projects allow agencies to share concerns and to educate each other.

Below we have listed some of the agencies or individuals who may be valuable contributors. Barring unusual circumstances, we would recommend an invitation be extended to each of them to help in the planning and design. These groups should have an interest in the needs assessment no matter what its primary goal. In fact they should be involved in the initial discussions to determine goals. They include:

• staff from the State Office on Aging (particularly the legal services developer);

• staff from relevant area agencies on aging;

• relevant legal providers (including interested private attorneys, *pro bono* attorneys, and Title III and LSC funded providers);

• any interested local bar groups (especially bar groups focusing on legal interests of the elderly or young lawyer or *pro bono* committees);

• other social service agencies working with the elderly;

• relevant university faculty (especially faculty attached to law schools, gerontology centers, or social research centers);

• judges; and

• anyone else you feel may have something to contribute.

If the assessment is to be "scientific," a social research consultant will be required.

How will the assessment be conducted? This takes us back to our earlier discussion of needs assessment methods. Realistically, cost will play a large role in determining the survey method used. As noted in the section on methods, there are advantages and disadvantages to each -- not least of which is its relative cost. In addition to the three "scientific" survey methods, there are also the less costly, informal methods of assessing needs discussed in Sections D and E above.

How will the survey instrument be designed? Assuming it has been decided that a survey questionnaire will be used, how must the survey instrument be designed to be useful and understandable and to yield valid results? For the last time, we will reiterate that these decisions cannot be made without clearly focusing on the goal of the assessment. Below we explore components of a needs assessment survey instrument.

First, any survey needs to gather basic information about the demographics and characteristics of respondents. At the very least, it is necessary to ascertain the age of respondents to know if they are over 60. In addition, if priority setting and targeting is a goal, the assessment tool should inquire into the financial and social characteristics of respondents. This would include information about income, educational level, size of household, reliance on public benefits, disabilities, etc. In this way legal needs can be matched to respondent characteristics, thereby allowing those services which are most needed by older persons with greatest economic and social need to be set as priority services.

The major portion of a survey instrument will be devoted to questions about the nature and frequency of the respondent's legal problems. Formulation of these questions should be carefully thought out jointly by persons who know survey research methodology and those who understand legal issues affecting older persons. Surveys designed to engender support probably need not inquire into particular legal problems with as much specificity or in as much depth as surveys designed to aid in planning. Some important areas of inquiry would include housing, utilities, consumer problems, government benefits (including Social Security retirement, Social Security disability, SSI, veteran's benefits, food stamps, Medicare and Medicaid), health care (including nursing home issues), community services, home energy assistance, guardianship and other surrogate decisionmaking issues, and discrimination. These are just the broad categories that should be considered for inclusion in a needs assessment. It may be important to include, within each category, a number of fairly specific questions to better define the nature of the problem.

The exact phrasing of individual questions is very important. If survey results are to be meaningful, all respondents must derive the same meaning from each question. Questions should not be so broad or general as to be open to different interpretations. At the same time, they should not be so specific as to unduly limit important issues, or as to require an overabundance of questions if all issues are to be adressed. To allow for tabulation of data, possible response choices need to be limited. Generally, this calls for the use of questions which can be answered yes or no, or which provide the respondent with a limited number of answer options. This does not preclude inclusion of a space for respondent comments, if that is desired and would assist in meeting assessment goals. In asking questions, it is also important to use everyday language and to avoid terms of art and legalese. For example, it would not be useful to ask respondents a question about "impact litigation."

In addition, it may be advisable to avoid any specific mention of the law or legal problems in the survey instrument. Many respondents may have pre-conceived ideas about what a "legal problem" is. They may believe a legal problem only arises when a crime has been committed or a suit has been brought. They may not feel that a problem with recoupment of a Social Security overpayment is a legal problem. Such pre-conceived notions may cause respondents to deny the existence of a problem because they do not believe it is "legal."

Another important issue to consider in designing a needs assessment questionnaire is the time frame covered. If no time frame is specified, responses may be meaningless. The longer the period of time covered by the survey, the greater the number of problems that will be reported. This is especially important to remember when comparing results between different needs assessments.

Depending on the goal, there are other useful issues you may wish to explore in a needs assessment besides specific substantive legal problems. We will discuss a few of these as they have appeared in surveys of indigent persons. First, for purposes of prioritizing legal problems it may be beneficial to include a question(s) that requires the respondent to assess the seriousness of particular legal problems. Different types of respondents may feel that the need for a will is more serious or less serious than the need to receive Social Security disability benefits.

In order to determine gaps in service, and how best to publicize program activities, it might be useful to inquire into the respondent's past use of lawyers. Has the respondent ever sought legal help? If so, from whom? With what result? If not, why not? What did the respondent do instead? Does the respondent know where to find legal help? If so, how did they learn where they could find legal help?

Some questionnaires have tried to ask respondents to assess the various methods for addressing legal needs, *e.g.*, whether they feel direct representation, class action litigation, impact litigation, or community education should be a higher priority for legal services. These questions are very likely not to be well understood and results not helpful.

A final area of investigation, which may also get at the issue of what kind of legal services best address legal needs, asks respondents about the legal needs of other older persons as opposed to their own particular legal needs.

Do not be constrained by this list of additional areas of inquiry. Brainstorming in planning may reveal many other ideas about what information would be useful.

How can a good response rate be encouraged? A well designed survey is useless if it is not responded to. The most comprehensive set of questions will be useless if it is tedious or confusing to the respondent. Therefore, it is important to consider how the needs assessment design can encourage responses. For example, a questionnaire which will be read by respondents -- *e.g.* a mail survey -- must be easy to read and understand. It should be well-organized, printed in large boldtype and have a lot of white space around the type. Any mail survey should have a cover letter which encourages responses by pointing out the importance of survey results. It should also clearly explain how to fill out the questionnaire and should thank respondents in advance for their cooperation. A self-addressed and stamped return envelope should be enclosed.

Similar suggestions apply to a survey done over the phone or in-person. The interviewer should be trained in techniques for communicating and working with older persons. Interviewers need to speak clearly and loudly when interviewing older persons who are hard of hearing. They need to be instructed on the manner in which the survey is to be explained and presented to respondents.

**H. Recent Assessments of Legal Needs of Older Persons**

The major scientific assessment of legal needs of older persons is the *1991 Wisconsin Elder Legal Needs Study*, conducted by the Spangenberg Group and the ABA Commission on Legal Problems of the Elderly for the Wisconsin Bureau on Aging.[[45]](#footnote-45) Funding for the study was from the U.S. Administration on Aging. This study administered a telephone survey to a random statewide sample of 603 households with at least one member 60 years of age or older. The same telephone survey was administered to a sample of 251 elderly Black households in Milwaukee, to provide further data on the legal needs of Black elders. Group meetings and in-person interviews with individuals familiar with the legal needs of American Indian and Hispanic elders were also conducted, to yield information on the legal needs of these populations. In-depth, in-person interviews with randomly selected benefit specialists and with 200 key members of the legal and aging networks in Wisconsin were done to gather information on the quality of legal service provision to elders and how the Wisconsin Legal Assistance/Benefit Specialist program was viewed by other service providers.

Another recent study which focused exclusively on the legal needs of Native American elders is *The Legal Needs of American Indian Elders Research Project*,[[46]](#footnote-46) conducted by The American Indian Law Center, Inc., and funded by the U.S. Administration on Aging. This study conducted telephone interviews in five states with a sample of "key informants," *i.e.*, a sample of service professionals considered to be knowledgeable about the legal needs of the Indian elder population in their state, to learn about their perceptions of the legal needs of Indian elders.

**TARGETING, PRIORITY SETTING, AND MEANS TESTING**

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**TARGETING, PRIORITY SETTING, AND MEANS TESTING**

**A. Targeting vs. Means Testing: The Dilemma**

Over the years, Congressional views regarding the federal government's responsibility toward older Americans have evolved, thereby creating a dilemma for providers of services under the Older Americans Act (OAA). As originally conceived in 1965, the OAA was to address needs of all older persons; and its objectives were broadly directed at giving older persons an opportunity for full participation in the benefits of society. Since that time, as the scarcity of federal service dollars became more apparent and the overall economic and social status of the older population improved, Congress has directed that services provided with OAA funds be focused on certain sub-populations of the elderly.

The targeting of certain groups was first mentioned in the 1973 Amendments to the Act which created the network of state and area agencies and the comprehensive system of services for older persons. Title I, Declaration of Objectives, of the 1973 Amendments stated:

SEC. 101. The Congress finds that millions of older citizens in this Nation are suffering unnecessary harm from the lack of adequate services. It is therefore the purpose of this Act, in support of the objectives of the Older Americans Act of 1965, to --

(1) make available comprehensive programs which include a full range of health, education, and social services to our older citizens who need them,

(2) give full and special consideration to older citizens with special needs in planning such programs, and pending the availability of such programs for all older citizens, give priority to the elderly with the greatest economic and social need. (emphasis added)

Since 1978, each reauthorization (with the exception of 1981) has placed increasing emphasis on targeting Title III services to those older persons in greatest economic and social need. The Act presently requires that, with respect to all types of services, preference must be given to serving those with greatest social and economic need, with particular attention to low-income minority individuals. It also requires that special outreach efforts be made to rural elderly.

Targeting responsibilities for providers of legal services are perhaps even greater than for other service providers. For, of all the services defined under Title III, only "legal assistance" includes as part of its definition a specific directive that services are to go ". . . to older individuals with economic or social needs." 42 U.S.C. §3022(4).

At the same time that the targeting language has been increasingly strengthened, the regulations -- which are consistent with legislative history -- specify that providers may not require older individuals to disclose information about income or resources (i.e., may not use a means test) as a condition for providing services. Thus the providers of Title III legal assistance must resolve the difficult dilemma of how to reach and serve older individuals in greatest economic and social need, particularly low-income minority individuals, without using a means test.

The following discussion will first examine the evolution and the current requirements in the Older Americans Act regarding targeting. It will then explore the prohibition against means testing in the regulations and trace the legislative history which supports those regulations. Finally, it suggests a variety of approaches to resolving the dilemma -- approaches that can successfully reach targeted groups of older persons but do not involve use of a means test.

**B. Evolution of Targeting Requirements in the Older Americans Act**

As noted above, Congress began to focus Title III services on certain targeted populations in 1978. The 1978 Amendments included requirements that State and area agencies give preference in providing services to those older persons with greatest economic or social needs. Area agencies were required to "assure the use of outreach efforts that will identify individuals eligible for assistance . . . with special emphasis on rural elderly, and inform such individuals of the availability of such assistance." P.L. 95-478 §306(a)(5)(B) (current version at 42 U.S.C. §3026(a)(5)(B)). In 1978, the current definition of legal services which states that legal services be provided to those with economic or social needs was also added.

The 1981 Amendments made no significant changes to the preference language. The 1984 Amendments, however, further strengthened the preference requirements by mandating that State and area agencies pay "particular attention" to low-income minority individuals when giving preference to those with greatest economic or social needs. P.L. 98-459 §§305(a)(2)(E), 306(a)(5)(A) (current version at 42 U.S.C. §§3025(a)(2)(E), 3026(a)(5)(A)(i)). The 1984 Amendments also included, for the first time, definitions of greatest economic and social need, and required that State plans include the application of those definitions.

The most recent Amendments further strengthened prior requirements to target services. They changed slightly the definitions of greatest economic and social need. Those definitions now read:

(20) The term 'greatest economic need' means the need resulting from an income level at or below the poverty levels established by the Office of Management and Budget.[[47]](#footnote-47)

(21) The term 'greatest social need' means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural, social, or geographical isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently. 42 U.S.C. §3022.

The 1987 Amendments particularly strengthened requirements to target low-income minority individuals. State agencies, when dividing the state into planning and service areas, and area agencies, when developing plans for service systems, are now required to pay "particular attention" to low-income minority individuals. 42 U.S.C. §§3025(a)(I)(E) and 3026(a)(1).

With respect to outreach, State plans must contain assurances that the state agency will require outreach efforts that will:

(A) identify older individuals who are eligible for assistance under this title, with special emphasis on older individuals with greatest economic need (with particular attention to low-income minority individuals), older individuals with greatest social need (with particular attention to low-income minority individuals), and older individuals who reside in rural areas. 42 U.S.C. §3027(a)(24).

Area plans now must provide assurances that the area agency will include in all agreements with service providers:

(ii) . . . a requirement that such provider will --

(I) specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served by the provider; and

(II) attempt to provide services to low-income minority individuals in at least the same proportion as the population of low-income minority older individuals bears to the population of older individuals of the area served by such provider; and

(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared --

(I) identify the number of low-income minority older individuals in the planning and service area; and

(II) describe the methods used to satisfy the service needs of such minority older individuals. 42 U.S.C. §3026(a)(5)(A)(ii) and (iii).

Thus the Act today provides clear and specific guidance regarding persons who should be given priority in the provision of legal assistance and other Title III services. At the same time, the legislative history and the regulations are clear that the use of income and resources in determining who shall be eligible to receive services under Title III is prohibited.

**C. Prohibition on Means Testing**

The regulations promulgated pursuant to the Act prohibit the use of a "means test" for any services provided under Title III. 45 C.F.R. §1321.17(f)(3). "Means test" is defined as "the use of an older person's income or resources to deny or limit that person's receipt of services . . . ." 45 C.F.R. §1321.3. With regard to legal assistance providers in particular, the regulations state:

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible. 45 C.F.R. §1321.71.

Legislative history repeatedly indicates that the regulations accurately reflect congressional intent. For example, Congress stated in connection with legal services under the 1978 Amendments to the Act that:

The conferees wish to emphasize that in carrying out its responsibility to concentrate on the elderly with the greatest need, no project shall, in any way, give a means test or asset test to any applicant; no applicant shall be questioned about his or her means or assets; and no applicant should be directed to seek services through a Legal Services Corporation project. Conf. Rep. No. 1618 (1978), p. 65.

Similarly, during his opening statement at a Joint Hearing on regulations to implement the 1978 Amendments, Senator Thomas Eagleton stated with respect to all Title III services:

Another area of great concern has been the issue of means and income tests. The 1978 Amendments do require that preference be given to those elderly with the greatest economic or social need. However, the Congress in no way intended to impose income as a determinant of eligibility for the comprehensive services provided under the Act. Congressional intent has been clear since 1965 that these programs not be stigmatized by the "welfare" label.

However, in view of the fact that some 7 million older Americans have incomes which fall below the poverty threshold or within the "near poor" category, Congress did intend that preference in service delivery be targeted to low-income elderly. Similarly, since older members of minority groups tend to have special social concerns sometimes irrespective of income, but more often in addition to income limitations, they, too, warrant special consideration.[[48]](#footnote-48)

**D. Approaches to the Dilemma**

Legal assistance providers and State and area agency staff sometimes express confusion and frustration at the inevitable tension created by the statutory requirement for preference to those in greatest need and the regulatory prohibition against means testing. The approach to resolving this dilemma lies in the provider first working with the State and area agency to identify those persons who are in greatest need, and then establishing deliberate operational procedures to insure that targeted groups will be reached. Indeed, Congress stated in connection with the 1978 Amendments:

Concentration on the elderly with the greatest need should be effectuated through such means as location of offices, referral of ineligible applicants from Legal Services Corporation projects, development of expertise in certain areas of the law, or general guidelines which the project may post or give to an applicant providing information on the nature of the clientele usually served there and those eligible for services at the Legal Services Corporation project. Conf. Rep. No. 1618 (1978), p. 65.

The following discussion will consider a number of approaches and operational procedures to reach targeted groups. These are not discussed in order of importance, but in the order they generally arise in the planning and development of a legal assistance program.

**1. Making Program Services Accessible to Targeted Groups**

Legal providers should give serious attention to implementing the following methods to make certain that services are easily accessible to targeted client populations.

Location of Office and Intake Sites: The office and intake sites should be located within the targeted client communities (low-income areas, ethnic areas, etc.) or in areas easily accessible to the targeted populations. If the legal provider serves an area fortunate enough to have public transportation, the office and intake sites should be located so they can be reached in that manner. Safety is also an important consideration so that targeted clients will not be afraid to seek needed assistance. The office and parking must be accessible to the frail and disabled, or reasonable accommodations must be made so that these groups of targeted clients may receive services.

Home and Institutional Visits: It is essential to make some home or institutional visits so that socially needy persons who are homebound, unable to travel, or in nursing homes, will be reached.

Overcoming Communication Barriers: Legal providers must have, or be able to obtain, the capacity to communicate with persons who are socially needy due to hearing impairments, language barriers, or mental disabilities. These communication barriers may be overcome through the hiring of bi-lingual or multi-lingual staff, use of translators, and the ability to use sign language and other forms of communication. (See Chapter IX, Part B(1) on Communication Techniques.)

Telephone Access: A provider serving a large geographical area may need a toll-free telephone number to enhance access by clients in outlying areas. If a toll-free number is not affordable or the expense is not justifiable, the provider may want to establish and publicize a policy of accepting collect calls, and instruct the staff to obtain the caller's telephone number and return the call immediately. Providers should also consider obtaining special telephone equipment which facilitates communication with the hearing impaired.

**2. Informing Targeted Groups of Program Services and of Their Legal Rights**

Regardless of steps taken to make the program accessible, those efforts may be wasted unless the targeted client populations are educated about their legal rights and aware that a program exists to help resolve their legal problems. This requires well-designed program publicity, outreach, and community education.

Program Publicity: Publicity is necessary to inform targeted potential clients, and others associated with those clients (e.g., family, friends, neighbors) about available services. Publicity which clearly describes types of problems handled by the legal program may aid the targeting process by enabling persons to make an educated decision on whether their problem is likely to be handled. Publicity must accurately reflect service priorities. It should not be so narrowly drawn as to discourage appropriate persons from pursuing services, but neither should it be so broad as to create unreasonable expectations of service. This risks ill-will and animosity from rejected clients as well as from other service providers and funders who make referrals to the program.

