**Legal Services Developers'**

**Resource Manual**



**Developed By:**

**The Center for Social Gerontology**

**2307 Shelby Avenue**

**Ann Arbor, Michigan 48103**

**(313) 665-1126**

**In Conjunction With:**

**National Association of Legal Services Developers**

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**LEGAL SERVICES DEVELOPERS' RESOURCE MANUAL**

(Updated March 1997)

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1. Older Americans Act of 1965, as amended through December 31, 1992 (42 U.S.C. § 3001 *et seq*.).

2. Comprehensive Guide to Delivery of Legal Assistance to Older Persons, published by The Center for Social Gerontology, 1988 (Chapter I updated April 1994 and Chapter IV updated December 1992)**.**

3. Guide to the Development of Statewide Standards for the Delivery of Legal Assistance to Older Individuals, published by The Center for Social Gerontology, January 1994.

4. Guidelines for Planning and Evaluation of Legal Assistance Programs Funded Under the Older Americans Act, published by The Center for Social Gerontology, May 1989 (updated April 1994).

**I. Introduction**

In recent years, as Legal Services Developers became an increasingly integral part of the elderly legal services and elder rights advocacy efforts within the 50 states and territories, there was a growing recognition that a need existed for a user-friendly reference manual for all, but especially new, Legal Services Developers. This need was expressed by Legal Services Developers and was confirmed in a survey of Developers conducted by The Center for Social Gerontology.

This *Legal Services Developers' Resource Manual* has been developed to meet these expressed needs. Developed by The Center for Social Gerontology, in conjunction with the National Association of Legal Services Developers, the manual is intended to be both basic and comprehensive. The manual provides basic and concise information on the very comprehensive set of areas and responsibilities which the Legal Services Developers cover in their jobs.

The manual will provide new Legal Services Developers with a quick, yet wide-ranging, description of their job, the Aging Network, the legal services system, elder rights advocacy, and the various resources available to assist them in doing their job. For both new and more experienced Legal Services Developers, the manual provides easy access to background information on the historical development of the Legal Services Developer position (see Chapter II), and also on the development of Older Americans Act-funded legal services programs (see Chapter IV).

Since each state has only one Legal Services Developer and since each state's Developer has a role that truly is unique to that state and that State Unit on Aging, usually one of the most formidable first tasks for a new Developer is to determine his/her role. Chapter V provides a description of many of the roles that Developers tend to play. This should assist both new and more experienced Developers in "creating" the niche that they will fill in their state; recognizing that the role(s) will undoubtedly change as time and circumstances change within the state.

The Legal Services Developer position was created and funded under the Older Americans Act to be a key player in the overall legal services and elder rights advocacy network within the individual states. Chapter VI provides an overview of the Older Americans Act-funded Aging Network and the major components of that system. Since elder rights advocacy is central to any legal services system for the elderly and to an effective statewide elder rights advocacy movement, Chapter VII provides a discussion of the various forms of advocacy which a Developer may be involved in or may assist in creating within the state elder rights system.

Chapters VIII and IX describe key resources which are available to Legal Services Developers from back-up centers and other sources, as well as setting forth a plan for new Developers to follow in getting started in the job. The Appendices provide a set of short written materials which are comprehensive in their scope and will be of continuing assistance as the Developer becomes involved in various tasks within the state. Chapter IX of this manual lists additional, more lengthy written resources which the Developer will want to become familiar with early on in his/her tenure. These are also materials which are likely to be references which are referred to with some frequency over time.

This manual is intended as a starting point for new Developers and as a source of reference for more experienced Developers as their role changes over time within the state. It is not a stand-alone manual. We strongly encourage Developers to utilize other resources listed in this manual, particularly the *Comprehensive Guide to Delivery of Legal Assistance to Older Persons*, also written by The Center for Social Gerontology and often referred to as "the big red book" by Developers. The *Comprehensive Guide* provides a wealth of information to assist Developers in their various roles, as well as providing a very thorough description of the Older Americans Act, particularly as it applies to legal services for the elderly.

Since change is the one constant in the world, this manual will also change over time and will be updated as the Older Americans Act changes and as needed. We at The Center for Social Gerontology believe that the Legal Services Developer position is a crucial one for the development and enhancement of legal services for the elderly and for the protection of the rights of older Americans. We hope that this manual will assist you in doing your job most effectively. Always remember that your job starts and ends with working to protect the rights of older Americans. And, when times seem most confused or difficult, remember that "this too shall pass."

**II. Statutory Underpinnings of the Legal**

**Services Developer Position**

**A. Origins of the Legal Assistance Developer Position:**

**1965 - 1992**[[1]](#footnote-1)

As originally enacted in 1965, the Older Americans Act (OAA or Act) did not specifically mention legal services as one of the services to be provided. It was not until regulations were developed for implementation of the 1973 Comprehensive Services Amendments that the definition of Title III social services included legal services. In 1975, Congress increased the appropriations for the Title III program by $9 million, $1 million of which was to be used for model projects to strengthen legal representation for older persons. As a result, the Administration on Aging (AoA) undertook its first systematic effort to develop legal services on a nationwide basis. To maximize the use of these funds, AoA supported (1) four innovative services delivery Model Projects; and (2) seven projects to provide technical assistance (TA) to State and Area Agencies on Aging on the inclusion of legal services components in annual State plans, and to provide the Aging Network with resource materials to train attorneys and paralegals providing legal services for the elderly.

As these eleven model projects were being implemented, Congress was seriously considering the future of legal services in the 1975 Amendments to the Act. As a result, (1) legal services was identified as one of four priority service areas under Title III; and (2) specific language relating to the training of lawyers and paralegals was added to Title IVA. In June 1976, 6 awards were made under the Title IVA program. These awards were made primarily to grantees which had been funded under the Model Projects program one year earlier. The emphasis of the IVA projects was on specific materials development and training events for lay advocates, paralegals, law students or lawyers. In some cases, grantees funded under Title IVA continued to also receive Title III, § 308 funding.

Also in June 1976, AoA issued a Program Instruction announcing the State Legal Services Development Program. The purpose to this program, similar to the earlier State Ombudsman Model Projects, was to build the capacity for leadership in the State Agencies on Aging to promote legal services for the elderly within each State. Model Project funds totaling $1.125 million were reserved for 9-month projects to begin January 1, 1977, and end September 30, 1977. AoA also announced the continuation of five of the original eleven Model Projects grantees specifically for TA purposes. The following activities for the Legal Services Developers were defined in an August, 1976 TA Memorandum (AoA-TA-76-42):

1. Working with Area Agencies on Aging (AAAs) in order to help them design legal services programs for older persons and to assist them in developing plans for the implementation of such programs by public or private agencies;

2. Assisting LSC offices and/or legal aid programs to expand services and outreach efforts to eligible elderly clients and to design and secure funding for programs which would serve all older persons;

3. Assisting AAAs in involving the private bar in increasing legal representation to older people;

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 on Aging, legal and aging training programs for State and Area Agency Staff and grantees, paralegals, lawyers, and older persons;

6. Providing assistance in developing legal back-up to the nursing home ombudsman programs at the area level;

7. Working with the State Agency, AAAs, and other interested parties on research, drafts, testimony, advocacy and monitoring for legislation at all levels that benefits the elderly.[[2]](#footnote-2)

Because of the difficulties associated with starting this new program and with hiring Developers, many Developers did not even begin working until shortly before September 30, 1977. 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 though 9/30/78.[[3]](#footnote-3)

In late 1978, AoA established 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."[[4]](#footnote-4) 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.*[[5]](#footnote-5)

AoA set up a new 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.

AoA ended the OAAA program when Congress, as part of the 1984 Amendments to the Act, moved funds for State Legal Services Developers from Title IV to Title III, State administrative funds. The 1984 Amendments also added a requirement that each State Agency on Aging "assign personnel to provide State leadership in developing legal assistance programs for the elderly throughout the State."

**B. 1992 Reauthorization of the Older Americans Act**

With the 1992 Reauthorization of the Act, Congress for the first time specifically recognized Developers and their importance. The Amendments added new provisions to Title III and included provisions in the new Elder Rights Title (Title VII) of the Act, requiring that all States have a Legal Services Developer (LSD).[[6]](#footnote-6) Title III indicates that states must have a Developer *and* other personnel "to provide State leadership in developing legal assistance programs for older individuals throughout the State."[[7]](#footnote-7) Title VII has a similar requirement and also delineates some specific responsibilities, stating that all State agencies must "provide an individual who shall be known as a State Legal Assistance Developer, and other personnel sufficient to ensure" that the State has the capacity and will provide*--*

*• leadership in securing and maintaining legal rights of older individuals;*

*• coordination of the provision of legal assistance;*

*• technical assistance, training and other support to area agencies on aging, legal assistance providers, ombudsmen, and others as appropriate; and*

*• promotion of financial management services for older persons at risk of conservatorship.* [[8]](#footnote-8)

This Title VII provision is particularly important because it begins to define specific responsibilities for State agencies in developing a statewide legal advocacy system and, for the first time, it requires all States to have an LSD to carry out those responsibilities. Further, it recognizes the magnitude of the task, and requires states to have sufficient *other personnel* to accomplish it.

In other words, Title VII anticipates that the Developer will be a major player in the elder rights advocacy system. Chapter 4 of Title VII sets forth, with some specificity, what States must do to be effective advocates themselves and to establish and maintain effective advocacy systems. In explaining chapter 4 of Title VII, the Senate Report on the proposed 1992 OAA Amendments states:

*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 dementias, and lack of knowledge about rights and avenues for redress of grievances. . . . the Committee expects that States will provide leadership in assuring that state and local systems . . . are responsive and effective in meeting the needs of elders and in protecting their rights. . . . The Committee compliments State agencies on aging for their commitment to providing such services through legal services developers . . . [and] 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.... 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.*[[9]](#footnote-9)

**C. 1995 Reauthorization of the OAA**

At the time of this writing in December 1995 and the updating in March 1997, the Older Americans Act reauthorization process is not yet complete. Therefore, rather than trying now to read Congressional tea leaves or minds, this section will be updated, if and when, the Older Americans Act is reauthorized in 1997 or 1998.

**III. National Association of Legal Services Developers (NALSD): Questions and Answers**

**Q: What Is NALSD?**

**A:** To help handle the diverse demands of their position and their complex and challenging responsibilities, Legal Services Developers (Developers or LSDs) formed an association in 1987, the National Association of Legal Services Developers (NALSD). NALSD represents the Developers in each of the 50 states and other U.S. territories. Since its inception, NALSD has been working hard to facilitate communication, share ideas and experiences, and develop additional resources to help LSDs do their jobs more effectively. NALSD also provides support and a forum for information exchange between Developers on issues including: legal services delivery models, federal and state legislation, best practices, substantive law, and other topics.