Publicity must be carefully planned to reach targeted client populations. Television and radio public service announcements and appearances by staff on talk shows focusing on the elderly can be very effective means of reaching potential clients who are isolated or unable to read. It is important, however, to be aware of how targeted groups use and respond to different types of media. Publicity that is not delivered in the manner in which a particular population is accustomed to receiving information will not be effective.

Printed publicity materials must be appropriate to the groups targeted. They must be written in a manner and at a level understandable to those targeted to read them. This may necessitate obtaining the services of an expert in readability. Materials should depict persons who are racially and ethnically representative of the targeted populations. If a significant percentage of the population is non-English speaking, then publicity must be made available in the appropriate language(s).

Outreach and Community Education: Outreach can effectively target certain client populations if providers choose times and locations where those persons are likely to congregate. This may mean, for example, once-a-month Sunday intake at churches whose congregations are comprised of low-income minority individuals or intake in low-income housing projects.

The same principle applies to community education, although it is not enough simply to give talks at sites where targeted clients congregate. Providers must offer information about those issues which reflect the program's priorities and the common legal problems of targeted clients. By focusing on these priority issues, providers educate the targeted populations about their rights and generate cases in the areas determined to be of greatest importance to that population.

As noted above, the requirement of appropriate outreach to low-income minority individuals was strengthened by the 1987 Amendments to the Older Americans Act. Thus, as area agency and legal assistance budgets are cut or remain stagnant, outreach and community education programs that target these individuals must be maintained.

**3. Establishing Priorities and Coordinating Program Efforts**

The thoughtful establishment of certain legal issues which are likely to impact the targeted client populations as case priorities for the program, and the development of expertise in those areas of the law, are extremely important approaches to attracting and serving targeted clients without using a means test. Coordination with the local Legal Services Corporation (LSC) program (if the provider is not a LSC grantee) and with other providers of service to the elderly are also necessary components in tailoring program services to reach targeted client populations.

Priority Setting: Prior to establishment of case priorities, and regularly thereafter, the provider and/or area agency should assess the legal needs of targeted populations in the service area. Needs assessments were discussed thoroughly in Chapter IV, and there is no need to further elaborate except for a caveat that any needs assessment must be carefully planned so as not to exclude a significant portion of the targeted population (e.g., by doing only a telephone survey, the needs of nursing home residents, particularly low-income persons who cannot afford private rooms with phones, will not be assessed). Changes in the laws, regulations and policies affecting targeted populations may also affect needs and case priorities.

The area agency and provider should work together to establish case priorities. Once established, these priorities should be used to restrict intake and guide community education efforts. Many programs limit case priorities to areas involving the maintaining or obtaining of food, income, health care, and shelter. More specifically, this means they handle cases in areas such as Social Security, Supplemental Security Income (SSI), landlord/tenant, public housing, physical and financial abuse, Medicare, Medicaid, nursing homes, or guardianship. Under this procedure, cases are accepted if they fall within a priority category, regardless of the client's income. Some of the priorities, of course, are likely to impact the economically needy (e.g., SSI, Medicaid, public housing), while others will impact the socially needy regardless of income (e.g., abuse, guardianship).

It is important to note that The Center for Social Gerontology has recently received inquiries about the appropriateness of area agencies, in response to the Act's increased emphasis on targeting, requiring their legal providers to establish priorities based on client type, rather than case type. For example, the area agency may require its provider to serve only protective services clients or to give protective services clients first preference. These two situations are somewhat different and will be discussed separately.

The requirement that a legal provider serve only a discrete group, such as protective services clients, may be contrary to both the letter and spirit of the Older Americans Act. While such a group may fit within one of the specified target groups (socially needy), it may not be representative of others (e.g., rural, low-income minority, economically needy). Protective services clients may not even be the most socially needy as they are, by definition, receiving some services. Thus, such restrictions seriously interfere with a provider's ability to meet the broad targeting requirements of the Act.

The requirement that a provider give first preference to a discrete group of clients is less troublesome, but still presents some problems. As above, there is a question of whether the preferred group is representative of the various target populations, and whether that group is the most needy and deserving of highest preference. Furthermore, there is a question whether a more serious legal problem of a non-priority client should be rejected so that the program may handle a less serious problem of a priority client. To illustrate this point, consider a situation in which an area agency requires protective services clients to receive priority over rural elderly. Under this system a protective services client might be assisted with a will or durable power of attorney, while the rural client's income maintenance case is rejected. This is not to say that any type of client or problem is unimportant, but that many factors (e.g., type of client, type of problem and its impact on the client, impact of problem on broader population, etc.) should be considered when deciding whether to accept or reject a case. It may be very useful to establish client-type priorities in conjunction with case priorities, but client priorities alone will not serve the clients or program well.

Developing Expertise in Substantive Areas of Law: As providers focus on priority issues which have particular impact on targeted clients, they should naturally develop expertise in those substantive areas. In turn, this expertise further aids the process of targeting clients. Providers become better able to recognize complicated legal issues and therefore are more aware of the needs of targeted populations. Providers also increase their ability to handle complex litigation and administrative matters. Their abilities and successes at resolving problems become more widely known -- through "word of mouth" or other forms of publicity -- and other targeted clients in need of assistance may be attracted to the program.

Coordinating With LSC Programs: The Act mandates that Title III legal assistance shall be furnished ". . . in addition to any legal assistance for older individuals being furnished with funds from sources other than this Act. . . ." 42 U.S.C. §3027 (a)(15)(C). In other words, Title III dollars are to be used to supplement, rather than supplant, other sources of legal services. The Act also requires that each legal program coordinate its services with the local Legal Services Corporation (LSC) program (if the Title III provider is not an LSC grantee) and with the private bar, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis. 42 U.S.C. §3027(a)(15)(A), (B). It is clear, when reading these provisions together, that Congress intended that the priorities of a Title III legal assistance program should complement -- not duplicate -- those of the local LSC program and services provided under the auspices of the local bar association (such as reduced fee wills).

The requirement that a Title IIl program coordinate with the local LSC grantee may seem difficult to reconcile with the prohibition against means testing since the LSC Act requires use of a means test. The history of legal assistance under the Older Americans Act does shed some light on this dilemma however. Congress added legal assistance (then "legal services") as a priority service in 1975 after determining that the legal needs of the elderly were not being met through either the LSC offices or the private bar. Congress found there was a scarcity of attorneys who had substantial knowledge of older persons' rights or experience in protecting those rights, and concluded that specialized legal services had to be developed to help older persons enforce their rights. The legislative history indicates that Congress intended that Title III money be used, at least in part, to develop programs with expertise in areas of law which were not usually priorities of LSC offices, so that a greater number of older persons could be assisted with a greater variety of legal problems.

The requirement to coordinate with LSC programs was added to the Act in 1978. At the same time, in the Conference Report language dealing with means testing, Congress stated that ". . . no applicant should be directed to seek services through a Legal Services Corporation project." Conf. Rep. No. 1618 (1978), p. 65. This indicates that Congress believed that if older persons were first directed to seek services from a LSC project before being assessed for eligibility as Title III clients, this would constitute an unlawful means test. It would seem, however, that Congress did not intend that an older, low-income client could never be referred to a LSC program. Such an interpretation would necessarily result in a costly duplication of resources contrary to the purpose of Title III.

Thus it seems that the dilemma posed by the mandate to coordinate with LSC can be resolved by developing case priorities which complement those of the local LSC provider. For example, most LSC offices handle public housing and landlord/tenant problems which are experienced by low-income persons regardless of age. Therefore, a Title III program might make better use of its resources by ranking those issues as low priorities, referring such cases to the LSC office, and focusing its efforts on problems predominantly faced by needy older persons in which the LSC office might not have expertise (e.g., SSI, Medicare, nursing home issues). The Title III program would still have the flexibility to represent an older client with a landlord/tenant problem if referred back by the LSC office for not meeting eligibility guidelines.

Coordinating With Providers of Other Services: Another effective means of reaching the targeted client populations is by coordinating with providers of other Older Americans Act services and other social services to the elderly who may be likely to come into contact with certain targeted populations. These other providers may be of great benefit by identifying potential clients in need of legal help as well as new problem areas which may become program priorities.

The following are examples of some productive linkages between legal programs and providers of other services that can help in targeting:

(1) Coordinate with the local Long-Term Care Ombudsman program to reach nursing home residents;

(2) Train volunteers and staff who deliver meals and other home services on how to recognize legal problems and refer persons with legal needs to the legal provider;

(3) Develop a relationship with hospital discharge planners to reach Medicare beneficiaries who may have been prematurely discharged; and

(4) Coordinate with protective services so that protective services workers are better able to recognize and refer clients with legal problems.

**E. Conclusion**

The issues surrounding means testing, targeting and priority setting are complex and challenging. Yet, if one keeps in mind that one of the hallmarks of the Older Americans Act is its promotion of flexibility in State and local planning, it may be easier to reconcile some of the seemingly inconsistent language in the Act, the legislative history, and the regulations. Through the prohibition against means testing and the requirements for targeting certain populations and coordinating with LSC and local bar programs, Congress has imposed constraints on Title III legal assistance providers, rather than strict parameters. Area agencies and legal providers must plan and work within those constraints, but otherwise have great flexibility to develop and conduct legal programs which best meet the needs and fit the circumstances of the particular service area.

**OVERVIEW OF MODELS FOR DELIVERY OF**

**LEGAL ASSISTANCE TO OLDER PERSONS**

**Introduction**

The Older Americans Act requires State units on aging to ensure that each area agency selects and enters into a contract with the legal assistance provider best able to satisfy the legal needs of the area's older population. The provider may, but need not, be a Legal Services Corporation (LSC) grantee. If it is not an LSC grantee, the Act requires that it coordinate its services with existing LSC projects in the area to ensure that those older persons with greatest economic and social needs are served. Whichever legal assistance provider is chosen, the area agency must also encourage members of the private bar to provide legal assistance to the elderly on either a pro bono (free) or reduced fee basis. It is the role of the State legal services developer to work with area agencies on aging to determine the delivery model appropriate to the various areas and to coordinate provision of legal assistance throughout the State.

Area agencies, providers and developers have a wide variety of legal delivery models from which to choose in determining how best to serve the needs of older persons in their communities. Each delivery model has distinct characteristics. Some models rely on staff attorneys, whereas others use paid private attorneys, volunteer private attorneys, law students, or paralegals. The location of providers also varies among the models. Providers may be housed in LSC or legal aid offices, freestanding Title III programs, traditional law firms, legal clinics, law schools, community service agencies, or senior centers.

**A. Major Issues to Consider in Selecting a Delivery Model**

In order to determine which model or combination of models is likely to be most practical and effective in a given area, it is important to first consider certain underlying issues.

The first issue to be considered is the size and characteristics of the elderly population to be served. Is the population large or small? Urban, rural, or mixed? Mobile or isolated? Are there large minority or non-English speaking populations? What are the demographics relating to age and income?

The second consideration is the legal needs of the targeted population. (See Chapter V for a discussion of targeting clients.) Are potential clients experiencing public benefits problems which may lawfully be handled by non-lawyer advocates? (See Chapter IX(D)(3) for a discussion of this subject.) Or are the clients experiencing problems which necessitate attorney services? Are the problem areas of the targeted population those in which the private bar has expertise (e.g., consumer and homeownership problems, wills, probate) or those which have been traditionally handled by legal services and legal aid lawyers (e.g., tenant representation, public benefits, nursing home problems)? It is important to recognize that in selecting the types of cases to be handled, the delivery model is, to some extent, determined. Likewise, in selecting a delivery model, the types of cases to be handled will be determined. Therefore, in planning, legal needs of targeted clients should be assessed before establishing a delivery model, otherwise the model may prove inadequate.

Third, it is critical to consider the goals for the program and the types of activities it is expected to undertake to address the legal needs of targeted clients. Will activities consist essentially of routine, individual client representation? Is impact or class action litigation anticipated? Will administrative or legislative representation be involved? Will substantial community education and outreach be undertaken? Will it be some combination of the above? As in the case of legal needs, the objectives and types of activities to be undertaken by a legal program will, to a certain extent, determine the delivery model.

The fourth consideration is the resources -- funds and community support -- that will be available to the program. What level of funding will be provided by the area agency? What funds are available from other sources to match the federal funds and expand services? Is there strong bar association support for one model over others? Is there strong support from other community services for a particular model? Are there other political reasons to choose one model so it will be accepted and supported in the community? If the program is not to be housed in a local LSC or legal aid office, will it be able to effectively and efficiently provide services?

The remainder of this chapter is devoted to a listing and brief descriptions of the most commonly used models for delivering legal assistance to older persons. The four underlying considerations discussed above will be applied as the advantages and disadvantages of each model are addressed. It is important to keep in mind that portions of each of these models can (and often should) be combined with portions of others to create the delivery system that best suits the needs and resources of a particular area. Problems with one model can often be remedied by supplementing it with part or all of another model. Also keep in mind that this list of models is by no means exhaustive.

The discussion is divided into two sections. The first section provides an overview of nine of the most common delivery models which may be funded by area agencies with OAA Title III funds. The second section describes two delivery models which do not meet requirements for legal assistance specified in the Older Americans Act and regulations, but which are important supplements to Title III-funded legal assistance programs.

**B. Older Americans Act-Funded Delivery Models**

1. **Addition of Legal Services for Older Persons to an Existing Legal Services Program for Low-Income Persons**

An area agency can fund an existing Legal Services Corporation grantee or other legal aid society program to provide, or increase its provision of, legal assistance to older persons. The program can either set up a separate unit for older persons by designating one or more staff attorneys and paralegals to serve only older persons, or have all program staff share the responsibility of representing older persons. That decision may depend on the size and needs of the client population, as well as the amount of resources allocated to the Title III program.

Some advantages of this model are that: (1) it makes use of existing office facilities and library resources; (2) the attorneys and/or paralegals in legal services offices are trained in areas (e.g., food stamps, Medicare, Social Security disability, etc.) affecting the elderly in the greatest social and economic need; and (3) intake, client grievance, quality control and other operational procedures are already in place and readily applicable to the additional older client caseload. This model may be particularly well-suited to Title III programs with goals of handling impact or class action litigation or complex administrative or legislative representation because of the additional resources available to the program.

The possible problems with using this model are that: (1) legal services offices do not exist in all, particularly rural, areas; (2) the office may be located in a part of the community that is not easily accessible to older persons or not safe enough for them to feel comfortable visiting; (3) some older persons may be reluctant to use the services of a program initially established to assist only persons with low incomes; and (4) it is possible that, rather than using the Title III funds to increase and improve legal assistance to older persons, legal services programs will use the Title III dollars to replace other funds and then simply maintain prior levels of service to older persons. The first two problems may be resolved by "circuit riding" or conducting outreach and home or institutional visits, which may be done as a component of this model or in conjunction with the paralegal and outreach worker program model discussed below.

**2. Legal Services Program Serving Only the Elderly**

In an area where there is a particularly large population of older persons, an area agency might fund the creation of a program serving only the elderly. Subject to the level of funding and needs of the client population, the program would be staffed by a lawyer, or a lawyer and paralegal, and clerical worker who would coordinate efforts with local social services agencies serving older persons.

Some strengths of this sort of program are: (1) the program office may be located in an area that is safe and accessible to older persons; and (2) older persons may be more likely to utilize a program that is designed solely for them and does not have the reputation of serving only persons with low incomes.

The main drawback to this model is the expense of establishing the office. There may not be adequate funding to provide a law library or staff training comparable to that offered in a LSC or legal aid office, or to enable the provider to handle more than routine individual cases. In addition, staff of a free-standing office will have limited contact with other attorneys and paralegals who may have different ideas and areas of expertise which could benefit the older clients. Community and political support of this model may depend on the reputation of the existing legal services program.

**3. Law School Clinical Program**

Where there are law schools, area agencies can try to direct the skills of law students, faculty, and the resources of the schools toward serving the legal needs of the elderly. There are several ways a law school might be willing to help. First, it might create a clinical law program exclusively for the elderly or add legal services for the elderly to an existing clinical program. A clinical law program typically is staffed by law students who receive school credits and "hands-on" experience and who are supervised by law faculty or lawyers from the community. Second, a law school might allow students to earn credits by working under the supervision of staff attorneys at local legal services programs for the elderly. Third, a law school could develop courses on legal issues affecting older persons and, as part of the course work, have the students prepare materials for the elderly (or persons working with them) on the rights and remedies of the elderly.

Some advantages of involving a law school in the provision of legal assistance to older persons are: (1) a law school is likely to provide office space and law library facilities for use by a clinical law program for the elderly; (2) students will represent older clients to gain "lawyering" experience or law school credits and not for financial compensation; (3) students eager to gain experience may be willing to travel to rural areas to provide legal services; (4) a law school with a Title III funded elderly law project may attract additional funding for the project from other sources; and (5) a law school at a university with, for instance, social work, public health, and/or gerontology graduate schools has access to the expertise those schools have to offer.

Some shortcomings of the law school program approach are: (1) students may leave the program after a semester or two and clients whose cases last longer than that period of time may have their cases transferred at least once to a new student; (2) during school vacations the program may be understaffed and unable to provide adequate representation in ongoing or new cases; (3) without constant and careful supervision, inexperienced law students may be unable to give as complete assistance to their clients as can more experienced lawyers; and (4) it is likely that the law school -- not the elderly -- will have primary control over setting the priorities of the program. Some of these disadvantages may be overcome if the program limits its representation to areas of the law likely to be less complex and more quickly completed, but the area agency must assess whether such representation fully meets the needs of the client population in its service area and the requirements of the Act. If not, the AAA might consider funding this approach along with another model so that the service gaps could be closed.