NALSD is an extremely active organization. It publishes a regular newsletter, *NALSD News*, which gives members a chance to communicate with each other, ask for advice about particular problems, and describe successful programs or initiatives. NALSD also maintains an audio tape library.[[10]](#footnote-10)10 Among its projects, NALSD has worked with The Center for Social Gerontology to develop a packet of materials to guide States in establishing statewide standards for legal assistance, as now required by the Older Americans Act.[[11]](#footnote-11)11 NALSD also holds an annual meeting at the Annual NALSD Symposium (see below).

**Q: How Do I Become a NALSD Member?**

**A:** To become a NALSD member, you need only pay a small membership fee. As of 1997, the annual fee is $95 for Legal Services Developers, $150 for supporting organizations (*e.g.*, The Center for Social Gerontology), and $50 for supporting individuals. To join, send a check made payable to "NALSD" or "National Association of Legal Services Developers" to:

NALSD Treasurer

c/o The Center for Social Gerontology, Inc.

2307 Shelby Avenue

Ann Arbor, MI 48103

**Q: Why Should I Become a NALSD Member?**

**A:** As a Legal Services Developer, you will find that you are the only individual in your state who holds this position. Becoming a member of NALSD will give you the opportunity to network with individuals from around the country who perform duties and have responsibilities similar to yours, and have successfully dealt with many of the same challenges you may face. For new Developers, this type of networking is invaluable. The members of NALSD are a generous and supportive group who are always willing to provide assistance to other Developers.

Membership also entitles you to (1) a free subscription to the quarterly NALSD newsletter, *NALSD News*, which provides a forum for Developers to share innovative practices and brief summaries of important substantive issues; (2) updates on Congressional and other legislative or administrative action impacting Legal Services Developers; (3) free registration to the Annual NALSD Symposium; and (4) regularly updated mailing lists of legal services developers prepared by The Center for Social Gerontology.

**Q: Are There Any Committees and What Do They Do?**

**A:** Yes, there are several active committees that Developers may join as of March 1997, they are:

• Legislative/Reauthorization Committee: members work on suggested amendments to the Older Americans Act and strategies to implement NALSD's recommendations. Co-chairs are Mary H. Smith (NM) and Richard Ingham (OK).

• Mentors/Board of Emeritus Committee: members serve as mentors to new developers. Chair is Jan Meyers (CO).

• Public Relations Committee: members develop a promotional packet explaining what NALSD is and what NALSD does, and a strategy for disseminating this packet. Chair is Christy Fair (TX).

• Newsletter Committee: members write for and develop a quarterly newsletter, *NALSD News*. Chair is Bill Graham (NY).

• Conference Planning Committee: members plan the annual NALSD Symposium. Chair for the 1997 Symposium in Texas is Christy Fair (TX).

• Nominating Committee: members nominate candidates for the Executive Committee. Chair is Natalie Thomas (GA).

**Q: When Do NALSD Members Meet?**

**A:** NALSD members meet once a year at the Annual NALSD Symposium. The Annual Symposium provides Developers with opportunities to remain abreast of legislative developments and to learn about and understand issues of law affecting older persons, all in a retreat-like atmosphere. Legal Services Developers who have attended past Symposiums have taken advantage of:

• training sessions for new Developers;

• workshops on the development of statewide standards for legal assistance and workshops on creating and maintaining uniform reporting systems;

• strategy sessions on a variety of topics, such as community care systems, statewide systems advocacy, organization building, and leadership;

• opportunities to share and learn about projects that other Developers are working on in their own states;

• updates on federal and state legislation;

• and many other interesting and effective workshops.

Attending the Annual Symposium is an ideal way to learn about other projects that you, as a Developer, may want to undertake, and an excellent opportunity to meet other Developers.

The Annual Symposium is held in a new location every year. The Fourth Annual NALSD Symposium will be held in Austin, Texas, on April 20-23, 1997.

**Q: How Can I Contact NALSD Officers and Other Legal Services Developers?**

**A:** For a complete listing of the names, addresses, and telephone numbers of State Legal Services Developers, see Appendix C. For a list of current NALSD officers, see Appendix B. Legal Services Developers who have changed locations or phone numbers should notify The Center for Social Gerontology as soon as possible (phone: (313) 665-1126).

**IV. Title IIIB Funded Legal Assistance Programs**

Because a Legal Services Developer's duties require that he/she work with legal services providers, it is important that a Developer understand the Older Americans Act's provisions concerning Title IIIB legal assistance programs. In addition, it is critical that a Developer have a solid understanding of the need for targeting of services, the various types of available legal services delivery systems, and the legal issues of greatest importance to older persons. This chapter will provide a brief review of each of these topics. For a more detailed discussion of these topics, please see the *Comprehensive Guide to Delivery of Legal Assistance to Older Persons* published by The Center for Social Gerontology.

**A. The Older Americans Act and Title IIIB Funded Legal Assistance Programs**

*Definition of Legal Assistance*

A discussion of Title IIIB funded legal assistance programs should begin with a review of the Older Americans Act's (OAA or the Act) definition of legal assistance. The OAA defines "legal assistance" as:

*(A) . . . legal advice and representation provided by an attorney to older individuals with economic or social needs; and*

*(B) includes --*

*(i) to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and*

*(ii) counseling or representation by a nonlawyer where permitted by law.*[[12]](#footnote-12)

It should be noted that the phrase "legal advice and representation provided by an attorney to older individuals with economic or social needs" is located at the beginning, as an independent part of the definition. Therefore, this phrase should be perceived as the *basic definition* of legal assistance under the Act. The format and wording of the definition establish that *advice and representation by an attorney*is a necessary component of any legal assistance program. While legal assistance may *include* services by paralegals, law students, and nonlawyers as mentioned in sub-part B, they are not sufficient to meet the definition.

With the 1992 Amendments to the Act, Congress clarified ambiguities regarding the use of *unsupervised nonlawyers* for the provision of legal assistance. The addition of the word "direct" in subparagraph (B)(i) addressed the drafters' concerns that there be close and well regulated supervision of paralegals or law students. However, the definition also suggests that the *additional* use of unsupervised nonlawyers is acceptable, "where permitted by law," *e.g.*, under Titles II (OASDI), XVI (SSI), XVIII (Medicare), and XIX (Medicaid), of the Social Security Act. This interpretation is supported by legislative history indicating that direct attorney supervision of nonlawyers, working within specific areas of the law, is encouraged, although not required.[[13]](#footnote-13)

Finally, it should be noted that inclusion of the phrase "to older individuals with economic or social needs" in the principal part of the definition emphasizes how vital it is that legal assistance be targeted. Unless legal assistance is provided to individuals in such need, it does not meet the definition of legal assistance under the Act.

*Title III of the Older Americans Act and the State Agency on Aging*

Title III of the Act authorizes grants for State and community programs on aging, including supportive services such as legal assistance. In order to be eligible for a grant under this Title, a State must conform to a variety of requirements, including the development and submission of a State plan to the Assistant Secretary for Aging. With respect to legal assistance, the State must include in the plan assurances regarding (1) area agencies' contracts with legal services providers; (2) targeting of services and coordination with Legal Services Corporation programs; (3) coordination of legal assistance services to older individuals throughout the State and provision of advice, technical assistance, and training on legal assistance; (4) efforts to maintain existing levels of legal assistance to older individuals and the use of Title III funds to supplement, not supplant, legal assistance already being furnished; and (5) priority of legal issues such as income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.[[14]](#footnote-14)

Title III also requires the State agency to serve as an "effective and visible advocate" for older individuals by providing technical assistance, evaluating the need for legal assistance, and determining to what extent such need is being met by existing programs. Each State must have a Legal Services Developer, who provides State leadership in developing legal assistance programs for older individuals throughout the State.[[15]](#footnote-15)

*Priority Services and the Minimum Percentage Requirement*

The OAA currently requires that an "adequate proportion" of Title IIIB funds be expended by all area agencies on aging for delivery of each of three specified priority services: access, in-home, and legal assistance.[[16]](#footnote-16) What constitutes an "adequate proportion" is determined by each State agency on aging. State plans must 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.[[17]](#footnote-17) The minimum percentage is to be a floor and not a ceiling for funding of legal services.[[18]](#footnote-18) Furthermore, the State plan must contain assurances that, to the extent practicable, Title IIIB 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, *e.g.*, Legal Services Corporation-funded programs, and that reasonable efforts will be made to maintain existing levels of legal assistance for older individuals.

Although the requirement for a minimum percentage may appear to guarantee an adequate level of funding for legal services, this is not necessarily the case. Some states have chosen a figure that merely reflects the level of funding that was already being provided by Area Agencies; therefore, the actual amount spent on legal services has neither increased nor decreased after the establishment of a minimum percentage. Note that this is an area in which the LSD may be asked by AAAs and legal services programs to provide guidance (*e.g.*, as to what an "adequate proportion" means).

*Title VII Funding*

The enactment of Title VII, a new Elder Rights Title, in 1992 and the potential for appropriation of additional funds to state agencies to carry out state-level legal assistance development activities under Title VII should not in any way lessen the funds currently being expended on legal assistance activities by the State.[[19]](#footnote-19) Nor should it lessen, in any way, funds expended by area agencies for legal assistance services. Sec. 705(a)(4) of the Act requires that funds allotted to the State for the purpose of undertaking Title VII legal assistance activities must be used to augment, and not to supplant, funds that were being used by the State agency to carry out legal assistance activities prior to the enactment of the 1992 Amendments.[[20]](#footnote-20) At this time, no funds for legal assistance development have been appropriated under Title VII, nor is that now expected to occur.

*OAA and Regulatory Requirements for AAAs in Contracting with Legal Assistance Providers*

The OAA requires AAAs to contract with legal assistance providers that (1) have the experience or capacity to provide legal assistance; (2) are subject to those Legal Services Corporation (LSC) Act regulations determined appropriate and adopted as regulations by the Assistant Secretary for Aging; and (3) attempt to involve the private bar in legal assistance activities to target services to older individuals with social or economic need.[[21]](#footnote-21) The Act also requires that all Title IIIB legal assistance providers target their services to older individuals with social or economic need and, if not an LSC project, to coordinate services with existing LSC programs.[[22]](#footnote-22) In addition, a provision added by the 1992 Amendments requires area agencies on aging to select providers who will give priority to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.[[23]](#footnote-23) Legislative history shows that this list of issues grew out of Congress' concern over a reported lack of targeting by AAA-funded legal programs.

The 1992 Amendments to the Act also charged the Administration on Aging (AoA) with developing specific guidelines for AAAs to follow in choosing and evaluating legal assistance providers.[[24]](#footnote-24) After they are completed, the State must ensure that AAAs use these guidelines for selection to first assess potential providers, and then to make a finding based on that assessment that the grantee the AAA selects is the entity best able to provide legal assistance services to older persons in economic or social need. As of the time of this update, March 1997, AoA had not yet developed these guidelines.

The Regulations promulgated under the 1987 Amendments to the OAA discuss in greater detail requirements for AAAs in selecting a legal services provider.[[25]](#footnote-25) The regulations indicate that an AAA 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; *e.g.*, 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, *e.g.*, the long-term care ombudsman program;

(4) demonstrates the capacity to provide legal services 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 do not speak English as their principal language.[[26]](#footnote-26)

*Multiple Legal Services Providers*

If necessary or most efficient, an AAA may contract with more than one legal services provider. For example, a planning and service area (PSA) may require additional providers in order to be able to provide adequate legal assistance regarding priority issues, or to address special geographic or ethnic needs. Before an additional legal services provider is chosen, the AAA must evaluate whether such provider effectively meets that PSA's needs.[[27]](#footnote-27) In addition, all legal services providers must meet all of the requirements delineated in the preceding paragraphs, even if a provider's contract is merely for "supplemental legal services." Finally, the AAA may be required to explain why the PSA requires more than one legal services provider.

*Restrictions on State and Area Agencies as Service Providers*

The 1992 OAA Amendments retain the provision that State and area agencies on aging may not provide supportive services (including legal assistance) directly, unless the provision of such service by the State or area agency (1) is necessary to ensure an adequate supply of such services; (2) is directly related to the State or area agency's administrative functions; or (3) the service can be provided more economically by such State or area agency. Direct service provision by an area agency requires a waiver from the State agency.[[28]](#footnote-28) If legal services were to be provided directly by a State or area agency, they would need to meet all requirements for legal assistance services in the Act and regulations.

**B. Targeting Legal Assistance to the Most Needy Elderly**

*Older Americans Act of 1965*

As originally conceived in 1965, the OAA was to address the 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. However, since that time, federal service dollars have become increasingly scarce and Congress has increasingly directed that services provided with OAA funds be focused on older individuals in greatest social or economic need, with particular attention to low-income minority individuals. This targeting requirement is particularly relevant to legal services -- the Act *defines* legal assistance as "legal advice and representation provided . . . to older individuals with economic or social needs."[[29]](#footnote-29)

Following is a brief history of targeting provisions in the OAA.

*1978 Amendments*

In 1978, legal assistance was listed as one of the three priority categories of services under Title IIIB, reflecting congressional recognition of the important role played by legal assistance providers as advocates for older persons. The 1978 Amendments also required that State and area plans give preference to those older adults in **greatest social and economic need**. Area agencies on aging (AAAs) were required to ensure that outreach efforts to identify individuals eligible for assistance would place a special emphasis on reaching the **rural elderly**. The 1978 Amendments also added the definition of legal services,[[30]](#footnote-30) which required that services be provided to those with economic or social needs.

*1984 Amendments*

The 1984 Amendments further strengthened the targeting requirements by mandating that in the delivery of services, particular attention be paid to **low-income minority individuals**. The 1984 Amendments also included, for the first time, definitions of greatest economic need and greatest social need, and required that State plans include the application of those definitions.

*1987 Amendments*

The 1987 Amendments continued to stress targeting of services to individuals with **greatest social or economic need, with particular emphasis on low-income minority individuals**. To ensure targeting, the 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; (2) to the maximum extent feasible, provide services to low-income minority individuals as needed; and (3) meet the area agency's specific objectives for providing services to low-income minority individuals.[[31]](#footnote-31)

Other targeting provisions were added to both the State and area plan sections of the Act in the 1987 Amendments. These provisions required assurances that (1) **outreach efforts** would identify those individuals eligible for services, with emphasis on those who live in rural areas and those in greatest social and economic need, especially low-income minority individuals; and (2) such groups would be informed of the availability of assistance. In addition, the Amendments required State and area plans to include provisions for an evaluation of the effectiveness of these special outreach efforts.[[32]](#footnote-32)

Finally, the 1987 Amendments also slightly modified the definitions of greatest need. The 1987 Amendments and the Act currently define them as follows:[[33]](#footnote-33)

*(29) The term "greatest economic need" means the need resulting from an income level at or below the poverty line.*[[34]](#footnote-34)

*(30) 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.*[[35]](#footnote-35)

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*(41) 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)).*[[36]](#footnote-36)

*1992 Amendments -- Title III*

The 1992 Amendments called for particular targeting of three additional categories of older persons. The new provisions require State plans to contain assurances of special emphasis on outreach to these groups: **older individuals with severe disabilities, older individuals who have limited English speaking ability, and older individuals with Alzheimer's disease or related disorders**.[[37]](#footnote-37) The 1992 Amendments also added a requirement that the caretakers of these older individuals be informed of the availability of assistance.[[38]](#footnote-38)

Title III also addresses targeting specifically for legal assistance in two ways. First, in OAA § 307(a)(15)(E), it requires the State Plan to assure that AAAs 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. The 1991 Senate Committee Report explains the listing as being

*[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.*[[39]](#footnote-39)

Second, § 321(a)(6)(B) specifies legal assistance as a service that may be provided under Title IIIB, and places 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. Sec. 321(a)(6)(B) allows representation of individuals who are wards, or are allegedly incapacitated. It limits representation of older individuals who seek to become guardians to cases where other adequate representation is unavailable.

In addition to the emphasis on targeting apparent in Title III, the 1992 Amendments also introduced targeting provisions in the new Title VII of the Act.

*1992 Amendments -- Title VII*

Title VII of the OAA consolidates and strengthens advocacy programs and activities for vulnerable elder rights protection. Sec. 731 of the new Title VII pertains to the development by the state agency of a legal advocacy system and legal assistance programs within the state. The section addresses various State agency responsibilities regarding issue areas on which the State agency is to focus elder rights advocacy initiatives and which tend to affect older individuals in greatest economic and social need. These issue areas include, among others, public benefits, guardianship, and surrogate decision-making. Additionally, Sec. 731(b)(3)(B) makes explicit Congress' intent that targeting be an essential element of legal assistance efforts. This section specifies that the State agency shall

*provide technical assistance to area agencies on aging and legal assistance providers . . . including technical assistance in developing plans for targeting services to reach the older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority individuals.*

*Prohibition on Means-Testing*

While the Act is clear regarding who should be given priority in the provision of legal assistance as well as other Title III services, the legislative history and the regulations are equally clear that using income and resources to determine who shall be eligible to receive services under Title III is prohibited. The regulations promulgated under the 1987 Amendments prohibit the use of a "means test" for any services provided under Title III, and define "means test" as "the use of an older person's income or resources to deny or limit that person's receipt of services . . . . "[[40]](#footnote-40) 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.*[[41]](#footnote-41)

Legal assistance providers and State and area agency staff remain frustrated by the tension and dilemma created by the need to balance targeting of services with the 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. This can be accomplished through such means as focused outreach efforts, location of offices, referrals from Legal Services Corporation projects, and development of expertise in certain areas of law. The Act provides some guidance through the list of priority issues areas set out in § 307(a)(15)(E), specifically intended to help ensure targeting (see above). (For suggested approaches to the targeting versus means-testing dilemma, see Appendix 6 and Chapter V of the *Comprehensive Guide to Delivery of Legal Assistance to Older Persons* published by The Center for Social Gerontology.)

**C. Types of Title IIIB Legal Assistance Programs**

The Older Americans Act requires State Units on Aging (SUA) to ensure that each area agency on aging (AAA) selects and enters into a contract with the legal assistance provider best able to satisfy the legal needs of the area's older population.[[42]](#footnote-42) 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.[[43]](#footnote-43) Whichever legal assistance provider is chosen, the AAA 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.[[44]](#footnote-44) *It is the role of the State Legal Services Developer (LSD) to work with AAAs to determine the delivery model appropriate to the various areas and to coordinate provision of legal assistance throughout the State.*

AAAs, providers, and LSDs have a wide variety of legal delivery models from which to choose in determining how best to serve socially and economically needy 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 program offices, traditional law firms, legal clinics, law schools, community service agencies, or senior centers. Following is a listing and brief description of legal services delivery models. For a discussion of their advantages and disadvantages, see Chapter VI of TCSG’s *Comprehensive Guide to Delivery of Legal Assistance to Older Persons*.

**1. Existing LSC Programs**

An AAA can fund an existing LSC 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.

It should be noted that major changes are being experienced by many LSC programs as a result of major cuts and restrictions on activity in the FY’96 and FY’97 LSC Appropriations. AAAs and Developers need to examine how these changes have affected the ability to provide services to needy older persons.

**2. Legal Services Program Serving Only the Elderly**

In areas with particularly large populations of older persons, an AAA 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.

**3. Law School Clinical Program**

There are several ways the resources of a law school may be used to serve the legal needs of the elderly. First, a law school 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.

**4. Volunteer Attorney Panel**

The OAA requires each AAA to attempt to involve 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 an LSC 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.

One excellent, though largely unused, source of pro bono assistance is senior attorneys.[[45]](#footnote-45) Many senior attorneys readily offer their services, while others have to be recruited; a recruitment effort is usually most effective when peers, judges, bar leaders or respected local attorneys are enlisted to help. Some senior attorneys, once recruited, may require accommodations and program commitments that differ from most pro bono efforts. For instance, retired attorneys may no longer have an office or access to administrative assistance. Therefore, the legal services program would need to supply a desk, telephone, secretarial support, etc. In addition, some attorneys may not have experience in the areas of law covered by the legal services program, and therefore need training. The benefits to a legal services program, however, can be significant. Most devote one to two days a week to the program and have vast legal experience. Many do public speaking, serve on community boards, and act as mentors to program staff on writing briefs, planning a strategy, management and other matters. Because the legal services program remains responsible for the cases, however, supervision by a senior staff person or manager is necessary.[[46]](#footnote-46)

**5. Compensated Private Attorneys**

An AAA 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 AAA 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. Use of this model should be carefully examined in terms of its ability to effectively target and serve those in greatest need.

**6. Private, For-Profit Legal Clinics**[[47]](#footnote-47)

A variation of the compensated private attorney model occurs where an AAA contracts with a private, for-profit legal clinic to furnish free services to older persons in its area. These clinics, which have sprung up around the country in recent years, provide low-cost, standardized legal services to clients -- usually in areas such as simple wills, divorces, and personal bankruptcies.

**7. Judicare**[[48]](#footnote-48)

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.

Three types of judicare programs exist. 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.

**8. Paralegal and/or Outreach Worker Program**

Another legal assistance delivery system that can supplement one of the attorney models 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.

**9. Legal Hotline for Older Persons**

Legal hotlines for older persons provide 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.