**4. Volunteer Attorney Panel**

The Older Americans Act requires each area agency to attempt involving private attorneys as part of its legal services delivery system. Private attorneys willing to represent older persons either for free (pro bono) or for a reduced fee are specifically mentioned in the Act. This concept has been expanded into a delivery model. To make such programs work, Title III funds are used to hire a coordinating staff member whose job is to recruit attorneys, screen clients, refer eligible clients to private attorneys with expertise in the relevant areas of law, maintain case records, and monitor the progress of cases to ensure that clients receive prompt and adequate legal assistance. If the coordinator is a non-lawyer, his or her work (screening and referring clients, monitoring services delivered) must be supervised by an attorney. If enough funds are available, it may be preferable to hire an attorney coordinator who can take cases that many private attorneys do not have the expertise to handle (e.g., public benefits); handle emergency cases; do home visits, outreach, and community education; and provide technical and other assistance to the volunteers. The program coordinator may be housed in a Legal Services Corporation office, a bar association, or an independent compensated referral project.

The private attorneys participating in this type of program typically see clients in their own offices. Alternatively, they may see clients at a local senior center or provide services from a neighborhood law clinic.

Some of the strengths of this model are: (1) it is relatively inexpensive; (2) older persons may be more willing to see a private attorney than a staff attorney at a legal services office serving low-income persons; and (3) it fulfills the Act's requirement of encouraging private bar involvement at the same time that it educates the private bar about the legal needs of older persons.

The weaknesses of the model are: (1) it may be difficult to recruit an adequate number of attorneys willing to make and keep a commitment to the program; (2) the Act's prohibition against use of a means test may be violated if the bar association or private attorney volunteers insist that financial eligibility guidelines be imposed so that only low-income clients receive pro bono services; (3) many private attorneys may lack the expertise to handle certain legal problems of the elderly; (4) the program coordinator must be efficient and rigorous for the program to work; and (5) it may be difficult to impose quality control mechanisms on volunteers who may resent having their work monitored or having to complete program forms, etc. Furthermore, even if the coordinator is an attorney, a volunteer program still may not have the resources to meet the needs of its client population for extensive community education and impact or class litigation. Although this model can stand alone, its weaknesses can be negated and its strengths complemented if it is structured as an adjunct to an elderly law project.

**5. Compensated Private Attorneys**

An area agency can fund one or more private attorneys to represent the elderly on an as-needed basis. The attorney is paid for the time actually spent serving the elderly, or receives an established amount monthly in exchange for services. In an area where a significant percentage of the older persons are of a certain ethnic background, the AAA might consider funding a private attorney of that same background. An area agency can also fund the creation of a "closed" panel of attorneys who will be paid on a flat fee or fee-for-service basis to serve older persons. If this is done, a coordinator who has responsibilities akin to those of the coordinator in the volunteer attorney model will be necessary.

Both variations of this model have certain advantages: (1) they may be particularly useful in a rural area or a community with a small elderly population; (2) older persons may feel more comfortable dealing with a private attorney than an attorney who works for a non-profit organization; (3) the local bar association may be more supportive of a private attorney than a non-profit organization; and (4) they enable an area agency with extremely limited resources to fund some attorney services.

Each variation of the model has the following disadvantages: (1) it may be difficult to find attorneys with expertise in certain areas of law affecting the elderly; (2) private attorneys may be unwilling or unable to provide the full range of services needed by the client population, such as outreach, community education, and impact or class action litigation; (3) it may be difficult to monitor the amount of time actually spent on cases of the elderly; and (4) it may be difficult for a private attorney to take advantage of training opportunities available to providers of legal assistance.

**6. Private, For-Profit Legal Clinics**

A variation of the Compensated Private Attorneys model occurs where an area agency contracts with a private, for-profit legal clinic to furnish free services to older persons in its area. These clinics, which are springing up across the country, provide low-cost, standardized legal services to clients -- usually in areas such as simple wills, divorces, and personal bankruptcies.

This model has the same advantages and disadvantages as the Compensated Private Attorney model. An additional disadvantage is that legal clinics, because of the highly standardized nature of their practice, are not set up to provide individualized representation in less routine types of cases. The range of services provided by this model may be so limited that an area agency would have to fund an additional model in order to meet the legal needs of the older population in its service area.

**7. Judicare**

Another delivery model that involves compensating private attorneys is called judicare. In a judicare program, unlike most other delivery programs, the client often can choose to be represented by any private attorney in the community who has agreed to participate in the program. It is an "open panel" program in which all lawyers in a given area, who meet some usually simple eligibility criteria (e.g., three years of experience), may participate. Attorneys are paid by the AAA on a fee-for-service basis for providing legal services to eligible elderly clients. Attorneys usually agree to some fixed hourly fee or fee schedule set according to the type of case handled. Administrators are needed to recruit attorneys, inform older persons of the program, do intake and some referral, control the quality of legal services rendered, and manage finances.

There are three types of judicare programs. The first, called pure judicare, is basically the program described above. It relies solely on private attorneys to deliver legal services and an administrative staff to coordinate the program. The second is judicare with a staff attorney component. Here the program's staff includes at least one attorney in addition to the administrators. The staff attorney provides support and technical services to the private attorneys and handles some cases. The third variation is a judicare supplement to an existing staff attorney program. In this version, a staff attorney program creates a judicare panel of private attorneys to handle certain types of cases or provide legal services in a particular geographic location. The staff attorneys continue to handle most of the cases.

Some advantages of the judicare model may be: (1) older persons may be given the freedom to choose who will represent them from among an open panel of private attorneys; (2) it involves the private bar in the provision of legal assistance, as required by the Act; and (3) older persons may be more comfortable having their cases handled by private attorneys than by non-profit program attorneys.

The disadvantages are: (1) if there are no staff attorneys to offer assistance, private attorneys may be unwilling or unable to handle cases about matters such as public benefits; (2) this model may only work in large urban areas where there are many attorneys; (3) private attorneys may not be able to provide outreach and community education services and they may not be willing to undertake lengthy and complex legal matters; (4) the needs of private attorneys' paying clients may interfere with the needs of older, non-paying clients; and (5) quality control mechanisms may be difficult to implement as private attorneys may view monitoring by administrative staff as an unwelcome interference. Some of these drawbacks may be overcome by using the third variation of this model.

**8. Paralegal and/or Outreach Worker Program**

Another legal assistance delivery model involves the use of paralegals or outreach workers (known in some areas as "community service advisors") to educate the elderly about their legal rights and remedies and to advise and represent the elderly in matters where attorney representation is not required (e.g., administrative representation in public benefits cases). The paralegals and outreach workers should be trained and closely supervised by either legal services attorneys or private attorneys knowledgeable about legal problems of the elderly. These paralegals or outreach workers could themselves be older persons. (See Chapter IX, Part D for a complete discussion of the use of non-lawyers to provide Title III legal assistance.)

Advantages of this model are: (1) it may be less expensive than a model which uses attorneys to provide the same services; (2) it may be more cost efficient for paralegals and outreach workers to conduct circuit-riding and outreach activities which enhance service delivery in rural areas, where older persons may be unable to access services unless they are brought into the community through those methods; (3) client communications and comfort may be enhanced if the paralegals or outreach workers are older persons and of the same racial or ethnic background as the potential clients; and (4) paralegals and outreach workers may be stationed at other community service agencies, senior centers, etc. where they have greater access to targeted clients.

The model's disadvantages are: (1) paralegals and outreach workers cannot provide judicial representation or advice in all areas of law which affect older persons; and (2) paralegals and outreach workers may need significant amounts of training and supervision by attorneys to ensure that they provide correct advice, recognize all legal problems, and do not violate state statutes prohibiting the unauthorized practice of law.

**9. Legal Hotline for Older Persons**

A fairly recent delivery model -- legal hotlines for older persons -- provides telephone advice, referral, and brief services (e.g., a letter or telephone call to a third party, or document review) to older persons throughout the area served by the hotline. Services are provided by attorneys, or paralegals supervised by attorneys. If a caller needs more than advice or brief service, referrals are made to legal assistance providers, pro bono panels, attorneys willing to provide services at a reduced fee, and non-legal agencies. The hotline should be fully computerized to enhance record-keeping and document generation.

Existing hotlines are structured as either (1) free-standing legal assistance programs or (2) intake service components of programs using staff attorneys. The first variation necessitates coordination with other legal assistance providers as the hotline has no resources other than its attorneys and paralegals who handle the telephone calls. A free-standing hotline should not be the only Title III legal assistance program funded because it does not provide the full range of services needed by older persons or required by the Act (e.g., outreach, administrative and judicial representation). In the second variation, problems which cannot be resolved by the hotline staff are referred to the program's attorneys as appropriate.

Legal hotlines have the following advantages: (1) they can help people prevent legal problems by allowing ready telephone access to legal advice; (2) the ability to quickly obtain advice may help to ease clients' minds about legal problems; (3) they function at a low cost and can be designed so as to be income-generating if participating lawyers give back to the program a percentage of fees collected from hotline clients; (4) they can free Title III legal assistance monies and staff time for higher priority, more complex problems; and (5) they enhance accessibility to services for rural and isolated clients.

The disadvantages to this model are: (1) persons who cannot read well enough to understand or explain problems over the telephone or understand explanations provided by hotline staff may not be adequately served -- this may affect most seriously the low-income minority persons who are to be targeted under the Act; (2) the low income or institutionalized elderly without phones are unable to take advantage of hotline services; and (3) support of the private bar may be limited because of attorneys' skepticism about the adequacy of legal assistance given via telephone. These disadvantages illustrate the importance of using a hotline in conjunction with a full-service program.

Funders and providers must also use caution when implementing a hotline with OAA monies to ensure that its design does not result in inadvertent violations of the Act's prohibitions against charging fees for services and using a means test.

**C. Models Supplementing Older Americans Act-Funded Programs**

The following models -- lawyer referral services and prepaid legal services programs -- are discussed separately from the models described above because they are designed so that clients pay for services. Because programs which require payment by clients for legal services are not permissible under Title III B, area agencies cannot fund these models to provide legal assistance. Nevertheless, these models may be used to supplement and enhance services offered by a Title III legal assistance program.

**1. Lawyer Referral Services**

Lawyer Referral Services are designed to assist people who need help finding a lawyer capable of handling their problems. In addition, referral services usually provide an opportunity to talk with an attorney for a fixed period of time at a lower fee than is normally charged.

Some referral services are run on a statewide basis, others on a county-wide basis. Not all counties or states have referral programs. Usually the services are associated with and administered by a bar association, but some are administered by legal services organizations which serve the poor or elderly.

A lawyer referral service can effectively supplement a Title III program by providing guidance and reduced-cost assistance to persons not represented by the Title III program because their cases are not within the program's priority areas. Thus, if a lawyer referral service does not exist or is not designed to be helpful to older clients, a Title III program and the State or area agency should consider working with the State or local bar association(s) to create or re-design a referral service. Bar association support is likely to be critical for engendering the participation of private attorneys.

In general, lawyer referral services have the following advantages: (1) they can be tailored for urban and rural areas, with urban services categorizing participating lawyers by area of specialization and rural services categorizing lawyers by geographical area; (2) they may enhance the working relationship between bar associations and legal assistance providers; (3) they may be relatively inexpensive to administer; and (4) they allow a provider to give a client a more useful referral than to the attorney listings in the "yellow pages."

The question of where to house a referral service is important. The main drawback to housing it within the bar association is that it may be less sensitive to the needs of some older clients for untraditional methods of delivering services, such as home and institutional visits. On the other hand, a referral service specifically for older clients housed within a legal assistance program may not have the full financial, institutional and political support of the bar association.

**2. Prepaid Legal Services Program**

A local or state bar association or senior citizens group can sponsor and administer a prepaid legal services plan in which participants pay a fixed fee in advance to cover certain specified legal services provided by participating private lawyers. Other services are provided at fixed rates.

Such a model may be a beneficial supplement to a Title III legal assistance program because: (1) older persons may prefer to use the services of a private attorney if the fee charged is reasonable; (2) groups may be able to obtain lower rates for their members than individuals can for themselves; and (3) prepayment is likely to encourage the practice of preventive law.

The drawbacks to this model are: (1) many older persons cannot afford to join a prepaid program; (2) it may not be feasible in rural areas or communities where there is a small elderly population; and (3) participating lawyers may lack expertise in legal issues particularly important to older persons, such as public benefits.

**Tips on Developing Requests**

**for Proposals and Proposals**

**Introduction**

The processes of drafting a request for proposals (RFP) and a proposal are extremely important to high quality legal assistance programs. These two documents are the framework upon which a program and its services are built. If done thoroughly and carefully, the contract and implementation of the project flow naturally from them. The ideal process for developing both RFPs and proposals involves cooperation and dialogue among the area agency, the legal services developer, and others in the legal and aging services community. Ideas should be shared about the types and extent of legal needs that exist, the gaps in existing services, and so forth. Strategies should be explored for how best to use Title III dollars to meet needs and to fill gaps. In such discussions, area agencies should exercise caution so as not to give an advantage to one potential bidder over another or to create the perception of such an advantage.

Even in situations of non-competitive, continuation funding, the processes are important. They force the funder and provider to step back and assess where they are and where they need to be, and then develop a careful plan on how to get there. It is an opportunity to reassess priorities, targeting strategies, and so on.

Similarly, even where the amount of funding is small, the processes are useful. They determine how best to use limited dollars and help assure that the area agency understands the limits on what realistically can be done with its Title III funds.

**A. Requests for Proposals by Area Agencies on Aging**

When an area agency decides it intends to fund or renew funding for legal services, it is useful for the agency to prepare an RFP or an equivalent package of information and instructions for applicants. In preparing an RFP it is important for an area agency to explore its ideas, goals and objectives with various providers of legal services. Persons with experience in delivering legal services will be able to point out possibilities, particular needs, limitations, restrictions, etc. of which the area agency is not apt to be aware.

**1. Purposes of an RFP**

An RFP specifically designed to solicit proposals on delivery of legal services to older persons has a number of complementary purposes. On the one hand, it requests information from the applicant which will enable the area agency to assess the applicant's ability to conduct a quality program and perform functions which address the legal needs of older persons. On the other hand, the RFP should provide information to prospective applicants that will enable them to determine whether they are qualified to undertake the project, so that time will not be wasted preparing an application that will not be competitive.

Preparation of an RFP on an annual basis forces the area agency to undertake a valuable exercise -- to explore and then describe in writing the desired goals or outcomes anticipated from funding legal services. These goals should be oriented toward meeting (in part) the broad advocacy objectives of the Older Americans Act. Goals should also be linked to meeting needs of particular groups targeted in the Act -- those in greatest social and economic need, low income minority individuals, the rural, the frail, the institutionalized and the disabled. They should also be related to the particular needs and circumstances of the community.

The RFP can be an important general planning tool, by focusing on how legal services can be used in conjunction with other aging network services as a response to community needs. It should challenge applicants to develop creative service delivery systems and legal strategies which are integrated with other community advocacy efforts to advance the interests of older persons.

An RFP is also an important tool for educating applicants about the mandate for legal services and advocacy under the Older Americans Act and about the role of the area agency in planning and coordinating an entire range of services to meet the needs of the older population.

A carefully conceived RFP is a valuable aid for applicants. It provides guidelines and a structure for developing proposals that present a careful plan for how -- within broad area agency requirements for such things as individual client representation, outreach, and community education, and within statutory and regulatory requirements -- the applicant plans to design and deliver a cost-effective program that will target services to the economically and socially needy and will advance the objectives of the Older Americans Act.

The preparation of an RFP will also provide an occasion for the area agency to consult with the state legal services developer and legal providers and to decide on specific criteria that will be used in evaluating proposals and in awarding funds. If possible, weights should be assigned to the various criteria, so applicants are informed as to the relative importance of different aspects of their proposed plans. The criteria are important because they will help insure that only those agencies or individuals capable of meeting them will apply. This will avoid time being wasted by area agencies in reviewing proposals as well as by potential applicants who might otherwise prepare an application. Specification of selection criteria in a written document such as an RFP can also provide some protection for the area agency in the event that its selection process or decision is challenged.

A Cautionary Note: Few things are more difficult than responding to an RFP that has not been carefully considered and developed. Thus if an area agency does not have adequate time to devise an RFP, it is recommended that guidelines for applicants should contain a minimum of specificity and give applicants leeway to determine goals and objectives and design their own approach.

**2. Suggestions for Preparation of an RFP**

The following discussion provides guidance for preparing RFPs for Title III legal services. It outlines the major sections typically included in an RFP and presents some initial thoughts as to what might be covered in each of those sections. It is not intended as a comprehensive discussion of the topic. Rather, it should be seen as the basis for further discussion with the state legal services developer, and others familiar with provision of legal services and the needs, characteristics, and resources of the area to be served.

Cover Letter**:** The cover letter normally announces that proposals for legal services projects are being accepted, and the period for which funding is available. It provides information on the level of funding that is available and the type of award that will be made (e.g., grant or contract, cost reimbursement, or cash advance). The cover letter includes details such as deadlines for submission of proposals, mailing address to which proposals should be submitted, the name and phone number of an area agency person to whom questions may be addressed, and the date or approximate time when a decision on the grant award will be made. It should also specify any restrictions or limitations on who is eligible to apply for funds.

Description of the AAA and OAA: It is helpful to applicants who may not be informed about the Older Americans Act or the aging network to include a discussion of the Act's mandate for advocacy and legal services and to point out things such as the focus of the Older Americans Act on economically and socially needy. It is also important to describe the purpose and functions of the area agency on aging, and how legal services fits within the broader framework of Older Americans Act services and the aging network.

Statement of Purpose: The body of the RFP begins with a general "statement of purpose" or "statement of work." This is where the area agency can state -- in very broad terms -- the type of project and activities for which it intends to contract. This "statement of purpose" should be reflected in the specific activities called for later in the "Scope of Work" section. One example of a statement of purpose might read:

In an effort to further the goals of the Older Americans Act of 1965, as amended, 42 *U.S.C.* Section 3001 et seq., with respect to provision of legal assistance to older persons, the Area Agency on Aging wishes to contract for a project that will provide legal counseling and representation for older individuals (age 60+) and that will provide broad community education and outreach to inform older persons of their legal rights.