Hotlines can be 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.

**10. Pooled Legal Assistance Funds**

In states which have large rural areas, and few Title IIIB legal assistance dollars, "pooling" legal assistance funds may be the best way to provide legal services. Some rural areas currently provide legal assistance either by holding "Legal Assistance Days" (a day when an attorney would be available to meet with clients) or by contracting for an attorney's time and paying by the hour. Several problems exist with respect to each system. For instance, some clients with urgent legal problems may be unable to wait for the next scheduled "Legal Assistance Day." In those regions were AAAs contract for an attorney's time, budget funds may be used up before the end of the year, leaving no funding for legal problems that arise later in the year. By combining resources from various service areas for a "pooled" legal program, a state may be able to provide more consistent legal services throughout the participating regions, as well as eliminate duplicative administrative costs. In addition, by having a legal provider work year round rather than only a few days a year, the legal provider can specialize in elder law issues. The number of older persons receiving services is also likely to increase since legal assistance will be provided during the entire year.

This system has been implemented in Colorado, though it is not currently being utilized. Due to the vast areas to be covered in Colorado, legal services are provided primarily through the use of an 800 number. The legal provider, however, travels to each region on a regular basis to conduct client interviews and give educational presentations. In situations where the client is unable to be interviewed over the telephone and/or is homebound, a local volunteer travels to the client's home to conduct an interview. Local volunteers have been trained to use an intake questionnaire which is sufficiently detailed to obviate the need for a legal background. For more information on developing a similar legal services delivery program in your area, contact Jan Meyers, the Colorado Developer. (See attached list for address and phone number.)

*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 currently not permissible under Title IIIB, area agencies cannot fund these models to provide legal assistance.[[49]](#footnote-49) 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 for a fixed period of time at a lower fee than is normally charged. Some referral services are run on a statewide basis, and others on a county-wide basis. However, 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 IIIB program by providing guidance and reduced-cost assistance to persons not represented by the Title IIIB program because their cases are not within the program's priority areas (*e.g.*, complex real estate issues, bankruptcy, etc.). 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.

**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.

**D. Current and Emerging Legal Issues**

Set out below are legal issues likely to be encountered by older persons that will create a need for and/or cause them to seek out legal assistance. Because funding for Title IIIB and other legal services programs is likely to remain inadequate in the years ahead, it is important that legal services providers, as well as AAAs and SUAs, identify the legal problems that most commonly affect older persons, particularly those with greatest social or economic need. Legal services providers must also learn to establish priority issue areas, refuse cases that fall outside of these priorities, develop sufficient expertise in substantive areas of law related to priority issues, and coordinate with LSC programs and pro bono panels in order to maximize resources and not duplicate services. The State Legal Services Developer (LSD) plays a critical role in assisting Title IIIB programs to focus their services on the needs of the most vulnerable individuals and groups, and in identifying new, emerging issues affecting older persons in his/her state.

*Legal Issues Affecting the Elderly*

**1. Government Benefits Generally**

Nearly all elderly persons are eligible for government entitlements such as Social Security retirement benefits[[50]](#footnote-50) and Medicare. Others may be eligible to receive Supplemental Security Income (SSI),[[51]](#footnote-51) Social Security disability benefits,[[52]](#footnote-52) Food Stamps, Medicaid, or Veterans' Benefits. Because these programs are governed by complicated statutes, regulations, program operating manuals and federal-state partnership arrangements, subtle legal issues related to initial and continuing eligibility often arise. Despite the catastrophic financial impact that failure to apply for benefits (or the loss of benefits) may have on the elderly, they are often unaware of their right to benefits and their right to appeal the denial, reduction, or termination of benefits.

**2. Guardianship and Protective Services**

Not infrequently, older persons are confronted with guardianship, conservatorship, or involuntary commitment procedures initiated by family or friends. Often, family members or friends may take such action because they honestly believe the older person to be mentally incapacitated. However, in some instances, their actions may stem instead from selfish motives such as wanting to ensure that property they will inherit is preserved or, in the case of involuntary commitment, not wanting to be inconvenienced by the presence, needs, or behavior of the older persons. For an older person struggling to maintain independence and self respect, the loss of control over life and property may be psychologically devastating. Yet in most states it continues to be relatively easy to have an older person declared legally incompetent to manage his or her affairs, and to have a guardian or conservator appointed to look after the person and his or her property. Many states lack sufficient due process safeguards to ensure adequate notice, presence of the alleged incompetent at the proceedings, appointment of a lawyer to defend the alleged incompetent, and trial by jury.

Legal programs can provide representation to assure that both the personal and property rights of the elderly are safeguarded. Lawyers can work to prevent the involuntary commitment of their elderly clients where there are viable, less restrictive alternatives available. Competent elderly can be assisted in establishing "advance directives" (such as durable powers of attorney for health care or living wills) to avoid the need for guardianship.

**3. Pensions and Retirement Health Benefits**

Many individuals retire expecting to receive pensions and continuation of health care insurance coverage. All too frequently, some of these persons are told they are ineligible for a pension or, after retirement, that their health care insurance benefits have been reduced or terminated. Legal programs can assist clients with eligibility issues and advise individuals approaching retirement on how to obtain pensions.

**4. Age Discrimination**

Older persons may have problems obtaining credit or employment or be demoted or discharged by an employer because of age discrimination. They may also be evicted from their apartments because their landlords unjustifiably view them as problem tenants who can't take care of themselves. In many instances these discriminatory actions may be predicated on the belief that older persons will not challenge the actions and enforce their rights. Legal assistance providers can help by educating older persons about their rights and assisting in filing charges of employment discrimination.

**5. Health Care and Insurance**

As a group, the elderly have more medical problems than younger persons. They often encounter problems with health insurance, drugs, and health care equipment. Denial of needed health care and insurance benefits not only damages the individual's physical health but also creates emotional stress that can complicate physical problems. Legal programs can help older persons with disputes with insurance companies, Medicaid eligibility issues, health care insurance that supplements Medicare, etc.

**6. Nursing Home Problems and Resident Rights**

Nursing home residents comprise one of the most isolated and needy classes of older persons. Legal problems specifically related to their nursing home situation are myriad: denial of Medicare Part A skilled nursing care coverage; denial of Medicaid coverage; requirements that they enter into "private pay" contracts prior to nursing home acceptance of Medicaid payments; overcharging by nursing homes; involuntary transfer from nursing homes; and inadequate or abusive treatment. Legal providers can give advice to their clients regarding these issues or represent them in court or before administrative tribunals.

**7. Consumer Fraud**

Older people who live alone and are isolated are more likely than others to become victims of consumer fraud. The most commonly encountered consumer problems involve high-pressure door-to-door salespersons, mail-order purchases, medical bills, insurance coverage and claims, prescription drugs, funeral expenses, utility problems, hearing aids, eyeglasses and dentures, and home repairs. For an older person living on a fixed income, even small financial losses can be critical. Legal providers can assist older persons to recover monetary damages, enforce warranty provisions, and enforce consumer fraud laws.

**8. Landlord/Tenant and Housing**

Elderly persons who rent apartments may have all the problems typically associated with the landlord/tenant relationship: problems with repairs, lease violations and eviction. Those who own homes may not realize that they may be entitled to property tax relief as well as assistance in paying heating bills and weatherizing their homes. Older persons who cannot afford to pay rent or maintain their own homes may be unaware of public and rent-subsidized housing options. In addition, elderly tenants are increasingly affected by the conversion of rental apartments to condominiums or cooperatives. They are unable to purchase their apartments; yet relocation may be difficult and traumatic. Legal services can be provided to assist with most of these issues.

**9. Utilities**

Many older persons, because they are living on very limited incomes, have trouble paying their monthly utilities bills on time or at all. Others may simply forget to pay their bills. This may lead to an imposition of late charges, or, even worse, to a complete shutoff of electricity, gas, water, or telephone services. In addition, some utility companies may improperly discontinue services to clients (*e.g.*, shutting off electricity during winter months), a potentially severe problem for the elderly. Legal services providers can help their clients apply for utilities payment assistance; set up workable payment plans; investigate improper shutoff, billing, or collection practices; identify discounts for elders or others on fixed or low incomes; and reinstate services.

**10. Wills and Estate Planning**

A great many elderly, regardless of the extent of their assets or income, are interested in having a will and protecting their estate. Such concerns are frequently expressed by low-income individuals, who wish to ensure that their modest estate and personal effects pass to the individuals of their choice. Legal assistance providers can draft simple wills or locate members of the local bar to do so on a pro bono or reduced fee basis.

Note: Given the high degree of interest of most elderly in having a will, legal providers must be careful not to allow their services to become too skewed in this direction. To insure that those in greatest economic and social need are adequately served, programs must limit estate planning services. This is an area where the private bar has substantial experience and the provider can work with the bar to establish reduced fee or pro bono referral panels to assist persons who cannot be served by the Title III program.

**11. Domestic Relations/Family Law**

The elderly face the same marital problems experienced by younger members of society. They are involved in separations and divorces which may have grave psychological and financial consequences (especially for women). They may be victims of spouse abuse. They may also be concerned with custody or visitation issues involving minor children and grandchildren. In addition, they may be grandparents raising their grandchildren and experiencing heavy financial burdens. Legal providers can represent an older person in obtaining a divorce, assist victims of abuse in obtaining a court injunction, and (if state law permits) assist grandparents regarding issues of custody and visitation of grandchildren; and help grandparents access public benefits.

**12. Abuse of the Elderly**

There is increasing evidence that abuse and neglect of dependent and frail elderly persons is a significant problem. Abuse may be physical, financial, or emotional and may be perpetrated by neighbors, family, or paid caregivers. A legal services provider may assist an older person by seeking a court injunction and by attempting, through court action, to recover money or goods taken from the victim.

*Priority Issues and Statewide Standards for the Delivery of Legal Assistance*

Sec. 731(b)(3)(A) of the Older Americans Act directs the State agency on aging to "develop, in conjunction with area agencies on aging and legal assistance providers, statewide standards for the delivery of legal assistance to older individuals."[[53]](#footnote-53) There are a number of important reasons for pursuing statewide standards. One reason, relevant to our discussion here, is to establish clear state policy with respect to specific aspects of legal assistance -- *e.g.*, priority legal issues. In those states that have convened a standards task force and developed statewide standards, participants have identified priority legal issues and made a commitment to ensure that legal services programs do give priority to these issues. Set forth below are two examples of how states have covered priority legal issues in their statewide standards.

**1. Georgia's Statewide Standards for the Delivery of Legal Assistance**

Georgia's statewide standards require area agencies on aging and Title IIIB legal services programs to assure that certain broad categories of legal assistance are available throughout each planning and service area. These categories include: income, health care, long-term care, nutrition, housing and utilities, defense of guardianship, abuse, neglect and exploitation, age discrimination. Each of these broad categories is then broken down into more specific subcategories -- *e.g.*, SSI, food stamps, landlord/tenant issues, etc. These subcategories are further identified as either low or high priority. For instance, some subcategories are marked with a plus sign, indicating that these issues are most important (*e.g.*, Social Security, Medicaid); the unmarked subcategories are considered to be less important (*e.g.*, durable powers of attorney, wills). The standards also require that all Title

IIIB providers be able to address these most important areas, unless the provider can demonstrate to the area agency on aging that another provider is delivering the needed services. In addition, area agencies must require legal services providers to address these issues when responding to requests for proposals.

**2. Minnesota's Statewide Standards**

Minnesota's statewide standards require legal assistance providers to provide services "to the extent permitted by available funding" in each of the following broad categories: public benefits, health care, housing, consumer, and problems of vulnerable persons/individual rights. Each broad category contains a listing of subcategories (*e.g.*, the "health care" category includes Medicare, pre-admission screening, home care services). Because the standards state that services provided should reflect the needs of the target population in each AAA region, the subcategories that are considered are only *examples* of cases that *could* be addressed. It is up to the area agency on aging and the legal services provider to determine which of these issues are important to their planning and service area. Every two years, the needs of the target population must be reviewed, discussed, and agreed to by the legal assistance providers and the area agency.

For more information about the development of statewide standards, see Chapter V, Section E on page 55of this manual or TCSG's *Guide to the Development of Statewide Standards for the Delivery of Legal Assistance to Older Individuals*. You may also contact TCSG at (313) 665-1126 for additional information or assistance.

**V. Roles of the Legal Services Developer**

The position of Legal Services Developer (LSD) varies greatly from state to state. Even the job title varies -- while in most states the title is "Legal Services Developer," in other states it is "Elder Rights Specialist," "Aging Coordinator," or "Legal Services Development Specialist." A review of various LSD job descriptions, however, reveals one constant: the job of the Developer is a formidable one. The LSD is responsible for pulling together and orchestrating throughout the state high impact, high quality legal advocacy services for older persons, that: (1) make maximum use of limited Title IIIB dollars; (2) utilize a broad range of resources to serve needy elders; (3) are an integral part of the aging network's services; (4) work in a coordinated way with the ombudsman, protective services, and benefits counseling programs; and (5) are an important component of the state's elder rights advocacy efforts.

The key role that distinguishes the LSD from other legal providers and advocates for the elderly is that s/he is likely to be the one person in the state who must conceptualize, and then focus on implementing, a statewide vision of the delivery of legal advocacy services to the most vulnerable elderly in the state.

In carrying out this role, the typical developer is required to play numerous other 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, advocate, 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.

And, all this must be done with little formal statutory or administrative authority for these roles. In other words, most LSDs have the luxury and burden of shaping their roles and authority, often on the basis largely of their own persuasiveness within their own organization and in the statewide legal and elder rights networks.

Chapter 4 of Title VII of the Act provides some guidance regarding the functions of the LSD. Under Chapter 4, the State agency must provide a Legal Services Developer, "and other personnel, sufficient to ensure:"

• leadership in securing and maintaining legal rights;

• coordination of the provision of legal assistance;

• technical assistance, training and other support to area agencies on aging, legal assistance providers, ombudsmen, and others as appropriate; and

• promotion of financial management services for older individuals at risk of conservatorship.[[54]](#footnote-54)

This provision is important because it begins to define specific responsibilities for State agencies in developing a statewide legal advocacy system, and, for the first time, it requires all States to have a Legal Services Developer to carry out those responsibilities.

Although Chapter 4 provides some guidance for Developers, the Act does not give sufficient direction to Developers. Therefore, in this chapter we present a discussion of some of the various roles that may be undertaken by Developers, including a copy of the AoA's draft model job description for LSDs and the National Association of Legal Services Developers’ (NALSD’s) draft model job description upon which the AoA draft was based.

**A. NALSD Developer Job Description Draft**

Because no job description for Legal Services Developers existed and because the 1992 Amendments to the Older Americans Act called for the creation of one, NALSD took on the task of drafting a job description in late 1993. There were a number of drafts produced and some excellent discussions trying to pinpoint the essence of the developer roles. The result is an extremely valuable job description to guide the work of Developers in all states.

**B. AoA’s Draft Model Job Description**

The 1992 Amendments to the Older Americans Act added a requirement that the Administration on Aging (AoA) "develop guidelines and a model job description for choosing and evaluating legal assistance developers. . . " (42 U.S.C. § 3012(a)(26); OAA §202(a)(26)). In compliance with this mandate, AoA worked with the NALSD draft job description and in November 1995 issued a draft of the *Model Job Description for Legal Assistance Developers*, which can be found on the following pages.[[55]](#footnote-55)AoA sent this draft to Directors of State Agencies on Aging and to State Legal Services Developers for a formal review and comment period before final promulgation. As of March 1997, the final version has not yet been issued.

**C. Legal Program Development Work with Legal Services Providers and Area Agencies on Aging**

As stated at the beginning of this chapter, the key role that distinguishes the LSD from other legal service providers and other advocates for the elderly is that s/he is the one person in the state who must conceptualize, and then focus on implementing, a statewide vision of the delivery of legal advocacy services to the most vulnerable elderly in the state. No other player in the Aging Network has that role. How effective a LSD is at filling this role will generally determine how effective s/he is overall in his/her job.

The vision of the statewide legal advocacy delivery system is the benchmark against which the LSD will determine what his/her priority duties/tasks should be. That is, the litmus test for whether tasks are important or high priority will be whether and to what degree they contribute to achieving that vision of having in place the most effective possible legal advocacy system to meet the needs of the vulnerable elderly in the state.

In developing and constantly refining this statewide vision, the LSD will need to seek advice and counsel from a wide variety of sources, including legal providers, AAAs, other SUA staff, particularly those involved in elder rights advocacy, and other local and statewide elder rights and legal advocacy leaders. Indeed, a key part of the role of the LSD is to facilitate on-going, formal and informal, statewide planning efforts regarding legal advocacy services delivery system issues, as well as to assist the AAAs in this same effort on the planning and service area level.

At the heart of the legal program development work is the recognition that the OAA envisions legal advocacy services as meeting the individual needs of the most vulnerable elderly by making available the full panoply of legal advocacy services, i.e., administrative advocacy, litigative advocacy, and/or legislative advocacy. This recognizes also that meeting the individual needs of the most vulnerable elderly requires providing access to justice through individual case representation as well as through systems change advocacy, depending on the needs of the individual client.

A major role, then, of the LSD is to provide statewide leadership in the development and enhancement of the legal advocacy services which are available to the most vulnerable elders in the state. In so doing, the LSD will find him/herself working at times on statewide issues, and at other times on local or regional issues. In either case, the goal is always the development and enhancement of the provision of legal advocacy services to the most vulnerable elders.

The most frequent statewide issues in the legal program development area are the following:

\* Expansion of direct legal representation so that gaps in service are alleviated, whether through increased funding or through increased pro bono or reduced fee services or through alternative means, such as alternative dispute resolution or non-lawyer advocacy services or legal hotlines for advice-only cases.

\* Enhancement of outreach techniques by both legal providers and AAAs to assure that legal advocacy services are targeted to the most vulnerable elderly.

\* Development and enhancement of statewide systems advocacy efforts which include legal advocacy services to meet the needs of vulnerable elders.

\* Design and implementation of programmatic systems to improve the quality of legal services delivery and/or to increase effective communication between legal providers and AAAs and other funding sources. For example: reporting systems which measure output and reduce burdensome, useless reporting; statewide standards for service delivery; etc.

\* Expansion of collaboration between legal providers and other elder rights advocacy programs, such as the Long Term Care Ombudsman, the benefits counseling programs, and the elder abuse prevention programs.

On the AAA level, the LSD has a key role of providing both leadership and technical assistance. The AAAs generally look to the LSD to provide "expert" guidance on legal service delivery system issues, whether in program development or program monitoring and assessment. While the LSD must recognize that the AAA makes the final decision about funding of legal programs, the LSD can provide very useful and welcome assistance to the AAA on these decisions.

Also on the area level, the LSD is looked to by the legal providers for leadership and technical assistance, particularly in developing and maintaining effective working relationships with their AAA funding sources and in finding ways of expanding and improving the services available to vulnerable elders. Frequently in this relationship, the legal providers look to the LSD for guidance and assistance on "relationship" issues with the AAA or with other potential funding sources.

Recognizing that the LSD is looked to by both the AAAs and the legal providers for assistance, the LSD needs to be certain that s/he helps both, but is not perceived as the spokesperson for either. The LSD's role is to promote and enhance high quality legal advocacy services for vulnerable elders, not to promote the interests of one party or of the other. Key to this relationship is gaining the respect of both parties, because of your substantive knowledge, your honesty and integrity, and your commitment to vulnerable older Americans.

**D. Pro Bono Development Work with the Private Bar**

Legal Services Developers are charged with identifying the legal needs of older persons, as well as the resources available to meet those needs. Title IIIB-funded legal assistance programs clearly are not sufficient to fulfill the needs of all older persons in any given state or local area. Therefore, it is incumbent upon the Developer to find additional sources of legal services for older individuals. One avenue to explore is pro bono or reduced fee work by members of the state private bar. LSDs can develop and implement statewide and local pro bono programs that bring together prospective clients and volunteer lawyers.

In their pro bono development work, LSDs can help AAAs and providers not only to generate a substantial number of volunteer lawyers, but to use these resources in such a way as to maximize their impact within their local communities. Developers can help providers to integrate systematically pro bono resources as part of their overall delivery of legal services. Developers can also work to ensure that pro bono programs target for priority attention specific substantive areas or client groups, to be optimally effective.

In addition to working with AAAs and legal services providers, LSDs can work directly with members of the private bar. For instance, Developers should consider attending formal and informal meetings of relevant sections of the State or local bar associations. This helps the Developer to keep up with what the private bar is doing, and to make important contacts. In some states, the LSD has been a key player in founding, chairing or providing support to Elder Law Sections of the State Bar Association.

**E. Development of Standards for the Delivery of Legal Assistance to Older Persons**

Title VII of the Older Americans Act calls for State agencies to "develop, in conjunction with area agencies on aging and legal assistance providers, statewide standards for the delivery of legal assistance to older individuals."[[56]](#footnote-56) Statewide standards can be defined as a set of guidelines which describe and define the essential elements involved in providing high quality, high impact legal assistance to older persons, and which set out the major responsibilities and roles of the actors and agencies involved in the legal advocacy system. Planning for the development of standards generally begins with the Legal Services Developer, who takes the lead in organizing the effort.