The legal assistance provider awarded funds under this procurement will be expected to provide: (1) creative outreach efforts to serve older persons who have limited access to legal assistance and to reach those in greatest social and economic need, particularly low income minority individuals; (2) community education at sites commonly used by and easily accessible to older persons; and (3) counseling and legal representation in the following areas: (Here, if the area agency is aware of particular areas of need, it may wish to specify types of problems on which it wants a program to focus attention. Problem areas should be those that will have particular impact on older persons in social and economic need. Two of the many possible examples would be "public benefits problems" and problems related to nursing home admission and quality of care.)

Understanding of the Problem: Following the Statement of Purpose, the RFP may ask the applicant to demonstrate briefly in writing that it has an understanding of the legal needs and legal issues affecting older persons and is knowledgeable and skillful in the substantive areas of law that particularly affect older persons. The applicant should be asked to demonstrate its understanding of special considerations involved in delivering legal services to older persons and in working with older clients.

In light of the increased emphasis on targeting contained in the 1987 Amendments to the Older Americans Act, this section of the RFP should also ask for a general demonstration that the applicant is aware that services must be targeted to older persons in greatest social and economic need and that it knows how to achieve successful targeting.

Scope of Work: In this section of the RFP, the area agency specifies activities it wishes the project applicant to undertake if awarded funds, the geographic area to be served, and other requirements as to reporting, communicating, etc. The applicant is asked to describe plans for accomplishing the activities. To aid applicants in organizing their proposal and to facilitate the area agency's review of applications, the RFP can request that descriptions be broken down into: (a) service activities, (b) management activities, and (c) reporting and other required activities.

*a.* *Service Activities/Tasks*

There is a wide range of possibilities an area agency may wish to consider before deciding which legal services activities it will fund. In making these decisions, the area agency should consult with persons knowledgeable about provision of legal services, and it should be cognizant of the financial support that will be needed to successfully accomplish the specified activities. The following list is not comprehensive, but it includes examples of the types of service activities an agency may wish the provider to undertake.

1. Individual representation in administrative and court proceedings of clients 60 years of age and older. Representation of individual clients will be the major focus of funding legal services. (The area agency may wish to have individual representation focused on one or more particular issues such as public benefit programs; health insurance; representation of older persons in involuntary guardianship proceedings; housing problems; problems of the institutionalized; or consumer complaints. The area agency may also wish to limit or prohibit representation in areas where other resources exist to meet the needs of older persons or areas that are unlikely to target those in greatest need. A common area on which limits are placed is estate planning. The area agency may wish to suggest issues it feels are important but also encourage the applicant to suggest other issues about which the area agency may not be aware. [Note: While the area agency can give broad guidance on types of issues it knows to be particularly important, the setting of specific priorities and classifications of types of cases that will be handled by the program should be a joint decision of the legal provider and area agency.]
2. Impact litigation on issues that affect large numbers of older persons in the area or *class action representation* for groups of clients experiencing the same legal problem.
3. Community education on legal rights of older persons. (The applicant could be instructed to provide information on the content, frequency, audiences to be targeted, and anticipated locations of such community education efforts. If the area agency wishes to specify or suggest certain locations or frequency of programs, it may do so. The area agency should be mindful that the time spent making community education presentations is only a part of the time involved in this activity. Additional time must be devoted to preparing the presentation.)
4. Outreach activities to insure that legal services reach the (institutionalized), (minority), (rural), (homebound) elderly. (The applicant should be instructed to provide a plan for outreach activities; and if the area agency feels efforts should be focused in any particular way, it can instruct the applicant to that effect.)
5. Training of area agency staff, providers of social services, and volunteers in legal rights, legal resources, and recognizing legal issues. (The applicant might be asked to present a plan to conduct a certain number of training sessions during the year on topics that can be designated in the RFP if particular topics are needed by area aging staff. Again, the AAA should bear in mind that legal provider staff time devoted to such efforts will lessen its ability to provide direct client representation.)
6. Back-up support for the long-term care ombudsman program. (The applicant should be instructed to address its plans for coordinating efforts and setting up a formal working relationship with the ombudsman program.)

*b. Plan for Targeting Services*

The RFP should indicate that the Older Americans Act places great emphasis on providing preference in services to economically and socially needy older persons (42 *U.S.C.* §3027(a)(16)(A)). The 1987 Amendments specifically instruct area agencies to assure that all service providers will be required to specify how the needs of low-income minority individuals will be met and that they will be served in at least the same proportion they bear to the population of older individuals in the area served (42 *U.S.C.* §3026(a)(4)(A)(ii)). In light of these requirements, the applicant should be asked to provide a detailed demonstration of how it will target services to older persons in greatest economic and social need, and in particular how it will reach low-income minority individuals.

*c. Management and Staffing Plan*

In an RFP, the area agency can request that a section of the proposal be devoted to the staffing and management plan. It can specify that the applicant should supply a management plan and outline of office procedures that will demonstrate the applicant's capacity to carry out the service tasks in a cost-efficient and effective manner. It can ask about operational procedures such as the client-intake procedure; the times scheduled for intake; whether appointments can be set up or whether clients will be served on a first-come first-serve basis; office hours; whether there is more than one office location; and whether older persons will receive full services at the various locations.

The RFP should also ask for a description of the staff needed to carry out the proposed activities. A brief job description should be requested that sets forth the major activities that will be undertaken by each staff person.

The management section can also ask for information about facilities and equipment, such as whether the office is accessible and convenient to public transportation; whether it is barrier free; whether there is an adequate law library and, if not, what library facilities are available to the applicant.

*d. Reporting and Other Required Activities*

In the RFP, the area agency can set forth reporting requirements and any other requirements tied to the funding. The applicant can be asked to describe how it will comply with those requirements. The area agency might wish to require a quarterly statistical report and a semi-annual narrative report on the program. The type and extent of information expected in reports should be clearly outlined by the area agency. The applicant should then be expected to address in the proposal how that information will be acquired and tabulated. In designing this section of the RFP, the area agency should be mindful that the bidder may have other reporting requirements (e.g., those of the Legal Services Corporation) that can be easily adapted to meet the area agency requirements so that time that would be better spent serving clients is not unnecessarily spent doing reporting.

If the area agency wishes to establish any other requirements, they should be clearly set forth so the applicant can anticipate them. Some thoughts as to other requirements that might provide useful insights and information to the area agency include: (1) required quarterly meetings with the area agency director or appropriate staff to assess progress of the legal services program, special problems it is encountering, important issues on which it is working, etc.; (2) quarterly or semi-annual meetings or presentations to the area agency board of directors to provide its members with information on the legal services program and its activities; and (3) quarterly meetings with the local ombudsman to plan and coordinate efforts on behalf of institutionalized elderly.

Capacity of the Organization and Staff to Undertake the Project: The RFP should also ask for a discussion of the capacity of the applicant to successfully undertake the proposed project. It should ask for a description of the program (or law firm) structure and the organizational status (e.g., whether or not incorporated, for profit or not for profit, 501(c)(3) status, make up of board of directors -- if there is one). The credentials, experience, and any special qualifications for working with older clients of staff working on the Title III project should be requested. Information can also be requested about non-Title III funded staff, and the extent to which they will be working with or providing back-up to Title III staff.

Budget: The RFP should ask for a complete itemized budget. Any restrictions on allowable expenses should be set forth. If the area agency wants subtotals for certain line items such as salaries and wages, fringes, or staff travel, those should be specified. If there are requirements that the applicant provide a certain amount of match, the percentage or amount should be specified and any restrictions on source of match, whether it is cash or in-kind, should be indicated. If a budget narrative or explanation is desired, that should also be indicated in the RFP.

Criteria for Evaluation of Proposals: The final section of an RFP informs applicants of methods by which their proposals will be evaluated, and criteria upon which their proposals will be evaluated and judged. It is particularly helpful to applicants in their planning if the relative importance of various things they have been asked to address in their proposals is outlined in the RFP. In order to provide this information, the area agency will need to come to a decision about how much weight will be given to each section and subsection of the proposal called for in the RFP.

**B. Drafting Proposals for Title III Legal Services**

For nearly everyone working in the public law arena in the 1980s, the uncertainty of funding and the need to write proposals is a fact of life. This is certainly true for Title III legal services, where proposal writing generally is an annual activity. Although the task is not pleasant, the process of putting together a good proposal is extremely beneficial.

**1. Importance of the Proposal Writing Process**

A thorough and carefully conceived proposal serves a valuable planning function. As in the case of RFPs, planning and drafting a proposal forces existing and potential providers to examine their programs and then develop written plans that set forth goals and objectives, describe in concrete terms how those objectives will be accomplished, and establish a timeline for their accomplishment.

If a proposal did not have to be written, this type of planning would still have to occur for the program to operate effectively and efficiently. (See Chapter IX(A)(5) for a complete discussion of annual program planning.) Thus, even if funding is non-competitive or the amount of funding is small, the substantial amount of time required to prepare a good proposal is well worth investing, as it can be recouped in the initial stages of implementing the program because the basic structure, method of operation, staffing pattern, etc. will already have been established in the process of preparing the proposal.

A well-written proposal also sets parameters on activities that a provider is able to undertake, given a particular level of funding, staff, and resources. If these parameters are explained clearly in the proposal, this should help insure that expectations of the area agency providing the funding are realistic, and should minimize the need for re-negotiating the contract with the agency during the project year.

The proposal writing process is also important because it usually provides the area agency a "first impression" of the quality of work the applicant is capable of producing, if funded. The proposal should be readable, logical and have a professional appearance. Careful compliance with proposal guidelines issued by the funding agency demonstrates a similar ability to comply with reporting requirements, statutory and regulatory mandates, etc.

**2. Suggestions for Preparation of a Proposal**

The basic elements of a good proposal track the elements outlined in the preceding segment of this Chapter on "Requests for Proposals." Essentially a proposal describes in some detail the "who, what, when, where, why, how, and how much" of the legal services program being proposed. A good proposal clearly states in measurable terms what will be achieved with the funding being requested. It speaks to the ability and expertise of the applicant to accomplish the proposed tasks, and describes major tasks and the manner in which those tasks will be carried out. Also, a good proposal follows the guidelines and instructions set forth by the potential funder with respect to form and content of proposals to be submitted.

In drafting a proposal it is helpful to place yourself in the position of the reviewer(s) who will be making the decision about funding. What would convince you that a project merits funding? How important is the goal being proposed? How likely is the project's success? What impact will the project make on the lives and well being of older persons? Is the budget appropriate to the tasks being proposed? Is the project planned in a way that makes it cost-effective? Taken as a whole, does the proposal provide the area agency with information adequate to assess the applicant's ability to conduct a quality legal services program for older persons?

The following discussion outlines the major sections that should be included in a Title III legal services proposal and presents some thoughts as to what might be addressed in each. It is not intended as a comprehensive discussion of proposal writing, for different approaches are important for different types of funding sources. Rather it presents broad guidelines specifically geared for Title III legal assistance.

Cover Letter/Introduction: The cover letter/introduction should introduce reviewers to what it is they are reading. It should indicate the name of the applicant submitting the proposal and that it is being submitted in response to an RFP from the area agency, and that the applicant is proposing to undertake a project to provide legal counseling and representation, outreach, community legal education, etc. on behalf of older persons in the area. You may also wish to indicate the total dollar amount being requested to undertake the project. If you wish to highlight certain aspects of the proposal, that can also be done in this section. This is an appropriate spot to point out how the applicant and proposed project meet the evaluation criteria against which reviewers will measure proposals.

Proposal Summary/Abstract: Some funders ask for a proposal summary at the start of a proposal. This should state: the major goals and objectives of the project; why the project is important; a synopsis of major tasks to be undertaken, outcomes/products expected, and the plan for evaluating progress and achievements of the project; and the amount of funding requested and match that will be provided.

Unique Capabilities of the Applicant: If there is no page limit and no specific format that must be followed, it is useful for the reviewer as well as the applicant to point out unique capabilities. It is an opportunity for the applicant to assess and then indicate in writing why it is particularly well suited to undertake the proposed project. Such things as prior successful experience in delivering legal services to older persons, areas of expertise, particular skills of staff, good working relationships with the aging services network, and so forth can be identified in this section.

Need for the Project/Understanding of the Problem/State of the Art: The precise nature of this section will depend upon what is called for in the RFP. In general, it is a rationale that sets the scene with facts and figures of why the particular project is important, weighs the work of other legal providers, and indicates how the proposed project will build on that work. It should be used to demonstrate that the applicant has an understanding of why the proposed project is needed, the dimensions of the need, and any special aspects of need that will be addressed by the project (for example, doing outreach and intake in nursing homes and adult foster care homes in order to serve the institutionalized if that has not been done in the past). It should discuss any gaps and deficiencies in present services of which the applicant is aware and which will be addressed by the project. It should indicate the results and benefits expected from the project, i.e. the impact the applicant expects the proposed project to have on the lives and well-being of older persons targeted for services.

This section should also demonstrate that the applicant has an understanding of the older client population and how to reach and communicate effectively with that population. Similarly, it should demonstrate that the applicant has a solid understanding of the substantive areas of law that particularly affect older persons and has staff with skills in interviewing and counseling as well as in representing clients in court and at administrative hearings. In addition, it should show that the applicant makes efforts to learn about and adopt program models and practices that have been found to be successful in other locations.

The applicant should also indicate here that it is aware of special requirements for services provided under the Older Americans Act, such as the obligation to target services to those in greatest economic and social need, the regulatory requirement to provide clients an opportunity to contribute to the cost of services, and the prohibition against means testing.

Goals and Objectives: Based on the needs described in the previous section, and on any objectives specified in the RFP, this section should delineate clearly the overall goal(s) of the proposed project, and the objectives that have been established in order to attain that goal. Objectives should be realistic, given the time and resources available to achieve them, and to the extent possible, should be stated in measurable terms. The objectives should then be used to guide development of the work plan to be described in the next section.

Work Plan/Methodology: The work plan details what tasks and activities will be undertaken by the project to accomplish established objectives, who will undertake which activities, and the time frame in which each of the major activities will be accomplished. It must, of course, be built around any tasks that are specifically called for in the RFP. It also provides the basis for developing a budget. If appropriate, the applicant should discuss why the particular methodology proposed works best given needs and circumstances. For purposes of organizing the proposal, it is useful to divide and discuss activities by category. Typical categories are planning tasks, direct service tasks, management tasks, and reporting tasks.

For a proposal to be useful as a planning document, it is essential that the work plan be as specific and detailed as possible. Tasks that are directly related to achieving specific objectives set out in the previous section should be proposed.

*a. Tasks/Activities to Achieve Goals*

It is useful, prior to discussing individual tasks, to simply list all of the major tasks and activities that are anticipated. If they will be discussed according to categories, list them under the appropriate category (e.g., planning and needs assessment, targeting, outreach and community education, direct service provision, reporting, etc.). If a time frame or date of completion can be determined for the tasks, this could be indicated in the listing.

It is also useful to briefly summarize at the start of the work plan the staff that will be required to accomplish the proposed activities. Similarly, it is useful to indicate what office facilities, equipment, library resources, etc. are needed to successfully complete the project, and that those resources are available.

*b. How Tasks Will Be Accomplished*

This section is a task-by-task discussion of exactly what will be done, how it will be done, how much time and effort will have to be devoted, whether it is an ongoing activity or whether there is an expected completion date. For planning and budgeting purposes, the more detail the better. For example:

1. If written products are anticipated, estimate the number of pages and number of copies that will be made.
2. If community education and outreach are anticipated, be sure to discuss the estimated amount of preparation time, travel time and distances, materials to be prepared, and so forth.
3. With respect to direct service provision, discuss the difference in time, staff and other resources needed to provide brief services, administrative representation, judicial representation, etc. Estimate the numbers of clients to receive the various types of services.
4. If any major cases (e.g., class actions or impact litigation) are anticipated, discuss how they will be accomplished and resources needed.
5. With respect to the ombudsman program, discuss how and by whom support will be provided.

The 1987 Amendments to the Older Americans Act require that all providers of Title III services specify how they will target older persons in greatest need, particularly low-income minority individuals. Thus the work plan should include a detailed discussion of how these persons will be reached and served. (Please see Chapter I for the statutory requirements regarding targeting.)

*c. Reporting and Other Tasks to be Undertaken*

In addition to tasks related to provision of services, it is important to plan time and resources for reporting and any other tasks called for in the RFP or anticipated by the applicant. Time needed for reporting should be realistically estimated given the frequency of reports required, the types of statistics that will have to be compiled, narratives that will have to be written, etc.

*d. Management and Staffing Plan*

This is an important but often overlooked portion of a proposal. It can be completed only after the sections on project tasks and reporting and other tasks have been completed. In this section the applicant should indicate the compilation of staff, volunteers, and consultants that will be required to accomplish all proposed tasks. The percentage of each person's time on the project should be indicated. Also, the extent to which they will be paid with project funds or contributed as match should be specified.

For each of the staff and consultants, there should be a brief job description that sets forth responsibilities of the individual for specific project tasks. An organizational chart and plans for managing project staff and activities should be presented. A Gantt Chart indicating the months of the project in which different activities will occur is also useful.

Another very valuable planning document -- though substantial time is required to create it -- is a "Staffing by Tasks and Time" chart. Such a chart lists all major tasks (including reporting and management tasks) in a column on the left hand side of a page. It lists staff/consultants and the amount of time each person will be working on the project across the top. It then estimates how much time (usually in days) each person will spend working on each activity. The total time for each person required for all of the tasks should equal the amount of time allotted for them to work on the project.

Organizational and Staff Capacity: This section should describe the applicant organization -- its structure, purpose, board of directors, number of years in operation, its complement of staff, their overall skills and areas of expertise. It is also useful to discuss previous undertakings that demonstrate the program's capacity to undertake successfully projects similar to the one being proposed. Resources and facilities of the organization, as well as those needed to carry out the proposed project, should be pointed out.

The qualifications, experience, and areas of expertise of each staff person and consultant who will be substantially involved in project activities should be described, with one to two paragraphs devoted to each person.

Itemized Budget: A complete itemized budget should be developed which reflects all costs associated with proposed staff and activities. The budget should be composed of a line-by-line itemization of costs, including salaries, materials, overhead, mailing costs and equipment purchases. Indicate clearly which costs are being requested of the funder.