The reasons for developing statewide standards are to (1) improve the ability of AAAs to request proposals from, and contract with, legal providers for full-service, targeted legal programs; (2) assist state and area agencies and legal providers in viewing legal assistance as an integral part of the AAAs' and state agencies' larger role in protecting and enhancing elder rights and the autonomy of older persons; and (3) establish minimum standards of service which may be used by the state agency, AAAs, and legal providers to develop quality assurance systems of operation, monitoring procedures, and reporting systems which reflect the services being delivered and the impact of those services on the lives and well-being of older persons. Because developing and supporting legal assistance programs throughout the state is the basic role of the Developer, it is logical that the LSD would take the lead in bringing together a task force for the development of standards.

As an initial step in the planning, the LSD can discuss the need for and purpose of standards with the State Director on Aging and other state office staff who may have an interest in the project, and determine whether there is consensus that the concepts and process (discussed in TCSG's publication, *Guide to the Development of Statewide Standards for the Delivery of Legal Assistance to Older Individuals*) seem appropriate for their state. It is also helpful to discuss the development of standards with staff from area agencies and Title IIIB programs, members of the State Bar Elder Law Committee, representatives from the Office of General Counsel, etc. Development of standards by calling together a task force that includes even "problem" area agencies and providers can be a very effective tool in dealing with difficulties. By including the problem area agencies and providers in the process, the Developer gives them a forum for open discussion about their conceptions of the programs and the ownership of the final product.

**F. Legal Education of Practitioners, Courts and Public**

The Older Americans Act calls on Legal Services Developers to "provide technical assistance, training and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons as appropriate."[[57]](#footnote-57) In addition, AoA's *Model Job Description for Legal Assistance Developers* states that Developers can

*[provide] technical assistance to AAAs and Title IIIB legal assistance programs on laws, regulations, and guidelines affecting program development and implementation[; and provide] and arrange for training on a regular basis to AAA staff, Title IIIB legal assistance providers, volunteer attorneys, other elder rights staff, and others in the aging network on legal concerns affecting older people.*

The model job description also encourages Developers to provide for the education and training of professionals, volunteers, and older persons on elder rights, requirements and benefits of specific laws, and methods for enhancing coordination of services. In all these efforts, the LSD will want to focus on how such activities will contribute most to enhancing the rights of the most vulnerable elders.

Among the roles that Developers may most effectively play in this area are the following:

\* Coordinating and assisting in planning and organizing statewide forums on substantive law topics to increase the knowledge of the public and private bar members about key elder law issues. These sessions may also be of value to judges.

\* Coordinating statewide forums on elder rights issues for Aging Network advocates and older persons so as to increase both knowledge of the issues and to increase the strength of the statewide elder rights movement.

\* Organizing elder law or elder rights workshops or seminars at other aging conferences in the state to both increase knowledge about these key issues and to increase interaction between legal providers and other members of the Aging Network.

\* Organizing special meetings or forums for members of the private and public interest bar and the courts on key elder rights issues of concern to the most vulnerable elderly, *e.g.*, guardianship reforms issues, etc. The LSD can play a key role in coordinating this by personal persuasion and by thinking and planning how best to package the issue and who to involve.

**G. Elder Rights Advocacy Development and Support**

With the passage of Title VII, the Vulnerable Elder Rights Title of the OAA, there has been increased attention to elder rights planning and advocacy. LSDs should always remember that elder rights planning and advocacy have been integral to the OAA since its inception, and therefore are not dependent upon Title VII for their base in law. A key role of the SUA and the AAAs is to serve as a focal point for elder rights advocacy on behalf of the most vulnerable elders.

The LSD is an integral part of the SUA elder rights advocacy efforts. This has been particularly true with the advent of Chapter 4 of Title VII, which linked legal development with elder rights advocacy. Again, with or without Title VII, by definition advocacy is a part of legal services. Thus, in the LSD's role in promoting high quality legal services for the elderly in the state, the LSD is always attempting to promote and enhance the elder rights advocacy services available in the state.

LSDs generally are either the lead player in the SUA or one of the lead players in the SUA in developing and implementing statewide elder rights activities which are to enhance the rights and benefits available to older Americans. Such efforts may include: statewide elder rights conferences; statewide elder rights task forces to focus on specific advocacy issues; legislative or administrative advocacy activities; development of statewide elder rights coalitions; or other activities.

One of the crucial elements which LSDs can bring to these elder rights efforts is the provision of assistance in creating strong local elder rights advocates to support the statewide efforts. That is, by virtue of the contacts the LSD has with local legal providers and other advocates, the LSD can play a significant role in bringing these groups and individuals into statewide elder rights initiatives.

**H. Coordination with other Title VII Elder Rights Programs**

Title VII of the Older Americans Act calls on State agencies on aging to ensure the coordination of Title III legal assistance services, LSC services, and those services provided by the State Long-Term Care Ombudsman; Prevention of Elder Abuse, Neglect, and Exploitation; and Insurance/Benefits Counseling Programs.[[58]](#footnote-58) The ultimate purpose of coordination is to maximize the impact that each of these programs can have on the needs of the vulnerable elderly.

The LSD can assist with coordination between Title VII programs by exploring ways in which the different programs can and should cooperate and collaborate to enhance their service to, and advocacy for, vulnerable older people. In doing this, the Developer, along with representatives from the other programs, can explore and define how each of the four Title VII programs can be developed and operated to best address the needs of vulnerable elders and achieve the overall mission of Title VII. The challenge to the Developer and others is to learn how the purpose of each program advances the broader purpose of vulnerable elder rights protection; what barriers each program must overcome to advocate effectively for vulnerable elders; what the legal assistance program needs from other Title VII programs; and what the key advocacy issues affecting vulnerable elders are.

Keys to improving coordination may include: (1) training/cross-training among Title VII programs about what they do, joint skills, and overlapping substantive areas; (2) *understanding the need* for Title VII programs to work in a more coordinated way and to understand each other's roles; (3) sharing of information and resources among Title VII programs; (4) the development of working agreements; and (5) the creation of elder rights units within state agencies on aging.

**I. Elder Rights Units and the Role of Legal Services Developers**

As SUAs have implemented Title VII, the Vulnerable Elder Rights Title, some of the SUAs have created special Elder Rights Units within the SUA to better coordinate their elder rights activities. These units generally include the SUA staff who work on the programs mentioned in Title VII, that is, the Long Term Care Ombudsman, the LSD, the health insurance and benefits counseling programs and the elder abuse prevention program. Some states have a senior staff member head this unit, while others have one of the aforementioned staff head the unit, or in some cases the leadership shifts from one person to another depending on the issue being dealt with.

Generally, the Elder Rights Units are established to facilitate better communication and coordination among the "elder rights programs" which the SUA operates, and secondly, to place a heightened focus on statewide elder rights activities coordinated by the SUA. In some states, the Elder Rights Units include membership from outside the SUA, as well. In these cases, the focus is more often on statewide elder rights efforts, such as elder rights conferences or task forces.

Thus far, fewer than half the SUAs have established such Elder Rights Units. It is also too early to tell whether they make a significant difference in the quality or quantity of elder rights activities in a state. Usually the organizational structure is less important than the leadership of the people who play key roles. But, if it works, do it. If it doesn't, don't.

**J. Development and Maintenance of Legal Services Program Reporting Systems**

When enacting both the 1987 and 1992 Amendments to the Act, Congress expressed serious concern over the lack of reliable data made available to them by the Administration on Aging (AoA) 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. As a result, Congress added specific requirements in the Act, describing what data AoA is to collect and compile. These requirements are included in Secs. 202(a)(19), 202(a)(29), and 207(a)-(c) of the Act.

While the reauthorized OAA does not require the development of a uniform statewide reporting system, as noted above, Congress has clearly stated dissatisfaction with previous AoA reporting practices. Thus, a number of State Developers have taken the initiative in developing statewide reporting systems specifically for Title IIIB legal programs. These new reporting systems provide substantially improved information on who is being served and how, and also delineate the value of the services.

A reporting and monitoring system typically serves a number of different purposes. These include:

• **demonstrating legal compliance:** reporting must supply information that is required by law and that is necessary to demonstrate whether the program meets requirements imposed by federal and state authorities;

• **accountability:** reporting can demonstrate the extent of a program's compliance with obligations under the contract with its funding source;

• **performance evaluation:** a funding agency can use a reporting system as a creative tool for gathering information for evaluation of the legal services provider; and

• **marketing:** reporting can be used as a way to gather data on the impact and importance of legal assistance to older persons. This information can be used to "sell" legal assistance -- in fundraising efforts, for public relations, and to strengthen community support.

With increasing limits on available Title IIIB funds, the fourth purpose -- marketing -- continues to gain importance. It is often difficult for those outside of the legal services arena to understand the value of legal services programs. Often such programs are considered a threat, or unnecessary. Reporting can greatly assist in verifying the value of providing legal services. For instance, if an AAA is not aware of the fiscal and social impact that a legal services program has, it is less likely to be supportive of funding those services. Reporting that fiscal and social impact has the potential of bolstering any given legal services program.

Although a good statewide reporting system is an extremely valuable tool, developing one requires a great deal of cooperation and communication. Difficulties can easily arise as a result of perceptions -- correct or not -- that (1) state and area agencies demand unnecessary information; (2) state and area agencies do not understand the ethical obligation to maintain client confidentiality; or (3) providers avoid accountability by using the excuse of "confidentiality."

The importance of a thorough, well-functioning reporting system cannot be under emphasized. It can provide an area agency with a clear picture of the real value of a legal program for the aging community. It can also facilitate communication and mutual understanding between agency and program staff, thus providing an opportunity to prevent problems from developing. More broadly, a good reporting system can help agency and program staff work together more closely and effectively, thus contributing to the development of a high-quality legal program for elderly clients.

Perhaps most importantly, state agencies and area agencies funding legal assistance should avoid requiring reporting for reporting's sake. The time involved in collecting and compiling data for reporting must be weighed carefully against the value of the information produced and the extent to which the information will actually be used.

In developing a uniform statewide reporting format or system, the legal services Developer should seek input from the area agencies and the legal providers. In addition to ensuring compliance with federal reporting requirements, the Developer should inquire as to the type of data required of the legal programs' other funding sources (such as the Legal Services Corporation or the United Way). This may avoid unnecessary duplication of reporting requirements and enable the provider to spend less time on reporting and more time assisting clients.

For a more in-depth description of reporting systems, see Chapter X of TCSG’s *Comprehensive Guide to Delivery of Legal Assistance to Older Persons*. Also, see Appendices D and E for copies of Michigan's and Wisconsin's statewide reporting forms.

**K. Development and Use of Monitoring/Assessment Systems for Legal Programs for the Elderly**

A major role of the Legal Services Developer is to work with area agencies and legal services provider to ensure the provision of high quality, high impact legal services to older persons. This can be accomplished through the development of a system of reporting (discussed above) and evaluation/monitoring of Title IIIB legal programs. If an evaluation is to be meaningful, it should be undertaken as a cooperative effort between funder, provider and Developer. Too often the relationship between area agencies and legal providers is one of mutual skepticism, or even antagonism. The developer should help the area agency and provider try to move beyond a mere contractual relationship to a collaborative, working partnership in which there is a shared goal of assessing and improving legal services for older persons.

A good evaluation should look at various factors, including

• compliance with the Older Americans Act's requirements, such as targeting, priority setting, and assessing community needs and resources;

• adequacy of accessibility, community education and publicity, and outreach;

• program organization, management, and quality control (*e.g.*, intake procedures, internal grievance procedures, case management and file organization and maintenance);

• adequacy of staff training, supervision, and utilization of staff;

• adequacy of legal program's library/legal research materials;

• adequacy of legal program's office facilities and equipment;

• coordination with other legal resources;

• coordination with other community services; and

• client satisfaction.

For additional guidance in evaluating and monitoring Title III legal assistance programs, see TCSG’s *Guidelines for Planning and Evaluating Legal Assistance Programs Funded Under the Older Americans Act*, *The Comprehensive Guide to Delivery of Legal Assistance to Older Persons* (TCSG), and *Evaluating Legal Services Providers: A Handbook* (NSCLC).

**VI. Older Americans Act Aging Network**

This chapter addresses the roles of key components of the law and aging network in the development and delivery of legal assistance to older persons. It discusses the Administration on Aging (AoA), State Units on Aging, Legal Services Developers, Long-Term Care Ombudsmen, area agencies on aging, and local legal assistance providers. 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. This chapter provides a brief overview of these actors. For a more in-depth explanation, see Chapter II of TCSG’s *Comprehensive Guide to Delivery of Legal Assistance to Older Persons*.

**A. Overview of the Aging Network**

The aging network was created by the 1973 Amendments to the Older Americans Act (OAA or Act). Legal and other 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 on aging, in turn, fund their area agencies on aging; 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. In states which do not have area agencies on aging, the state is considered to have one planning and service area, and the state agency is considered to act as the area agency on aging and contracts directly with the service providers.[[59]](#footnote-59)

The chain of authority and funding for the network, as specified by congress in the Act, is as follows:

(Chart on reverse)

**Aging Network Flowchart**

PRESIDENT

Í

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Í

ADMINISTRATION ON AGING/ASSISTANT SECRETARY FOR AGING

(Washington, D.C.)

Recommends policy; develops Older Americans

Act regulations; allocates and administers national OAA

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

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REGIONAL AND BI-REGIONAL OFFICES OF THE ADMINISTRATION ON AGING

(10 Regions)

Provide technical assistance to states.

Í

STATE UNITS/OFFICES ON AGING

STATE LEGAL SERVICES DEVELOPERS &

STATE LONG-TERM CARE OMBUDSMEN

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

Virgin Islands, 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.

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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.

Í

LOCAL SERVICE PROVIDERS

Receive funds from the area agencies to provide services needed by older persons.

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

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.

AoA is headed by an Assistant Secretary appointed by the President, and is housed within the Department of Health and Human Services. 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. Recently, several of these have been combined into Bi-Regional offices.

AoA is responsible for numerous functions specified in the Act, including collecting and disseminating information related to problems of older individuals; developing plans, conducting and arranging for research in the field of aging, and assisting in the establishment of programs designed to meet the needs of older individuals; providing technical assistance and consultation to States with respect to programs for the aged; evaluating programs and activities carried out under the Act; collecting statistical data regarding programs and activities carried out with funds provided by the Act; and many other duties.[[60]](#footnote-60)

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

*State Unit/Office on Aging*

In order to receive funds under the OAA, 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. For example, the SUA must develop a State plan; be responsible for the development, administration, coordination, priority setting, and evaluation of all State activities related to the objectives of the Act; and "serve as an effective and visible advocate" for older individuals.[[61]](#footnote-61)

The SUA designates subdivisions (area agencies) within the 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. For a discussion of the SUA's specific obligations regarding legal assistance, see Chapter IV of this manual and Chapters I and II of TCSG’s *Comprehensive Guide to Delivery of Legal Assistance to Older Persons*. For a discussion of the history and function of the Legal Services Developer position, see Chapters II and V of this manual.

*Office of the State Long-Term Care Ombudsman*

All states must establish and operate an Office of the State Long-Term Care Ombudsman (Office), headed by the State Long-Term Care Ombudsman (Ombudsman). The functions of the Ombudsman include identifying, investigating, and resolving complaints by or on behalf of residents of long-term care facilities; providing services to protect the health, safety, welfare, and rights of the residents; representing the interests of residents before governmental agencies; seeking administrative, legal, and other remedies to protect residents' health, safety, welfare, and rights; and others.[[62]](#footnote-62) The Office is also required to coordinate "to the greatest extent possible, ombudsman services with legal assistance . . . through adoption of memoranda and other means."[[63]](#footnote-63) It is important for the State Ombudsman and Legal Services Developer to work closely. Linkages between the legal assistance and ombudsman programs enable them to be perceived as a single advocacy unit. This relationship benefits both programs as it enhances access to legal assistance by long-term care facility residents.

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

*Area Agency on Aging (AAA)*

Area agencies on Aging (AAAs) plan, coordinate, implement, and oversee a system of comprehensive OAA 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 older individuals."[[64]](#footnote-64) While most states have more than one AAA, some states are designated as a single planning and service area (PSA) -- for example, North Dakota. In states with a single PSA, the State agency must fulfill the same responsibilities that an AAA ordinarily would.

The services that 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 AAA. 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.

*Title III Legal Assistance Providers*

A discussion of Title IIIB legal assistance providers is included in Chapter IV of this manual. For additional information, see Chapters II, VI and IX of *The Comprehensive Guide to Delivery of Legal Assistance to Older Persons*.

**VII. Elder Rights Advocacy**

***Power concedes nothing without a demand. It never did and it never will. If there is no struggle, there is no progress.***

**Frederick Douglas**

**A. Advocacy as a Part of the Older Americans Act**

The Older Americans Act grew out of a determined, non-violent struggle to assure that older persons in this nation would have the rights and benefits to which their service to this country entitled them. It grew out of the hard work and unceasing efforts of old and young together to assure that the most vulnerable older persons in this nation should not have to suffer through the last decades of their lives without the protection and assistance of the government they devoted their lives to, in so many ways. It grew out of a belief that justice demanded no less, and that older Americans should have access to justice. The Older Americans Act was born out of advocacy, and advocacy is inherent in its purpose.

Since its inception in 1965, the Older Americans Act has upheld the value of advocating on behalf of the rights of older Americans. In the 1992 Amendments to the OAA, Title VII reaffirmed that elder rights advocacy was a focus of the Act. In its own way, the OAA was simply reaffirming the birthright of this nation; that advocacy for the rights of our citizens is basic and fundamental. And, by making legal services -- a service that is by definition advocacy -- an integral part of its services, the OAA re-emphasized that advocacy is essential to the success of the program.

For Legal Services Developers (LSDs), advocacy is also a part of the job description. The LSD's role is to advocate both for the rights of vulnerable older Americans and for the development and enhancement of a system of high quality legal advocacy services which will provide access to the system of justice for vulnerable older persons. This is the crux of the LSDs job; all else follows from this.

**B. Media Advocacy**

In pursuit of the protection and enhancement of the rights of older Americans, the use of media advocacy can be essential. The Advocacy Institute has defined this advocacy tool as follows: *Media advocacy is the strategic use of mass media and community advocacy to advance a social or public policy initiative.*

As this definition states, media advocacy must be done strategically -- carefully -- and in conjunction with other community advocacy. The role of any advocate includes the use of all the advocacy tools at his/her disposal. Media advocacy is one of those tools. The LSD should make use of this tool either directly or indirectly when the occasion warrants it. Inasmuch as the LSD is part of a larger Aging Network, including possibly as a staff member of the SUA, use of media advocacy must be done within these institutional constraints. The important point to remember is that working with the mass media can be key to the advancement of an elder rights policy initiative.

**C. Legislative Advocacy**

As with media advocacy, legislative advocacy is a key tool for advancing many public policy initiatives. Since many of the programs which are most crucial to the rights and well-being of the most vulnerable elderly are legislated by Congress or state legislatures, legislative advocacy is a natural outgrowth of any elder rights initiative. Social Security, SSI, Medicare, Medicaid, regulation of private pensions, regulation of health insurance, consumer protection laws, guardianship and many more areas critical to the most vulnerable elderly result from federal or state laws.

LSDs, and really all persons, operate within certain institutional and legal constraints. Each LSD must determine what those boundaries are in the position s/he holds. However, the Developer should keep in mind that there is nothing currently in the OAA that creates a blanket prohibition on legislative advocacy. There are certain constraints on some legal providers, such as Legal Service Corporation programs, and on what certain organizations can do or must report, but legislative advocacy should clearly be viewed as a possible part of any elder rights initiative.

**D. Coalition Building**

Although coalition-building has become the great buzz-word of the 1990's, it remains crucial to any elder rights advocacy effort. Whether short or long-term, coalitions are the building blocks of effective efforts to make public policy change. One of the roles of an LSD, as work is done on elder rights initiatives, will be to assist in creating and sustaining coalitions of older and younger advocates. A key part of this role is to bring legal assistance providers into larger elder rights coalitions, so that the legal providers' skills can be made an integral part of the overall advocacy efforts.

**VIII. New Developers -- Getting Started**

The purpose of this chapter is to give new Developers some helpful hints on how to get started with their work as Legal Services Developers. This section guides the new Developer through some basic first steps that should be taken as soon as possible after the Developer has accepted his/her new position. Following these steps will help to provide a smoother and more enjoyable transition into this new and exciting job. Any Developer who has questions or needs additional guidance should not hesitate to contact other Legal Services Developers and/or the national support centers in law and aging.

**A. Gathering Basic Information and Knowledge**

*1.* *Become familiar with the Older Americans Act and Regulations:*

• Title III provisions on Title IIIB legal services, priority services, minimum percentage, targeting, the Developer, elder rights and the role of legal services, etc.

• Chapter 4 of Title VII: information on elder rights and state responsibility.

• Use TCSG's *Comprehensive Guide to Delivery of Legal Assistance to Older Persons.*

*2.* *Recognize the importance of targeting in the Act and the implications for legal services.*

*3.* *Contact the National Association of Legal Services Developers.*

*4.* *Become familiar with the national support centers in law and aging and the services they provide.*

*5.* *Read the NALSD and AoA drafts of the Legal Services Developer Model Job Description.*

**B. Starting Out**

*1. Get to Know the Key Players:* As soon as possible, contact by phone or in person, the following individuals.