It is very important to be realistic in developing a budget and not to promise to do something for less than it will cost. All costs should be considered in developing a budget, including planning, service delivery, case preparation, travel, reporting, etc. Most budgets will include three columns: (1) costs that will be charged to the funder; (2) costs that will be contributed by applicant; and (3) total project costs.

Major costs ordinarily associated with a legal services project include:

Salaries and Wages

Fringe Benefits

Staff Travel

Supplies

Overhead (rent, utilities, furniture, etc.)

Equipment

Long Distance and Other Telephone Costs

Development and Dissemination of Publicity

Development and Dissemination of Educational Materials

Materials Reproduction/Copying

Malpractice Insurance

Subscriptions and Publications

Summary: Even if a proposal summary/abstract has been included at the beginning of the proposal, it is useful for reviewers if a brief summary of the total proposal can be provided as the final item. This allows the reviewer one last glimpse at the applicant's overall project idea, while enabling the applicant to "sell" its qualifications and proposed project one last time.

**ANNOTATIONS**

Introductory Note: *At the time this annotated contract was prepared the regulations to implement the 1987 Amendments to the Older Americans Act had not been issued; however, the proposed Amendments were released on March 29, 1988 [Federal Register Vol. 53 No. 60, page 10121 et. seq.] for public comment. The annotated contract cites to the current regulations; however, the proposed regulations are also cited as follows [e.g. Proposed Reg. 1321.71(c)] Readers are cautioned to review the final version of the regulations when issued before utilizing the citations in this contract.*

1. If the Provider is not a non-profit corporation, its legal status should be stated. If either party has more than one office, the address of the main office should be used.
2. The recitals set forth in paragraphs 2 through 5 are not necessary, but can be included to show the purposes for which each party is acting.
3. Under second WHEREAS, list counties included in Planning and Service Area.
4. Under third WHEREAS, if Provider is also a Legal Service Corporation recipient, alternative "WHEREAS" might read: "WHEREAS, Provider is an organization that has a legal services program under the provisions of the Legal Services Corporation Act (42 USC Section 2999 et seq.)."
5. The standards which 45 C.F.R. Section 1321.73(b) [Proposed Reg. 1321.7(c)] enumerate are:
6. Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;
7. Demonstrates the capacity to provide effective administrative and judicial representation in the area of law affecting older persons with economic or social need.
8. Demonstrates the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;
9. Demonstrates the capacity to deliver legal services to institutionalized, isolated or homebound older individuals effectively;
10. Demonstrates the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

**SAMPLE CONTRACT PROVISIONS**

Description of Parties and Legal Authority

This agreement (hereinafter, "Agreement") is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_ Area Agency on Aging for Planning and Services Area #\_\_\_\_\_\_ for the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter "Agency") and\_\_\_\_\_\_\_\_\_\_ (hereinafter, "Provider") a non-profit corporation organized under the laws of the state of \_\_\_\_\_\_\_\_\_\_\_\_\_ . The Agency's address is\_\_\_\_\_\_\_\_\_\_. The Provider's address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS, under the provisions of Title III of the Older Americans Act of 1965, as amended (42 USC Sections 3001 et. seq.) hereinafter "Act", Agency is mandated to expend an adequate portion of funds for the provision of legal assistance, as defined in the Act; and

WHEREAS, Agency desires to fund provision of legal assistance to persons who are domiciled within the geographic area it serves (which includes \_\_\_\_\_\_\_\_\_\_) (hereinafter "Service Area") and who are at least 60 years of age (hereinafter "beneficiaries") with a priority for those beneficiaries with the greatest economic and social need with particular emphasis on low income minority individuals as set out in the Act; and

WHEREAS, Provider qualifies as a provider of legal assistance under Section 307 (a) (15) of the Act; and

WHEREAS, Agency finds that Provider meets the conditions which legal assistance providers must meet under 45 C.F.R. Section 1321. 73 (b) and is best able to provide legal assistance for beneficiaries;

NOW THEREFORE, it is mutually agreed by and between the parties as follows:

I. Legal Services To Be Provided

* Provider will provide legal assistance to beneficiaries in accordance with the provisions of Exhibit "A" attached to this Agreement.
* Provider will utilize the services of the staff described below to provide the legal assistance set forth in this Agreement: [specify descriptive job title and percentage of working time devoted to performance of this contract (e.g. 10 hours per week of staff attorney)].
* Provider will not condition the provision of legal assistance to any beneficiary on that beneficiary's level of income or resources, or on that beneficiary's disclosure of information about income or resources [and will not require any beneficiary to apply first for services through a Legal Services Corporation recipient] provided, however, that provider may question beneficiaries about their financial circumstances as a part of the process of providing legal advice, counseling and representation and for the purpose of identifying additional resources and benefits for which a beneficiary may be eligible.
* Provider will coordinate its services with Legal Services Corporation recipients located in the Service Area in order to concentrate legal services funded under this Agreement on older persons with greatest economic or social need.

**Annotations**

I. B. Section 302(4) of the Act defines "legal assistance" as ". . . legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a nonlawyer where permitted by law, to older persons with economic or social needs." A broad definition of persons who will provide the services allows for use of paralegals and other nonlawyer advocates (paid and volunteer). It may be appropriate to attach an exhibit describing the job titles listed in this paragraph and the minimum qualifications for each job classification.

I.C. 45 C.F.R. Section 1321. 73(c) [Proposed Reg. Section 1321.71(d)] prohibits a Provider from using a means test to determine eligibility for services. Once the person is accepted as a client that person can be asked financial information for the reasons enumerated in this paragraph. 45 C.F.R. Section 1321.73(d) [Proposed Reg. Section 1321.71(e)].

I.D. This provision should be used if Provider is not a Legal Services Corporation program as an additional means of insuring that the program targets the neediest elderly. The coordination specified in this paragraph is required by Section 307(a)(15)(B) of the Act.

* Provider will furnish legal assistance under this Agreement without diminishing the level of legal services which Provider provided to beneficiaries prior to the effective date of this Agreement (the "base level" of services), except that Agency agrees to modify or waive this provision, as reasonably appropriate in light of all the surrounding circumstances, if events beyond Provider's control limit the ability of Provider to provide the base level of legal services. Provider further agrees to ensure that funds provided under this Agreement will not be used to replace funds from non-federal sources. Provider agrees to use its best efforts to supplement the funding of services under this Agreement with support from other public and private sources.

**Annotations**

I. E. This is a "maintenance of effort" provision, and is based on Section 307(15)(D) of the Act. It is inserted in order to insure that other funds already being spent on elderly services are not being replaced by Title III funds.

If this agreement funds new personnel, this provision should adequately guarantee maintenance of effort. Otherwise, this paragraph describes the "base level" of services already provided so that provision of additional services funded by this agreement can be substantiated (services during contract period should equal base level services plus the services funded by this contract, unless budget cuts or other serious problems intervene). For example, the following language could be added:

For purposes of this Agreement, it is mutually agreed that Provider has provided legal services to beneficiaries prior and up to the commencement of this Agreement (referred to as "baseline figure") at an average rate of\_\_\_\_\_\_\_ "service units" per month [as defined in Exhibit "A", paragraph E (1)]. Legal services provided under this Agreement shall be in addition to the baseline figure; provided that if circumstances beyond the reasonable control of the Provider should occur which prevent Provider from maintaining its baseline figure, Agency and Provider will adjust the baseline figure accordingly through negotiations. Such circumstances would include, but are not limited to, reduction in non-Title III funds (after adjustment for inflation), turn-over in staff, employee strikes and work stoppages, and the like.

* Provider will attempt to provide services to low-income minority individuals in a least the same proportion as the population of low- income minority older individuals bears to the population of older individuals of the area served by such provider. Provider will attempt to satisfy the service needs of low-income minority persons in its Service Area by utilizing the procedures specified in Exhibit "A", paragraph E.5.
* Provider will give beneficiaries a free and voluntary opportunity to contribute to the cost of the services they receive; to ensure their privacy with respect to these contributions; and to establish procedures to safeguard and account for all such contributions. All such contributions shall be used solely to expand the services provided under this Agreement and shall not affect any obligation of Agency to make payments under this Agreement. Provider will not deny services to any beneficiary because s/he declines to make any contributions to the cost of the services.

**Annotations**

I.F. This provision is required by §306(a)(5)(A)(ii) of the Act. This section of the Act requires that the agreement between the Provider and Agency specify how the Provider intends to meet the needs of low income individuals in the area served by the Provider.

I.G. See 45 C.F.R. Sections 1321.9 and 1321.69 [Proposed Regs. Sections 1321.17(f)(5) and 1321.67]. These provisions probably require no more than posting a sign which indicates that donations are accepted or maintaining handouts in the waiting room. Provider staff should know the policy in order to respond to client questions. So as not to discourage clients from seeking legal assistance, some Providers choose not to inform clients that contributions are accepted until after service has been rendered.

* Payment for Services

A. Agency will pay to Provider as total compensation under this Agreement an amount not to exceed the sum of \_\_\_\_\_\_\_\_($ ) for the services provided under this Agreement. The budget and the budget narrative for this Agreement are set out in Exhibit "\_\_\_". No expenditures shall be made, or obligation incurred in excess of the authorized total budget. Any expenditure by Provider of Title III funds, not within the limitations of the approved budget, is not a chargeable cost under this Agreement and such will be borne by Provider.

B. Provider is allowed to transfer up to 20% of any line item to any other line item. Any other reallocation of funds requires prior notice to and written approval by Agency.

**Annotations**

II. A. The payment method used in this Agreement is a cash advance method, with a maximum amount to be paid under the Agreement per twelve month period. If a small amount of money is involved, (less than $25,000) it is preferable to use a fixed price contract. To convert this Agreement to a fixed price contract, delete paragraphs III D, II A, II B, II C, and II D; renumber paragraph II E as "II C"; renumber paragraph III E as "III D"; and substitute the following for paragraphs II A and II B:

II.A. Agency agrees to pay to Provider the fixed sum of \_\_\_\_\_\_\_\_($\_\_\_\_) for the provision of the services set forth in Exhibit "A" in the manner described by this Agreement.

B. Agency agrees to pay compensation to Provider in twelve equal monthly installments. The first installment shall be paid within \_\_\_\_\_\_ working days of the beginning of the contract period and continue at monthly intervals until the \_\_\_\_ payment is made. The balance of the contract price will be paid upon receipt of the final reports required under paragraph III D. Agency may withhold payment while a report required under paragraph III D is overdue by more than \_\_\_ working days. Upon submission of the required reports, all payments due will be paid within \_\_\_ working days.

II. B. This provision, in essence, allows the Provider to move 20% of the total contract amount into any one line item or among several items. If a more restrictive policy is desired, use the words "Provider may transfer funds among line items provided that no line item may be exceeded by more than 20% by reason of the transfer unless prior written approval is given by the Agency." See also 45 C.F.R. Part 74-Subpart L for Programmatic changes and Budget Revisions Requirements.

C. Agency will compensate Provider in monthly installments upon receipt of request for payment of funds. Provider shall submit a request for funds by the \_\_\_\_\_\_ day of each month based on an estimate of its funding needs for that month. The first request shall not be made earlier than \_\_\_\_\_\_ days after the effective date of this Agreement. Beginning with the [second] [third] month of this contract, Provider must submit with its request for funds a financial report on the form attached as Exhibit "\_\_\_\_" showing actual expenditures for the [prior month] [month preceding the prior month]. If the financial report is late, it must include all completed, unreported [months.] [months except for the immediately proceding month].

The Agency agrees to make payments within \_\_\_\_ days of receipt of the request for funds specified in the preceding paragraph, provided that all financial reports due have been submitted in correct form. The amount of the payment shall equal the amount requested, if reasonable, less a deduction for the excess of earlier advances over reported expenses.

**Annotations**

II. C. If possible, payment procedures should be adapted to existing procedures of Provider and Agency. See also 45 C.F.R. Part 74-Subpart K for Grant and Subgrant Payment Requirements.

D. Provider shall submit the last request for payment to Agency not later than 90 calendar days after the expiration of the Agreement. It shall include a detailed final accounting of all expenditures made and costs incurred for the performance of this Agreement. Within \_\_\_\_ days after receipt of such final accounting, Provider and Agency shall adjust, by payment of one party to another, the amounts due under this Agreement or Agency may withhold the final monthly payment under this agreement until Provider has submitted the final accounting statement and program performance narrative required by this Agreement.

E. Provider will provide $ \_\_\_\_\_ non-federal match through allowable cost of third-party [in-kind] [cash] contributions.

**Annotations**

II. E. Funds received from the Legal Services Corporation are considered "non-federal" funds (per AoA Policy Announcement - PA-III-80 (Sept. '80) of Commissioner of AoA). The Commissioner ruled in a Texas case that an AAA could not require a 50% cash-only match. There is a strong legal basis for arguing that an AAA cannot require that the match be in cash: it must accept an in-kind match.

III. Accounting, Records and Reporting

A. Provider will maintain books, records, documents, copies of invoices, payrolls, and other evidence of all expenditures and receipt of funds under this Agreement (collectively called "business records"), in accordance with generally accepted accounting procedures and practices.

B. Information regarding Provider's individual clients, including names, addresses and all other informatin regarding individual clients which is protected by the attorney/client privilege or which attorneys are prohibited from disclosing under the professional code applicable to attorneys, is confidential and Provider is not obligated to disclose this information to Agency; provided, however, that Agency may require Provider to hire a mutually agreed upon auditor who shall be employed by Provider to verify that Provider is handling funds properly (including the funds of individual clients) and/or is serving the clients Provider has specified in its reports to Agency. This auditor shall make the results of his audit (without devulging confidential information) available to Agency. Where Agency requires Provider to retain an auditor under this provision Agency shall reimburse Provider for the costs of such audit. If Provider and Agency cannot agree on the individual to act as auditor, such individual shall be named by {State office on aging} {president of \_\_\_\_\_ County Bar Association}.

**Annotations**

III. A. & B. Provisions for acceptable accounting should be included, but the Act and the codes of professional responsibility applicable to attorneys require Providers to ensure that client-attorney confidentiality is maintained. See also, "Confidentiality" section of these materials for discussion of confidentiality issues in reporting.

C. Subject to the confidentiality provisions of paragraph "B" above, Provider will provide federal auditors, state auditors and/or other qualified persons authorized by the Agency with access, for the purpose of audit and inspection, to only those business records maintained pursuant to this Agreement. Provider agrees to allow such access at Provider's address during regular business hours, provided that Agency gives notice of at least \_\_\_ working days to Provider in advance of any audit and/or inspection.

D. Provider agrees to maintain all business records made under this Agreement for a minimum of three years after final payment under this Agreement and as required under 45 CFR Section 74.21.

E. Provider will submit a financial report to Agency by the \_\_\_\_\_ day following the end of each \_\_\_\_ month period of this Agreement, which will report on financial transactions that have occured during the preceeding \_\_\_\_\_ months. Provider agrees to submit this report on the form attached hereto as Exhibit "\_\_\_\_".

F. Provider will submit a statistical report to Agency by the \_\_\_ day following the end of each three-month period of this Agreement, which will report on services rendered for the proceding three months. This report shall be submitted on the form(s) attached hereto as Exhibit "\_\_\_\_". Provider will submit to Agency a narrative performance report within \_\_\_\_\_\_ days following the end of each (quarterly) (semiannual) period of this Agreement. This report shall be submitted on the form attached hereto as Exhibit "\_\_\_\_".

**Annotations**

III.C. Audit and inspection should be specifically limited to records pertaining to expenditures, etc., under this Agreement, and should not permit access to records of other grants or funding. If Provider and Agency agree that an independent auditor is to be employed by Provider, then the cost for such should be included as a line item in the budget.

III.E. Exhibit "\_\_\_" should contain the financial reporting form to be used. No sample is included, since these forms tend to be quite state-specific.

III.F. Exhibit "\_\_\_" should contain the monthly case statistical reporting form to be used. See "Monitoring and Reporting" section of these materials for discussion and examples of statistical reporting systems.

Exhibit "\_\_\_" should contain the narrative reporting form to be used. See "Monitoring and Reporting" section of these materials for a discussion and examples of how to develop an appropriate format for narrative reporting.

IV. Rights of Beneficiaries

A. Provider will ensure that the views of beneficiaries are obtained about the services they receive. Provider shall involve representatives of organizations serving beneficiaries in the Service Area in its priority setting process for legal services if Provider is subject to the Legal Service Corporations Act including the process required by the Legal Services Corporation Act. Provider shall make good faith efforts to notify all elderly organizations in the Service Area of this opportunity within a reasonable time to allow their full participation. The organizations contacted shall include, at a minimum, the following:

[ specify organizations].]

B. Provider shall insure that legal assistance will be provided in the following languages for beneficiaries whose principal language is not English: [specify languages].

C. Provider shall develop and maintain a written grievance procedure that assures any beneficiary aggrieved by Provider's denial of services, or with the quality of services furnished by Provider, with an adequate opportunity to resolve the grievance. Provider shall advise all beneficiaries of the existence of the grievance procedure and shall make a copy of the grievance procedure available upon request.

D. Provider shall keep confidential all reports and all information, including identities, regarding individual beneficiaries and clients. In accordance with the Code of Professional Responsibility applicable to attorneys practicing in \_\_\_\_ (name state) and in accordance with Sections 306(d) and 307(g) of the Act.

**Annotations**

IV.A. This provision gives one example of how Provider may meet its obligation to obtain the views of the elderly on their legal needs. Federal regulations require Legal Services Corporation funding recipients systematically to take the views of their client communities into account in determining their program priorities. See 45 C.F.R. Section 1620.

IV.B. See 45 C.F.R. Section 1321.73(b)(5) [Proposed Reg. Section 1321.71(c)(5)]. This provision need only be included in areas where a significant number of clients do not speak English as their principal language. The parties should determine whether their area so qualifies, and should specify the languages.

IV.C. A client grievance procedure is not required under the Older Americans Act or regulations, but is required under Legal Services Corporation regulations. See 45 C.F.R. Section 1621. Even if Provider is not an LSC recipient, a grievance procedure ensures beneficiary input and is generally a good administrative practice. The LSC grievance procedure may be a useful model.

IV.D. See "Confidentiality" section of these materials for a discussion of the effect of the Code of Professional Responsibility on reporting and auditing issues.

V. Cooperation Between Agency and Provider

A. Provider agrees to cooperate with any reasonable efforts undertaken by Agency to evaluate or monitor the effectiveness, feasibility, and costs of services under this Agreement, provided that such evaluation or monitoring is consistent with the other terms of this Agreement.

B. Provider agrees to include on all publications written and distributed under this Agreement the following acknowledgement: "This program is supported, in part, by funds provided by the \_\_\_\_\_\_\_\_\_\_ Area Agency on Aging, the \_\_\_\_\_\_\_\_\_\_\_\_ (name of state) Agency on Aging and the U.S. Department of Health and Human Services, but the opinions expressed herein do not necessarily reflect the opinions or policy of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Area Agency on Aging or of any agency of (name of state) or the U.S. government."

**Annotations**

V.A. It may be advisable for Agency and Provider to agree in advance on an evaluation form which Agency will use and specific evaluation dates. See also 45 C.F.R. Section 74.82 (under Part 74 - Administration of federal grants) which addresses monitoring and review.

C. Agency agrees to supply Provider with:

* a copy of Agency's written procedures regarding outreach, training and the use of elderly and other volunteers and paid personnel, and coordination with other service providers:
* names and addresses of elderly groups located within the Service Area;
* a copy of any of the procedures or policies applicable to this Agreement that are not readily available to the public. Agency agrees to supply these documents to Provider within \_\_\_\_ days of the execution of this agreement. Procedures received after this date do not apply to this Agreement until received, and then apply prospectively only, notwithstanding any other provision of this Agreement.

D. Agency agrees to cooperate with Provider and with other agencies that fund Provider in order to avoid duplicate monitoring and evaluation efforts where possible.

E. Agency agrees not to interfere with any attorney or non-attorney advocate employed by, or volunteering for, Provider in carrying out duties to his/her clients. If this provision is in conflict with any other provision of the Agreement, this provision shall control.

F. Agency and Provider agree to utilize the dispute resolution procedure set forth in Exhibit "B" attached to this Agreement to resolve grievances arising under this Agreement.

**Annotations**

V.C. This provision insures that Provider will have available to it the information

necessary to create a good outreach and referral system.

V.D. Provider should advise Agency on ways that duplication of monitoring efforts can

be avoided.

V.E. This provision insures that clients will be guaranteed their right to private

communications with their legal advocate.

V.F. See Exhibit "B" for an informal grievance procedure that seeks to resolve conflicts

over interpretation of, or compliance with, terms of the Agreement.

VI. Compliance with Applicable Law

A. Provider agrees to comply with Title VI of the Civil Rights Act of 1964 in that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected t o discrimination under this Agreement. Exhibit "\_\_\_" [assurance of compliance form] is incorporated by reference into this Agreement.

B. Provider agrees that it will not discriminate against qualified handicapped persons in accordance with Section 504 of the Rehabilitation Act of 1973.

C. Provider agrees that it will not discriminate on the basis of age in compliance with the Age Discrimination Act of 1975, as amended, or on the basis of gender.

D. Agency and Provider agree to comply with all applicable state, federal and local laws and regulations in the performance of their obligations under this Agreement.

**Annotations**

VI.A. 45 C.F.R. Section 1321.71 [Proposed Reg. Section 1321.5] requires that all activities under Title III of the Older Americans Act comply with a number of other regulations including: 45 C.F.R. Part 80 (Nondiscrimination under programs receiving federal assistance through DHHS; Effectuation of Title VI of the Civil Rights Act of 1964); 45 C.F.R. Part 84 (Nondiscrimination on basis of handicap) and 45 C.F.R. Part 90 (Nondiscrimination on basis of age).VII. Effective Date, Termination, Renewal

A. 1) This Agreement shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 19\_\_ and shall expire on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 19\_\_, provided that at least ninety (90) days before the expiration date, Agency shall reevaluate Provider under the criteria set out in 45 C.F.R. Section 1321.73(b) [Proposed Reg. 1321.71(c)]. If Agency determines, pursuant to this reevaluation, that Provider is still the entity best able to provide legal services for beneficiaries, Agency shall, sixty (60) days before the expiration of this agreement, notify Provider of:

* its intent to fund Provider for an additional period of time; and
* its best estimate of the duration of the funding period and the funding level.

The parties shall amend this Agreement, including the budget, as needed and in accordance with paragraph (VIII) (A) of this Agreement, to effectuate the continuation of this Agreement.

2) If Agency should determine, pursuant to the reevaluation provided in Paragraph VII (A) (1) above, that Provider is no longer the best entity for the provision of legal services to beneficiaries, Agency shall notify Provider, on or before the sixtieth (60th) day before the expiration of this Agreement, that the Agreement will not be extended.

**Annotations**

VII. A. (1) It is anticipated that this will be an ongoing program but that at least yearly re-evaluation will occur. If the program is continued per this provision, an amendment to the budget for further funding would be necessary.

An alternative procedure would give Agency the option of writing a new Request for Proposals for the new contract year. This would give Agency an opportunity to explain any changes it considered necessary to the terms of its present contract, and to notify other possible legal providers of the availability of grants. Agency could write a new Request or could simply amend its prior year's Request. Unless otherwise indicated, Provider's responsive proposal could be its prior year's proposal with amendments addressing specific changes in the Request. Any resulting contract would also contain amendments setting out agreed upon changes. Although the proposed wording below does not mention evaluation, it is important to remember that the criteria for grant awards contained in 45 C.F.R. Section 1321.73(b) [Proposed Reg. Section 1321.71 (c)] should be compiled with in evaluating Provider. Annotation (2) below is also relevant in the event that Provider is not awarded the new contract.

The first sentence in paragraph A. 1) would end after "shall expire on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_ ." The rest of that paragraph, beginning with "If Agency determines", deleting the reference to evaluation, would become A. 2). The present Paragraph A. 2), deleting the reference to evaluaton, would become A. 3). The following language would be added to A. 1):

Ninety (90) days before the expiration date, Agency shall make available to Provider a copy of Agency's written request for proposals for the new contract year. Such request shall specifically and separately set forth any program features as to which Agency desires changes from existing contract provisions or program operations.

(2) Section 307 (a) (5) of the Act mandates that the State agency provide an opportunity for hearing to: "Any area agency on aging submitting a plan under this title, to any provider of service under such a plan is denied or to any applicant to provide service under such an [area agency] plan." Therefore, Provider may want to substitute the following clause for A (2):

If the Agency should determine that Provider is no longer the best entity for the provision of legal services to beneficiaries, Provider shall be entitled to a pre-termination hearing before the designated State Agency in accordance with the provisions of Section 307(a)(5) of the Act. This clause would apply to the Provider the same hearing procedures that are applicable when AAAs are contesting actions by the State. It is necessary to "borrow" these procedures because the Act does not specify the hearing procedures applicable to Providers.

VIII. Miscellaneous Contract Provisions

A. Amendments

Agency and Provider agree that either party may, from time to time, request changes to this Agreement, including changes in the scope of services of Provider to be performed hereunder. Such changes, including any increase or decrease in the amount of Provider's compensation, which are mutually agreed upon by and between the parties, shall not be effective unless and until they are incorporated in written amendments to this agreement signed by both parties. No oral modification of any of the provisions of this Agreement shall bind either party to this Agreement.

B. Indemnification

The Provider shall be solely responsible for and shall keep, save and hold the Agency harmless from all claims, loss, liability, expense, or damage resulting from or in any way connected with the performance of this contract which results from any act or ommission including, but not limited to, negligence or malpractice of any of its directors, officers, employees or agents. Provider's liability under this provision shall continue after the termination of this agreement with respect to any claims, liabilitiy, loss, expense or damage resulting from acts arising out of performance of this contract.

C. Insurance

Provider shall maintain coverage for malpractice or other professional liability in the amount of at least \_\_\_\_\_\_\_\_\_ per occurence and \_\_\_\_\_\_\_\_\_ as an aggregate amount. [Provider shall also purchase and maintain fidelity bonds of no less than \_\_\_\_\_\_\_ per incident for all employees with direct acces to, or responsibility for, the receipt and disbusement of funds]. Proof of said insurance shall be furnished to Agency at the execution of this agreement and thereafter upon demand.

D. Assignment/Subcontracting

The Provider shall not assign or subcontract any interest in or obligations arising under this Agreement, without the written consent of the Agency.

E. Integration

All exhibits attached to this Agreement are incorporated into this Agreement by reference. This Agreement represents the entire agreement of the parties and supercedes all prior oral agreements between the parties relating to the subject matter contained in this Agreement.

F. Severability

Each clause of this Agreement shall be severable and in the event that any clause, sentence, word or portion of this Agreement is declared unenforceable, the remainder of this Agreement shall be effective and binding upon the parties.

IN WITNESS THEREOF, the parties, Agency and Provider, by and through their authorized officers, have duly executed this Agreement on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 19\_\_\_.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

[name of Area Agency on Aging]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

[name of legal services provider]

**EXHIBIT "A" – SERVICES**

It is mutually agreed between the parties as follows:

* Services shall commence on the \_\_\_\_\_\_ day of \_\_\_\_\_\_ 19\_\_.
* Provider shall maintain an office(s) at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, where beneficiaries (as defined in this Agreement) shall be able to apply for and receive legal services during ordinary business hours.
* Provider shall provide legal services as needed in the following civil matters, in descending order of priority:
* Protective Services, including [adult abuse], [mental health commitment], and [representation of ward in involuntary guardianship or conservatorship proceedings];
* Health Care, including nursing-home care, hospital and other institutional care, and health insurance;
* Public benefits, including [Social Security], [Supplemental Security Income], [Food Stamps], [Medicare], [Medicaid], public and subsidized housing, energy assistance;
* Landlord-tenant problems, including substandard housing, evictions, and rent disputes;
* Other civil cases for beneficiaries in the greatest economic and social need, except that legal services shall not be provided in fee-generating cases unless adequate private legal representation is unavailable, in accordance with the terms of 45 C.F.R. Section 1321.73 (h) [Proposed Reg. 1321.71(g)].

**Annotations**

Exhibit "A"

A. Note that services will not necessarily commence on the effective date of the Agreement.

C. This paragraph describes one possible set of priorities that could be adopted by a legal program. Setting priorities is one means of directing services to the most economically and socially needy seniors without the use of a "means test." The nature of the priorities outlined here would tend to help insure that the poorest and most helpless elderly would have the greatest likelihood of obtaining legal services.

* In fulfilling its obligations under paragraph C above, Provider shall provide direct legal services to beneficiaries by means of:
* Individual case representation and advice to [number] beneficiaries;
* Impact litigation or class action litigation on issues affecting important rights or benefits of the elderly in accordance with the priorities specified in paragraph "C" above.

**Annotations**

D. The Act at Section 302(4) defines "legal assistance" as advice and representation by an attorney, or by a non-attorney as permitted by law. Thus, this Agreement highlights direct representation of clients as the critical ingredient of "legal assistance." While other elements (e.g., community education) are important, they cannot, standing alone, be considered to satisfy the area agency's responsibility to fund direct advocacy.

The specific forms of legal representation outlined in this paragraph allow a legal program, if desired, to focus on both individual cases and on legal work (i.e. class action suits) designed to effect broad changes in elderly rights and benefits.

E. Provider shall provide other services to beneficiaries as follows:

1. Community education and training on legal rights of older persons to [groups of older persons]; [advocates for older persons]; and [providers of social services to older persons], including the preparation and distribution of materials to these groups. Provider agrees to give [\_\_\_\_\_\_] educational programs per quarter, including at a minimum programs [for the following groups] [at the following sites] : [List all groups and sites agreed to.]
2. Staff and volunteer training: Provider agrees to give[\_\_\_\_\_\_\_] training programs per year with appropriate training materials, to designated staff and volunteers of the Agency on the following dates; [\_\_\_\_\_\_\_\_\_\_].
3. Long-term care ombudsman support: Provider agrees to coordinate its efforts with the efforts of the Long Term Care Ombudsman's Office.
4. Information/referral: Provider shall provide information on, and referrals to, other agencies to assist beneficiaries with non-legal problems, and referrals to the private bar to assist beneficiaries with fee-generating cases and other types of legal cases not handled by Provider. Provider shall adopt a written referral system to govern all referrals to the private bar, which referral system shall give preference to any groups or individuals within the private bar that furnish legal services to older persons on a *pro bono* or reduced fee basis.

**Annotations**

E.1 - 4. Community education, training, ombudsman program support, and information and referral services are important secondary functions that can be provided by a legal program. Information and referral services should be structured so as to make sure that the Provider's efforts are coordinated with those of other service providers.

5. Outreach. The services described in Exhibit "A" will be provided at locations

that are accessible to the most economically and socially needy beneficiaries, including low-income minority individuals, the institutionalized, the home-bound and isolated beneficiaries. Provider shall schedule at least [\_\_\_\_\_] sessions per month for the purpose of conducting intake interviews at the following locations: [specify locations, such as nursing homes, boarding homes, senior housing projects, etc.].

Additionally, Provider shall attempt to serve low-income minority individuals by [addressing topics of concern to them in its quarterly newsletter] [by making issues of concern to them (such as\_\_\_\_\_) a program priority] [by conducting legal education programs at sites which are convenient to them and in particular at \_\_\_\_\_\_\_\_].

**Annotations**

E. 5. If a legal program uses an intake procedure that focuses on locations where the most disadvantaged elderly are likely to reside or congregate, it can better concentrate its resources on the most economically and socially needy without the use of a means test. Since outreach efforts can be time consuming for Provider staff, a balance must be struck between the time devoted to outreach efforts and representation of clients. The Provider and Area Agency should also explore using staff of other agencies (e.g. social workers, home health care workers) as a source of referral of clients to the program.

**EXHIBIT "B" - DISPUTE RESOLUTION PROCEDURE**

If either Provider or Agency is aggrieved by the performance of the other under this Agreement, the aggrieved party shall exhaust the procedures set forth in this Exhibit "B", paragraphs (A) - (C), before seeking any other remedy against the other party.

* The aggrieved party shall seek to resolve its grievance through informal discussion(s) which shall include, at a minimum, an employee of the aggrieved party and the individual(s) whose acts or omissions gave rise to the grievance. All participants in these discussions shall use their best efforts to insure that the discussions fully and constructively explore the issues raised by the aggrieved party.
* If the aggrieved party is dissatisfied with the outcome of the process described in paragraph (A) above, it may submit a written statement of its grievance to the (director) of the other party. The (director) or his/her designee shall promptly under take efforts to resolve the matter fully and constructively, and shall report on the status of those efforts to the aggrieved party within a reasonable time, but in any event within 30 days of receipt of the grievance statement.

**Annotations**

EXHIBIT "B"

This exhibit sets out a mechanism for the informal resolution of disputes that may arise under the Agreement. Its intent is to prevent disagreements and mis-understandings from escalating into conflicts that could threaten the availability of legal services.

A. The first step is an informal meeting with the person thought to be causing the problem. Where appropriate, the complaining party may wish to involve that person's immediate supervisor.

B. The parties should substitute the title of the chief executive official of the Area Agency or legal program, if that title is other than "director."

C. If the aggrieved party is dissatisfied with the outcome of the process

discussed in paragraph (B) above, it may, at its election, (1) refer the dispute for mediation to a neutral mediator acceptable to both parties, whose name shall be chosen from a list of persons in the community who have indicated an interest in mediating disputes between the parties; or (2) submit a written statement of its grievance to the other party's governing board or an appropriate committee of that governing board. The aggrieved party may request an opportunity to appear personally before that governing board or committee. The governing board or committee shall, if at all reasonably feasible, hear and consider the matter at its next regularly scheduled meeting. It shall promptly inform the aggrieved party of its decision in writing.

**Annotations**

C. If the dispute has not been resolved by the director, the complaining party may desire to seek outside mediation of the dispute or to appeal to the other party's Board. If feasible, mediation is generally a preferable alternative, since a trained and neutral outsider may offer insights and approaches that the parties could easily overlook. The mediation contemplated here is not binding; however, the parties may wish to redraft this provision to mandate binding mediation or arbitration.

D. If the aggrieved party is dissatisfied with the outcome of the process

described in paragraphs (A) - (C) above, and if the default of the other party is "material" as defined in paragraph (E) below, then the aggrieved party may terminate this Agreement upon [\_\_\_\_\_] days written notice to the other party.

E. Provider shall be in "material default" (1) if it fails to provide timely and adequate services as set forth in this Agreement or (2) if it fails to substantially comply with Section III [relating to reporting requirements] of this Agreement. Agency shall be in "material default" (1) if it fails to compensate provider in a timely and adequate manner or (2) if it fails to comply with paragraph V (E) [relating to non-interference in the lawyer - client relationship] of this Agreement. Either party shall be in "material default" if it unreasonably declines to utilize the grievance procedure described in this Exhibit "B" to resolve issues outstanding between it and the other party.

**Annotations**

D.-E. These sections prevent the parties from terminating the Agreement unless a very serious reason exists to do so. The number of days of notice required for termination should be set by the parties. It should be long enough for Provider to close out or transfer its outstanding cases, and for Agency to provide for the continuity of legal services.

# CHAPTER XII

**National Resource and Support Organizations**

# (Updated August 2001,

# by Krista L. Campeau and Devin D. McFarland)

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A. Introduction

Those involved with the delivery of legal services should be aware of the many organizations available to assist them. What follows is a directory listing of some of the National Resource and Support Organizations, along with a brief description of the services and resources offered by each organization.

A prior version of Chapter Twelve included a lengthy description of each organization as well as a list of its publications. Due to the difficulty inherent in keeping each organization's publications current, we have revised the format of Chapter Twelve to include only a brief description of each organization along with contact information for each organization. Please contact the individual organization for its publications.

B. National Resource and Support Organizations

**Administration on Aging (AoA)**

330 Independence Avenue, SW

Washington, DC 20201

(800) 677–1116 Eldercare Locator

(202) 619–7501 National Aging Information Center

(202) 401–4541 Office of the Assistant Secretary for Aging

Website: [www.aoa.gov](http://www.aoa.gov)

AoA was created in 1965 with the passage of the Older Americans Act. It is headed by an Assistant Secretary appointed by the President, and it is housed within the Department of Health and Human Services. AoA funds the National Support Centers in Law and Aging, and runs a National Family Caregiver Support Program and Eldercare Locator to name just a few of its initiatives.

**Alliance for Retired Americans**

888 16th Street, NW

Washington, DC 20006

(888) 373–6497, Fax: (301) 578–8911

Website: [www.retiredamericans.org](http://www.retiredamericans.org)

The Alliance for Retired Americans is a national organization that works to create an America that protects the health and economic security of seniors, rewards work, strengthens families and builds thriving communities. Retired members of participating unions affiliated with the AFL–CIO and members of the former National Council of Senior Citizens are automatically members.

**American Association of Homes & Services for the Aging (AAHSA)**

901 E Street, NW, Suite 500

Washington, DC 20004–2011

(202) 783–2242, Fax: (202) 783–2255

Website: www.aahsa.org

AAHSA represents not–for–profit organizations dedicated to providing high quality health care, housing, and services to the nation’s elderly. Its membership consists of over 5000 not–for–profit nursing homes, continuing care retirement communities, senior housing facilities, assisted living and community services.

**AARP**

601 E Street, NW

Washington, DC 20005–1022

(800) 424–3410, Fax: (202) 662–8698

Website: [www.aarp.org](http://www.aarp.org)

AARP is a nonprofit, nonpartisan association dedicated to shaping and enriching the experience of aging for its members and all Americans. It is the nation’s largest organization of midlife and older persons with more than 30 million members.

**American Bar Association (ABA) Commission on Legal Problems of the**

**Elderly**

740 15th Street, NW

Washington, DC 20005–1022

(202) 662–8690, Fax: (202) 662–8698

Website: [www.abanet.org/elderly/home.html](http://www.abanet.org/elderly/home.html)

The ABA Commission on Legal Problems of the Elderly seeks to improve legal services for the elderly through involvement of the private bar. The Commission is involved in legal issues surrounding long term care, surrogate decision–making, individual rights, guardianship, housing, social security, elder abuse, and other public benefit programs.

**American Society on Aging (ASA)**

833 Market Street, Suite 511

San Francisco, CA 94103–1824

(415) 974–9600, Fax: (415) 974–0300

Website: [www.asaging.org](http://www.asaging.org)

ASA is founded on the premise that the complexity of aging can only be addressed as a multidisciplinary whole. To that end, it brings together researchers, practitioners, educators, business people, and policymakers concerned with the physical, emotional, social, economic, and spiritual aspects of aging.

**Bazelon Center for Mental Health Law**

1101 15th Street, NW, Suite 1212

Washington, DC 20005–5002

(202) 467–5730, Fax: (202) 223–0409

Website: [www.bazelon.org](http://www.bazelon.org)

The Judge David L. Bazelon Center for Mental Health Law is a nonprofit legal advocacy organization. The Center’s advocacy is based on the principle that every individual is entitled to choice and dignity.

**Brookdale Center on Aging**

425 East 25th Street

New York, NY 10010

(212) 481–4426, Fax: (212) 481–5069

Website: [www.brookdale.org](http://www.brookdale.org)

The Brookdale Center on Aging of Hunter College is a university–based gerontology center. It is made up of a multidisciplinary team of social workers, nurses, lawyers, educators, and ethicists who provide training and technical assistance to the aging network and non–aging agencies and businesses.

**Center for Healthcare Rights**

520 South Lafayette Park Place, Suite 214

Los Angeles, CA 90057

(213) 383–4519, 1–800–824–0780, Fax: (213) 383–4598

Website: [www.healthcarerights.org](http://www.healthcarerights.org)

The Center for Healthcare Rights is a nonprofit, healthcare, consumer advocacy organization serving consumers through a combination of direct service programs and policy level advocacy.

**Center for Law and Social Policy (CLASP)**

1616 P Street, NW, Suite 150

Washington, DC 20036

(202) 328–5140, Fax: (202) 328–5195

Website: [www.clasp.org](http://www.clasp.org)

CLASP is a national, non–profit organization with expertise in law and policy affecting the poor. CLASP seeks to improve the economic security of low–income families with children and secure access for low–income persons to our civil justice system.

**Center for Medicare Advocacy, Inc.**

P.O. Box 350

Willimantic, CT 06226

(860) 456–7790, Fax: (860) 456–2614

Website: [www.medicareadvocacy.org](http://www.medicareadvocacy.org)

The Center for Medicare Advocacy is a private, non–profit organization that provides education, advocacy, and legal assistance to help elders and people with disabilities obtain necessary healthcare. The Center focuses on the needs of Medicare beneficiaries, people with chronic conditions, and those in need of long–term care.

**Center for Medicare Advocacy, Inc. – Healthcare Rights Project**

1101 Vermont Avenue, NW, Suite 1001

Washington, DC 20005

(202) 216–0028, Fax: (202) 216–0119

Website: [www.medicareadvocacy.org/healthcarerights.htm](http://www.medicareadvocacy.org/healthcarerights.htm)

The Healthcare Rights Project is part of the Center for Medicare Advocacy. It is staffed by four attorneys who work to obtain and enforce healthcare rights for persons with chronic conditions and those in need of long–term care.

**The Center for Social Gerontology, Inc. (TCSG)**

2307 Shelby Avenue

Ann Arbor, MI 48103

(734) 665–1126, Fax: (734) 665–2071

Website: [www.tcsg.org](http://www.tcsg.org)

TCSG is a non–profit research, training, and social policy organization dedicated to promoting the autonomy of older persons and advancing their well being in society. TCSG has pursued this goal through a variety of projects, including serving since 1985 as an Administration on Aging–funded National Support Center in Law and Aging.

**Families USA**

1334 G Street, NW

Washington, DC 20005

(202) 628–3030, Fax: (202) 347–2417

Website: [www.familiesusa.org](http://www.familiesusa.org)

Families USA is a national, nonprofit, non–partisan organization dedicated to the achievement of high–quality, affordable health and long–term care for all Americans.

**Gerontological Society of America**

1030 15th Street, NW, Suite 250

Washington, DC 20005

(202) 842–1275, Fax: (202) 842–1150

Website: [www.geron.org](http://www.geron.org)

The Gerontological Society of America provides networking opportunities for researchers, policymakers, educators, and practitioners; disseminates information on aging research; and advocates for increased public and private funding for research on aging.

**Kansas Elder Law Network (KELN)**

University of Kansas School of Law

202 Green Hall

Lawrence, KS 66045

Website: www.keln.org

KELN provides nationwide electronic access, via the World Wide Web, to primary and secondary materials pertaining to elder law. KELN is maintained primarily as a public service to Kansas senior citizens and their advocates, but its legal and quasi–legal databases are national in scope.

**Leadership Council of Aging Organizations (LCAO)**

409 Third Street, SW

Washington, DC 20024

(202) 479–1200, Fax: (202) 479–0735

Website: www.lcao.org

LCAO is a coalition of national, non–profit organizations concerned with the well–being of America’s older population and committed to representing their interests in the policy–making arena.

**Legal Counsel for the Elderly, Inc. (LCE)**

601 E Street, NW

Washington, DC 20049

(202) 662–4933

Website: [www.aarp.org/foundation/capability.html](http://www.aarp.org/foundation/capability.html)

LCE is affiliated with AARP and the AARP Foundation. LCE provides a variety of legal and nursing home ombudsman services to residents of the District of Columbia.

**Legal Services Corporation (LSC)**

750 First Street, NE, Tenth Floor

Washington, DC 20002–4250

(202) 336–8800

Website: www.lsc.gov

The mission of LSC is to promote equal access to the courts by making grants to provide high–quality civil legal assistance for those who would be otherwise unable to afford legal counsel.

**Medicaid Clearinghouse – Project of Families USA**

1334 G Street, NW

Washington, DC 20005

(202) 628–3030, Fax: (202) 347–2417

Website: www.familiesusa.org/html/medicaid/medicaid.htm

The Medicaid Clearinghouse offers a wide range of information and publications on the Medicaid program from Families USA and from other sources on the World Wide Web.

**Medicare Rights Center**

1460 Broadway, 11th Floor

New York, NY 10036

(212) 869–3850, Fax: (212) 869–3532

Website: [www.medicarerights.org](http://www.medicarerights.org)

The Medicare Rights Center is a national, not–for–profit organization that helps ensure that older adults and people with disabilities get good, affordable health care.

**National Academy of Elder Law Attorneys, Inc. (NAELA)**

1604 North Country Club Road

Tucson, AZ 85716

(520) 881–4005, Fax: (520) 325–7925

Website: www.naela.org

NAELA is a non–profit association that assists lawyers, bar associations, and those who work with older clients and their families. NAELA provides information, education, networking, and assistance to those who deal with the many specialized issues involved in delivery of legal services to the elderly and disabled.

**National Aging Information Center (NAIC) – Administration on Aging**

330 Independence Avenue, SW, Room 4656

Washington, DC 20201

(202) 619–7501, Fax: (202) 401–7620

Website: www.aoa.gov/naic

NAIC is operated by the U.S. Administration on Aging. NAIC provides a central source for a wide variety of program and policy related materials, as well as demographic, and other statistical data on the health, economic, and social status of older Americans.

**National Association for Public Interest Law (NAPIL)**

2120 L Street, NW, Suite 450

Washington, DC 20037

(202) 466–3686, Fax: (202) 429–9766

Website: [www.napil.org](http://www.napil.org)

NAPIL is the country’s leading organization engaged in organizing, training, and supporting public service–minded law students. It is the national leader in creating summer and postgraduate public interest jobs.

**National Association of Adult Protective Services Administrators (NAAPSA)**

960 Lincoln Place

Boulder, CO 80302

(720) 565-0906, Fax (303) 443-3361

Email: NAAPSAOTTO@aol.com

Website: none

NAAPSA is a national membership organization. NAAPSA's mission is to improve the quality and availability of services for disabled adults and elderly persons who are abused, neglected, or exploited, and other vulnerable adults who are unable to protect their own interests.

**National Association of Area Agencies on Aging (NAAAA)**

927 15th Street, NW, 6th Floor

Washington, DC 20005

(202) 296–8130, Fax: (202) 296–8134

Website: www.n4a.org

NAAAA is the umbrella organization for the 655 Area Agencies on Aging (AAA) and the more than 230 Title VI Native American aging programs in the U.S. NAAAA advocates on behalf of the local aging agencies to ensure that needed resources and support services are available to older Americans.

**National Association of Legal Services Developers (NALSD)**

C/o The Center for Social Gerontology, Inc.

2307 Shelby Avenue

Ann Arbor, MI 48103

(734) 665–1126, Fax: (734) 665–2071

Website: none, but for more information and a listing of Legal Services Developers in each state, go to www.tcsg.org/lsdpage.htm

NALSD is the national, membership organization for Legal Services Developers (LSD). LSD’s in each state assist in the development of quality legal and advocacy assistance for older persons in greatest economic or social need.

**National Association of Protection and Advocacy Systems, Inc. (NAPAS)**

900 Second Street, NE, Suite 211

Washington, DC 20002

(202) 408–9514, Fax: (202) 408–9520

Website: [www.protection](http://www.protection)andadvocacy.com

NAPAS is a national, voluntary, membership organization for the federally mandated, nationwide network of disability rights agencies, protection and advocacy systems, and client assistance programs.

**National Association of Nutrition and Aging Services Programs (NANASP)**

1101 Vermont Avenue, Suite 1001

Washington, DC 20005

(202) 682–6899, Fax: (202) 684–3984

Website: www.nanasp.org

NANASP is a professional membership organization with members drawn from persons working in or interested in the field of aging, community–based services, and nutrition and the elderly.

**National Association of State Ombudsman Programs (NASOP)**

Contact Person: Sara Hunt

2007 Trail Wood Circle

Midland, MI 48642-3787

(517) 631-3817, Fax: (517) 631-3525

Website: none

NASOP is an organization composed of State Long Term Care Ombudsman Programs created by the Older Americans Act. NASOP is dedicated to improving the quality of care of long-term care consumers through effective Long Term Care Ombudsman Programs.

**National Association of State Units on Aging (NASUA)**

1201 15th Street, NW, Suite 350

Washington, DC 20005

(202) 898–2578, Fax: (202) 898–2583

Website: www.nasua.org

NASUA is a national public interest organization that provides information, technical assistance, and professional development support to the State Units on Aging. NASUA also works to promote social policy at the Federal and State levels that is responsive to the needs of older Americans.

**National Bar Association (NBA)**

1225 11th Street, NW

Washington, DC 20001

(202) 842–3900, Fax: (202) 289–6170

Website: www.nationalbar.org

The NBA is America’s oldest and largest bar association for people of color. It maintains a historical leadership role in the legal struggle for equal rights, equal opportunity, and equal justice.

**National Caucus and Center on Black Aged (NCBA)**

1220 L Street, NW, Suite 800

Washington, DC 20005

(202) 637–8400, Fax: (202) 347–0895

Website: www.ncba–blackaged.org

NCBA is a national, non–profit organization dedicated to improving the quality of life for African Americans and low–income elderly. NCBA concentrates its efforts on employment and training, housing, health promotion, and advocacy.

**National Center on Elder Abuse (NCEA)**

1201 15th Street, NW, Suite 350

Washington, DC 20005

(202) 898–2586, Fax: (202) 898–2583

Website: [www.elderabusecenter.org](http://www.elderabusecenter.org)

NCEA exists to provide elder abuse information to professionals and the public, offer technical assistance and training, conduct short-term research, and assist with program and policy development. NCEA is a consortium of six partners: National Association of State Units on Aging, National Committee for the Prevention of Elder Abuse, ABA Commission on Legal Problems of the Elderly, Clearinghouse on Abuse and Neglect of the Elderly of the University of Delaware, San Francisco Consortium for Elder Abuse Prevention of the Goldman Institute on Aging, and the National Association of Adult Protective Services Administrators.

**National Citizen’s Coalition for Nursing Home Reform (NCCNHR)**

1424 16th Street, NW, Suite 202

Washington, DC 20036–2211

(202) 332–2275, Fax: (202) 332–2949

Website: [www.nccnhr.org](http://www.nccnhr.org)

NCCNHR provides information and leadership on both federal and state regulatory and legislative policy development. NCCNHR also develops models and strategies to improve nursing home care and life for residents.

**National Center on Poverty Law**

205 West Monroe Street

Chicago, IL 60606–5013

(312) 263–3830, Fax: (312) 263–3846

Website: www.povertylaw.org

Formerly known as the National Clearinghouse for Legal Services, the National Center on Poverty Law identifies, develops, and supports creative and collaborative approaches to help achieve social and economic justice for low–income people.

**National Committee for Quality Assurance (NCQA)**

2000 L Street, NW, Suite 500

Washington, DC 20036

(202) 955–3500, Fax: (202) 955–3599

Website: [www.ncqa.org](http://www.ncqa.org)

NCQA is an independent, non–profit organization whose mission is to evaluate and report on the quality of the nation’s managed care organizations.

**National Consumer Law Center, Inc. (NCLC)**

Boston Office:

18 Tremont Street, Suite 400

Boston, MA 02108–2336

(617) 523–8010, Fax: (617) 523–7398

District of Columbia Office:

1629 K Street, NW, Suite 600

Washington, DC 20006

(202) 986–6060, Fax: (202) 463–9462

Website: [www.consumerlaw.org](http://www.consumerlaw.org)

NCLC is America’s foremost advocate for low–income consumer justice, and a leading expert on low–income consumer issues.

**National Council on Aging (NCOA)**

409 3rd Street, SW

Washington, DC 20024

(202) 479–1200, Fax: (202) 479–0735

Website: [www.ncoa.org](http://www.ncoa.org)

NCOA is the nation’s first association of organizations and professionals dedicated to promoting the dignity, self–determination, well being, and contributions of older persons.

**National Employee Rights Institute (NERI)**

Mercantile Library Building, Suite 911

414 Walnut Street

Cincinnati, OH 45202

(513) 241–5157, Fax: (513) 241–7863, (800) 469–6374

Website: www.nerinet.org

NERI provides information, education, and assistance to individual employees and promotes public policy to advance employee rights. It also provides resources to organizations, unions, and civil rights groups that help employees.

**National Guardianship Association (NGA)**

1604 North Country Club Road

Tucson, AZ 85716

(520) 881– 6561, Fax: (520) 325–7925

Website: www.guardianship.org

NGA provides educational, training, and networking opportunities for guardians; promotes the highest level of values, standards, and ethics; and ensures a nationally recognized standard of excellence for guardians.

**National Health Law Program, Inc. (NHeLP**)

2639 La Cienega Boulevard

Los Angeles, CA 90034

(310) 204–6010, Fax: (310) 204–0891

Website: [www.healthlaw.org](http://www.healthlaw.org)

NHeLP is a national, public interest law firm that seeks to improve health care for America’s working and unemployed poor, minorities, the elderly, and people with disabilities.

**National Housing Law Project (NHLP)**

California Office:

614 Grand Avenue, Suite 320

Oakland, CA 94610

(510) 251–9400, Fax: (510) 451–2300

District of Columbia Office:

1629 K Street, NW, Suite 600

Washington, DC 20006

(202) 463–9461, Fax: (202) 463–9462

Website: www.nhlp.org

NHLP is a national housing law and advocacy center that seeks to advance housing justice for the poor. NHLP provides legal assistance, advocacy, advice, and housing expertise to legal services organizations, attorneys, low– income advocacy groups, and others who serve the poor.

**National Immigration Law Center (NILC)**

3435 Wilshire Boulevard, Suite 2850

Los Angeles, CA 90010

(213) 639–3900, Fax: (213) 639–3911

Website: www.nilc.org

NILC is a national support center whose mission is to protect and promote the rights of low–income immigrants and their family members.

**National Institute on Aging (NIA)**

Building 31, Room 5C27

31 Center Drive, MSC 2292

Bethesda, MD 20892–2292

(301) 496–1752, Fax: (301) 496–1072

Website: www.nih.gov/nia

NIA is one of the 25 institutes and centers of the National Institutes of Health. NIA leads a broad scientific effort to understand the nature of aging and to extend the healthy, active years of life. Its mission is to improve the health and well–being of older Americans through research.

**National Legal Aid and Defender Association (NLADA)**

1625 K Street, NW, Suite 800

Washington, DC 20006

(202) 452–0620, Fax: (202) 872–1031

Website: www.nlada.org

NLADA is the oldest and largest national, non–profit membership organization devoting all of its resources to advocating equal justice for all Americans. It champions effective legal assistance for the poor and serves as a collective voice for both civil legal services and indigent defense services throughout the nation.

**National Legal Center for the Medically Dependent and Disabled, Inc.**

7 South 6th Street, Suite 208

Terre Haute, IN 47807

(812) 238–0769, Fax: (812) 232–0260

Website: none

The National Legal Center for the Medically Dependent and Disabled is a legal resource for disabled and dependent people throughout the nation.

**National Long–Term Care Ombudsman Resource Center**

C/o National Citizen’s Coalition for Nursing Home Reform

1424 16th Street, NW, Suite 202

Washington, DC 20036–2211

(202) 332–2275, Fax: (202) 332–2949

Website: www.ltcombudsman.org

The National Long–Term Care Ombudsman Resource Center supports the ongoing development and operation of the 52 state-wide long–term care ombudsman programs, which function under a Federal mandate to investigate and try to resolve the problems experienced by the residents of long–term care facilities.

**National Senior Citizens Law Center (NSCLC)**

District of Columbia Office:

1101 Fourteenth Street, NW, Suite 400

Washington, DC 20005

(202) 289–6976, Fax: (202) 289–7224

Los Angeles Office

3435 Wilshire Boulevard, Suite 2860

Los Angeles, CA 90010

(213) 639–0930, Fax: (202) 289–7224

Website: www.nsclc.org

NSCLC advocates nationwide to promote the independence and well–being of low–income, elderly individuals, as well as persons with disabilities, and racial and ethnic minorities.

**National Veterans Legal Services Program, Inc. (NVLSP)**

2001 S Street, NW, Suite 610

Washington, DC 20009

(202) 265–8305, Fax: (202) 328–0063

Website: www.nvlsp.org

NVLSP helps veterans who, because of the effects of military service, have been unable to share in the opportunities available to most Americans. NVLSP serves these veterans through advocacy, education, litigation, training, and publications.

**Native American Rights Fund (NARF)**

1506 Broadway

Boulder, CO 80302

(303) 447–8760, Fax: (303) 443–7776

Website: www.narf.org

NARF is a non–profit organization that provides legal representation and technical assistance to Indian tribes, organizations, and individuals nationwide.

**OWL, The Voice of Midlife and Older Women**

666 11th Street, NW, Suite 700

Washington, DC 20001

(202) 783–6686, Fax: (202) 638–2356, (800) 825–3695

Website: www.owl–national.org

OWL is the only national, grassroots membership organization to focus on issues unique to women as they age. OWL strives to improve the status and quality of life for midlife and older women. OWL accomplishes its work through research, education, and advocacy activities conducted through a chapter network.

**Pension Rights Center**

1140 Nineteenth Street, NW, Suite 602

Washington, DC 20036

(202) 296–3776, Fax: (202) 833–2472

Website: www.pensionrights.org

The Pension Rights Center works to protect the pension rights of workers, retirees, and their families.

**Project for the Future of Equal Justice**

1616 P Street, NW, Suite 150

Washington, DC 20036

(202) 328–5140, Fax: (202) 328–5195

Website: www.equaljustice.org

The Project for Equal Justice is a joint initiative of the National Legal Aid and Defender Association (NLADA) and the Center for Law and Social Policy (CLASP). The Project’s mission is to strengthen and expand the provision of civil legal assistance to low–income people.

**The Welfare Law Center**

275 7th Avenue, Suite 1205

New York, NY 10001–6708

(212) 633–6967, Fax: (212) 633–6371

Website: www.welfarelaw.org

The Welfare Law Center works with and on behalf of low–income people to ensure that adequate income support is available whenever and to the extent necessary to meet basic needs and foster healthy human and family development.

1. *Note*:: Following passage of the 1992 Amendments, the Commissioner was elevated to the level of Assistant Secretary for Aging by the Clinton Administration. Thus, we use the new title, "Assistant Secretary," even though the 1992 Amendments used "Commissioner." *Also Note*: In late 1993, Technical Amendments changed the term "Commissioner" to "Assistant Secretary" throughout. [Older Americans Act Technical Amendments of 1993, HR Rep No 103-330, 103d Cong, 1st Sess (1993)]. [↑](#footnote-ref-1)
2. TCSG believes this reference to “paragraph (19)” is an error in the 2000 Amendments. Because the data collection provisions being referred to here were previously at §202(a)(19) and were redesignated as §202(a)(16) in the 2000 Amendments, we believe that the reference here to “paragraph (19)” should be corrected to read “paragraph (16).” [↑](#footnote-ref-2)
3. This data collection system has been developed by AoA and is being used by the states; it is commonly referred to as NAPIS -- National Aging Program Information System. [↑](#footnote-ref-3)
4. For more information on Performance Outcome Measures, see Outcome Measures for Title IIIB Legal Assistance Programs: An Introduction, in Best Practice Notes on Delivery of Legal Assistance to Older Persons, Volume 10, No. 3, The Center for Social Gerontology, March 2000. This BPN can be accessed at [www.tcsg.org/bpnotes/bpn.htm](http://www.tcsg.org/bpnotes/bpn.htm). [↑](#footnote-ref-4)
5. Legal Problems Affecting Older Americans, A Working Paper, Special Committee on Aging, U.S. Senate, August, 1970, U.S. GPO 47-949 Washington D.C., and Legal Problems Affecting Older Americans, A Hearing, Special Committee on Aging, U.S. Senate. Part 1 – St. Louis, MO, August 11, 1970, and Part 2 – Boston, MA., April 30, 1971. U.S. GPO, Washington D.C. [↑](#footnote-ref-5)
6. Technical Assistance and Materials Development Projects *funded in July, 1975*:

   Legal Services for the Elderly Poor, Presbyterian Senior Services Technical assistance to State and area agencies and other elderly service staff in Region II.

   Legal Research and Services for the Elderly, NCSC ($249,607). Technical assistance to Regions I, III, and IV; development of bibliography and a manual on law and aging.

   National Senior Citizens Law Center ($225,000) Technical assistance to Regions V – X; publication of weekly newsletter.

   Connecticut Aging Legal Services ($33,706) Technical assistance to legal services programs and social services agencies in Connecticut to promote coordinated statewide network of law offices.

   University of Michigan Law School ($91,032) Technical assistance and materials development for Michigan’s State and area agencies on aging; training manuals, workshops, videotapes for aging services staff, legal aid lawyers, private attorneys, and law students.

   Louisiana Center for the Public Interest ($70,432) Technical assistance to Louisiana’s State and are agencies to develop lawyer referral system and community organization; direct services to elderly utilizing interdisciplinary approach to provide social and legal services.

   National Paralegal Institute ($150,000) Promotion of use of senior paralegals; design of training curricula and course materials; technical assistance in establishing of paralegal programs

   **Innovative Service Delivery Projects**

   California State Office on Aging ($121,000) Demonstration of Statewide delivery system, utilizing and training social services staff and seniors as paralegals and arranging for attorney supervision.

   NRTA/AARP ($85,000) Demonstration of model for low-cost legal services by almost exclusive emphasis on public entitlements and training of elderly volunteers as staff.

   George Washington University Law School ($75,860) Training of seniors as paralegals in year-long classroom and clinical setting; operation of law student clinical program.

   Senior Adults Legal Assistance ($47,322) Operation of offices in Palo Alto area providing legal services for elderly through volunteer attorneys, elderly paralegals, and law students; development of community education programs. [↑](#footnote-ref-6)
7. Title IV A Awards:

   1. George Washington University Law School ($171,172) Focus on continued training of elderly paralegals and law students. Emphasis on development of substantive materials for traditional law school curricula and efforts to "export" the program to other law schools.
   2. Senior Adults Legal Assistance ($60,000) Development and dissemination of multidisciplinary training materials for law schools, gerontology departments, and others; course on Legal Problems of Elderly taught at Stanford and Santa Clara Law Schools.
   3. University of Michigan ($68,089) Continued training and materials development activities. Materials for community colleges and gerontological centers for training non-lawyers, continuing legal education programs for practicing attorneys, and law schools for training students through clinical programs.
   4. National Paralegal Institute ($199,690) Design curriculum and demonstrate 10-day training for Community Service Advisors in 3 Regions. Effort complemented technical assistance activities under continued Model Projects funding.
   5. Louisiana Center for the Public Interest ($137,929) Emphasized training of law and social work students and aging services workers through utilization of socio-legal approach for direct service delivery. Focus on dissemination of law/social work model.
   6. Antioch Law School ($68,861) Development of 12-volume competency-based curriculum on Law and Aging; materials stress knowledge, skills, and performance necessary for law students and lawyers to provide effective services.

   [↑](#footnote-ref-7)
8. The five grantees were: (1) Legal services for the Elderly Poor ($80,000) (Region II); (2) National Senior Citizens Law Center ($277,918) (Regions V-X); (3) Legal Research and Services for the Elderly ($346,759) (Regions I, III, IV); (4) National Paralegal Institute ($190,000) (Use of paralegals); and (5) NRTA/AARP ($135,450) (Use of older volunteers). [↑](#footnote-ref-8)
9. Activities first defined by AoA for Legal Services Developers in August1976 (AoA-TA-76-42) were:

   1. Working with Area Agencies to help design legal services programs and assist them in developing plans for implementation of such programs by public or private agencies;
   2. Assisting, working through Area Agencies, Legal Services Corporation offices and/or legal aid programs to expand services and outreach efforts to eligible elderly clients and to design and secure funding for programs to serve all older persons;
   3. Assisting Area Agencies in involving the private bar in increasing legal representation;
   4. Stimulating law schools and other educational institutions to provide research, law related training, and/or direct client services to the elderly;
   5. Designing and coordinating, through State and Area Agencies, legal and aging training for State and Area Agency staff and grantees, paralegals, lawyers, and older persons;
   6. Providing, working through Area Agencies, assistance in developing legal backup to the nursing home ombudsman programs at the area level; and
   7. Working with the State Agency, Area Agencies and other interested parties on research, drafts, testimony, advocacy and monitoring for legislation at all levels that benefit the elderly. Areas of particular legislative concern could include for example, SSI, Social Security, food stamps, Medicaid, Medicare, veterans benefits, public and private pensions, nursing homes, real property taxation, federal taxation, housing, and welfare.

   [↑](#footnote-ref-9)
10. The Long-Term Care Ombudsman Program is discussed in the current chapter on pages 21-22. [↑](#footnote-ref-10)
11. The Bi-Regional contractors were Boston University for Regions I and II, the National Paralegal Institute for Regions III and IV, the Institute of Gerontology of the University of Michigan for Regions V and VII, the Center for Public Interest for Regions VI and VIII, and the National Paralegal Institute of California for Regions IX and X. [↑](#footnote-ref-11)
12. Comparing formal job descriptions, however, does not adequately convey the sometimes vast differences in developers’ day-to-day responsibilities. For further information on these differences, see (BPN and BORCHARD). [↑](#footnote-ref-12)
13. The Villers Foundation, On the Other Side of Easy Street: Myths and Facts About the Economics of Old Age (Washington, D.C.: 1987). [↑](#footnote-ref-13)
14. 2 Id. at 58. [↑](#footnote-ref-14)
15. Daniel Callahan, Setting Limits 165 (New York: Simon and Schuster, Inc., 1987). [↑](#footnote-ref-15)
16. American Bar Association's Commission on Legal Problems of the Elderly, White Paper: Legal Assistance Under the Older Americans Act 3 (1987). [↑](#footnote-ref-16)
17. Id. at 2-3. [↑](#footnote-ref-17)
18. Id. at 2. [↑](#footnote-ref-18)
19. Readers interested in learning more about survey research methodology may wish to consult the following publications: Earl Babbie, The Practice of Social Research, 5th ed. (Wadsworth Publishing, 1989); and Charles M. Judd, Eliot R. Smith and Louise H. Kidder, Research Methods in Social Relations, 6th ed. (Holt, Rinehart and Winston, Inc., 1991). For information on survey research on older persons see A. Regula Herzog and Willard L Rodgers, "The Use of Survey Methods in Research on Older Americans," in The Epidemiologic Study of the Elderly, ed. R. Wallace (New York: Oxford University Press, in press); A. Regula Herzog and Lynn Dielman, "Age Differences in Response Accuracy for Factual Survey Questions" 40 Journal of Gerontology 350-357 (1985); Willard L. Rodgers and A. Regula Herzog, "Interviewing Older Adults: The Accuracy of Factual Information" 42 Journal of Gerontology 387-394 (1987); Diane M. Gibson and Wendy Aitkenhead, "The Elderly Respondent: Experiences from a Large-Scale Survey of the Aged" 5 Research on Aging 283-296 (June 1983); and Gerald Hoinville, "Carrying out Surveys Among the Elderly: Some Problems of Sampling and Interviewing" 25 Journal of the Market Research Society 223-237. [↑](#footnote-ref-19)
20. Hearings before the Subcommittee on Aging, Senate Committee on Human Resources, Oct. 4, 1977. [↑](#footnote-ref-20)
21. 42 U.S.C. §3025(a)(2)(E). [↑](#footnote-ref-21)
22. 10 42 U.S.C. §§3027(a)(3)(A), (a)(15)(B) and (a)(15)(D); See also 45 C.F.R. §§1321.61(b)(5), 1321.65(a) and 1321.65(g). [↑](#footnote-ref-22)
23. Memorandum from Len Goodman of the National Social Science and Law Center to Catherine Stagg, Esq. dated August 4, 1987 regarding a proposed Legal Need/Priority Setting Survey, at 1. [↑](#footnote-ref-23)
24. Jessica Pearson and Nancy Thoennes, "Assessing the Legal Needs of the Poor in Colorado" 20 Clearinghouse Review 200, 203 (June 1986). [↑](#footnote-ref-24)
25. Robert J. Rhudy, "Conducting a Legal Needs Study -- A Tool for Expanding Legal Services" 6 PBI Exchange 1, 21 (Spring 1988). The Maryland assessment also undertook collection of data on current legal services delivery resources and activities, research into statistical indicators of legal need, a review of relevant literature, and extensive communications with legal services providers, consultants and others. [↑](#footnote-ref-25)
26. Memorandum from Len Goodman of the National Social Science and Law Center to Catherine Stagg, Esq. dated August 4, 1987 regarding a proposed Legal Need/Priority Setting Survey, at 7. [↑](#footnote-ref-26)
27. The Maryland Legal Services Corporation, An Assessment of the Legal Needs of the Poor in the State of Maryland 45 (January 1984). [↑](#footnote-ref-27)
28. Id. at 39. [↑](#footnote-ref-28)
29. Id. at 40-41. [↑](#footnote-ref-29)
30. Jessica Pearson & Nancy Thoennes, Report on Legal Needs of the Poor in Colorado 139 (June 1985). [↑](#footnote-ref-30)
31. Id. [↑](#footnote-ref-31)
32. Massachussetts Legal Assistance Corporation, Massachussetts Legal Services Plan for Action 42-43, 63-64 (November 1987). [↑](#footnote-ref-32)
33. Id. at 63-64. [↑](#footnote-ref-33)
34. National Social Science and Law Center, Interim Report on a Study of the Legal Needs of the Poor in New Jersey 22-23 (March 1987). [↑](#footnote-ref-34)
35. Id. at 41. [↑](#footnote-ref-35)
36. Massachussetts Legal Services Plan for Action, supra note 28, at 100-101. [↑](#footnote-ref-36)
37. Id. at 129. [↑](#footnote-ref-37)
38. Memorandum from Len Goodman of the National Social Science and Law Center to Catherine Stagg, Esq. dated August 4, 1987 regarding a proposed Legal Need/Priority Setting Survey, p. 5-6. [↑](#footnote-ref-38)
39. Id. at 9. [↑](#footnote-ref-39)
40. Id. at 10. [↑](#footnote-ref-40)
41. Id. at 7. [↑](#footnote-ref-41)
42. Id. [↑](#footnote-ref-42)
43. Id. at 6-7. [↑](#footnote-ref-43)
44. Jessica Pearson and Nancy Thoennes, "Assessing the Legal Needs of the Poor in Colorado" 20 Clearinghouse Review 200, 203-204 (June 1986). [↑](#footnote-ref-44)
45. American Bar Association Commission on Legal Problems of the Elderly, Wisconsin Elder Legal Needs Study, April, 1991. Copies of the final report for this study, or further information on the design or results of the research, can be obtained from the Wisconsin Bureau on Aging, Department of Health and Social Services, Division of Community Services, 217 South Hamilton Street, Suite 300, Madison, WI 53705, Phone: (608) 266-2536. [↑](#footnote-ref-45)
46. Copies of the report on this study may be obtained from: The American Indian Law Center, Inc., P.O. Box 4456-Station A, Albuquerque, NM 87196, Phone: (505) 277-5462. [↑](#footnote-ref-46)
47. The use of the OMB poverty levels to define "greatest economic need" was new in 1987. Prior to that, it had been defined according to the Bureau of the Census poverty threshold. [↑](#footnote-ref-47)
48. Joint Hearing before the U.S. Senate, Special Committee on Aging and the Subcommittee on Aging of the Committee on Labor and Human Resources, Part 1 - Washington, D.C., October 18, 1979. "Regulations to Implement the Comprehensive Older Americans Act Amendments of 1978." p 2. [↑](#footnote-ref-48)