• All Title IIIB legal services providers and AAA directors and program managers. Let them know your job is to help and support them in building their programs, and listen to their issues and concerns. Perhaps circulate a survey to providers and AAAs asking what their service priorities are and what they want/need from the Developer.

• State Bar committees on aging.

• The State Long-Term Care Ombudsman.

• Insurance and benefits counseling program staff.

• Continuing Legal Education staff.

• State and AAA Board members.

• Legal Services Corporation programs.

• *Pro bono* and reduced-fee programs.

• Hotline programs.

• Adult protective services staff.

• Attorney General's staff.

• Chairperson of Elder Law Committee of the State Bar

• Other advocacy groups.

*2.* *Develop positive relationships* with all of these individuals. Do not take sides or enter the relationships with biases.

*3.* *Develop a resource manual*  that includes some or all of the following:

• List of names, addresses, and phone numbers of area agencies on aging.

• List of names, addresses, and phone numbers of Title IIIB legal services programs and staff.

• List of suggested library materials.

• Copies of evaluation/monitoring tools.

• Information about the State Bar's elder law committee.

• Description of services available through the Legal Services Developer and through the state office on aging.

• Addresses and information about the Office of the State Long-Term Care Ombudsman.

• Addresses and information about care management programs, adult protective services, insurance/benefits counselors, etc.

• Information on other sources of legal assistance.

• Information about the national legal support centers.

*4.* *Learn the history of legal services in your state*. Note that the more you know about the past, the better prepared you are for the future. For example, you should find answers to the following questions:

• What have previous Developers done and how were they perceived and received by others?

• What is the minimum percentage in your state and has there been a "battle" over it? Has this changed? Are waivers available and how difficult is it to obtain one?

• Historically, has the state office on aging been supportive, neutral, or non-supportive of legal services? Has it taken a leadership role or hands-off approach, etc.?

• Have there been any major battles or lawsuits over any aspect of the provision of legal services?

• Who are the important supporters and foes of legal services?

• Do statewide standards exist? Statewide reporting?

*5.* Contact and make good use of assistance available from the national support centers in law and aging.

**C. Assessing the Current Title IIIB System and Establishing Priority Activities**

*1.* *Identify any crises and begin to work on these*.

*2.* *Begin an informal assessment of legal programs and AAAs*. You may want to assess the following:

• The current number of legal services providers.

• Who the providers are (LSC offices, private attorneys, paralegals, etc.).

• Current funding levels.

• Where the programs are located (in LSC offices, in separate elder law offices, in area agencies on aging, etc.).

• Geographical coverage of programs -- are certain areas of the state not being served?

• The types of legal services being provided -- advice, administrative representation, judicial representation, phone advice and/or referral, community education, etc.

• The types of clients being served -- are the target groups being served, or are the programs functioning on a "first come first served basis"?

• The types of cases being handled/priority issues (*e.g.*, SSI, Medicaid, wills, advance directives, etc.).

• Working relationships between the AAAs and legal services providers.

• Any outreach being done.

• Coordination and sharing of resources and expertise among providers.

• Impact of the legal services being provided.

• Linkages with ombudsmen, benefits counselors, etc.

• Compliance with the Older Americans Act.

• The approval process for waiver requests.

*3.* *Assess the non-Title III pieces of the system.* For example, assess:

• Existence of and work being done by State Bar committees on aging.

• Availability of *pro bono* or reduced fee programs. In what areas are they available? How many cases are they willing to accept? Who administers the program(s)?

• What other legal resources are available? *e.g.*, legal aid clinics, hotlines.

• What other non-legal resources are available? *e.g.,* emergency food and shelter assistance, medical assistance, food stamps, etc.

*4.* *Assess the tools that are already in place*, such as:

• Statewide reporting system.

• Model contracts between AAAs and legal services providers.

• Monitoring tools.

• Statewide standards for the delivery of legal assistance.

• Requests for proposals.

*5.* *Assess any gaps in the system.*

*6.* *Establish priorities and goals.*

*7.* *Develop a game plan.*

*8.* *Stay focused on goals* and don't get drawn into battles between AAAs and providers. Don't take sides and keep OAA requirements in mind.

**D. Other Helpful Hints**

*1. Keys to Being an Effective Legal Services Developer:*

• Be highly knowledgeable about legal services for the elderly.

• Be highly knowledgeable about the aging network and state government.

• Be trustworthy and credible.

*2.* *Join NALSD and attend the NALSD Symposium.* A new job can be overwhelming, but peer support and assistance helps in overcoming many of the problems. The NALSD Symposium offers attendees an opportunity to network with other legal services professions, gain insight into issues, and learn problem solving techniques from many different individuals with varying perspectives.

*3.* *Use the standards*. If your state has statewide standards for legal assistance in place, use these as a starting point. Examine them frequently for necessary refinements. If your state has not established standards for title IIIB legal services programs, TCSG can furnish samples.

*4.* *Call on the national resource centers*. Staff who specialize in delivery issues are available in each of the centers.

• The Center for Social Gerontology (313-665-1126)

• National Senior Citizens Law Center (202-887-5280)

• Legal Counsel for the Elderly/AARP (202-434-2120)

• ABA Commission on Legal Problems of the Elderly (202-662-8690)

**IX. Key Resources on Legal Services for the Elderly**

This chapter provides a concise listing of key resources -- written and otherwise -- of which new and more experienced Legal Services Developers will want to be aware. Many of these resources are publications from national support centers on law and aging, as well as other publications which are particularly relevant to issues affecting the most vulnerable older Americans.

To facilitate ease of access to these resources, this chapter simply contains short descriptions of these resources, followed by phone numbers of the organizations, so that you may directly contact the sources and make arrangements to directly receive the relevant information.

This listing is not all-inclusive, but it provides a good starting point for new Legal Services Developers. You will, of course, want to add state-specific publications and information.

**A. National Academy of Elder Law Attorneys**

The National Academy of Elder Law Attorneys (NAELA) is a non-profit association which assists lawyers, bar organizations and others who work with older clients and their families. It provides information, education, networking, and assistance to those who must deal with the many specialized issues involved with legal services to the elderly. Membership in NAELA is open to any licensed attorney who is interested in elder law issues.

NAELA publishes both a newsletter and a journal. The *NAELA News*, published eight times a year, is a newsletter for the NAELA membership with updates on NAELA activities and brief articles on happenings in elder law. The *NAELA Quarterly* is a scholarly journal published four times a year with articles on various issues in elder law written by experts in the field. NAELA also hosts an annual Symposium, which in 1997 will be held in Las Vegas, Nevada.

Contact: National Academy of Elder Law Attorneys (520) 881-4005

**B. Best Practice Notes**

The Center for Social Gerontology publishes *Best Practice Notes on Delivery of Legal Assistance to Older Persons* (BPN) three times a year. It is mailed to TCSG's mailing list of over 2,500 individuals and organizations, including all state and are agency directors, Legal Services Developers, ombudsmen, Title IIIB legal assistance providers, and others. This newsletter highlights quality delivery models and practices, and serves as a vehicle for communication, idea exchange, and dissemination of important information on rights and benefits. Newsletter topics have included: amendments to the Older Americans Act (OAA), the Americans with Disabilities Act, the Qualified Medicare Beneficiary program, long-term care insurance, working with questionably competent clients, coalition-building, guardianship standards, and many other issues. Upcoming issues will focus on coordination between the legal services and aging networks, the impact of Legal Services Corporation funding cuts and restrictions, implications of the upcoming reauthorization of the OAA, etc.

Contact: The Center for Social Gerontology (313) 665-1126

**C. Bi-Focal**

The ABA Commission on Legal Problems of the Elderly produces a quarterly newsletter, *BIFOCAL*, which is mailed to state and area agencies on aging, bar sections and committees on the elderly, and public and private attorneys. This newsletter disseminates information about legal assistance for the elderly, with a special focus on private bar involvement in reaching, representing and serving at-risk elderly. It features delivery models and highlights ABA project activities.

Contact: ABA (202) 662-8690

**D. NSCLC Washington Weekly**

The National Senior Citizens Law Center (NSCLC) publishes a four-page newsletter, the *NSCLC Washington Weekly*. This newsletter contains short articles on recent federal and state case law developments, significant administrative agency actions, and summaries of important Federal Register announcements. Each article includes an NSCLC contact person for follow-up and further information.

Contact: NSCLC (202) 887-5280

**E. Elder Law Forum**

The Legal Counsel for the Elderly (LCE) publishes a bi-monthly newsletter, *Elder Law Forum*, which provides updates on federal legislation, answers questions regarding delivery of legal services, offers advocacy tips on subjects such as Medicare and Medicaid, and includes a column on protective services. Many issues of the *Elder Law Forum* include a useful supplement that discusses current state legislation in guardianship, durable powers of attorney, and health-care decisions.

Contact: LCE (202) 434-2120

**F. Clearinghouse Review**

The *Clearinghouse Review* (Review), published by National Clearinghouse for Legal Services, is "the nation's premier journal on poverty law." The Review is a resource for advocates in the delivery of efficient, effective, and competitive legal services to vulnerable people. It is widely used by those in the poverty field to exchange information, sharpen advocates' focus on emerging as well as traditional poverty law issues, strengthen research capabilities, and inspire others to represent poor clients effectively. Every year, Clearinghouse devotes its September/October issue to law and aging topics, including guardianship, durable powers of attorney, delivery of legal services, the Older Americans Act, etc.

Contact: (312) 263-3830 ext. 226

**G. Quality Care Advocate**

The National Citizens' Coalition for Nursing Home Reform (NCCNHR) produces a bi-monthly newsletter, the *Quality Care Advocate*. This publication focuses on the long-term care system and quality of life for nursing home residents. It is intended to keep the reader informed of current advocacy issues and activities

Contact: NCCNHR (202) 332-2275

**H. NCEA Exchange**

The National Center on Elder Abuse (NCEA) publishes a quarterly newsletter on elder abuse, *NCEA Exchange*. The newsletter is used by NCEA to disseminate information about the latest concepts, practice methods, regulatory actions, and research findings in the field of elder abuse and neglect. *NCEA Exchange* also alerts its readers to new resources, upcoming conferences and the activities of the NCEA.

Contact: NCEA (302) 831-3525

**I. NCLC Reports and NCLC Energy & Utility Update**

The National Consumer Law Center (NCLC) publishes *NCLC Reports* 24 times a year. This publication covers the latest developments and ideas in the practice of consumer law, and is issued in four separate editions: (1) Bankruptcy & Foreclosures; (2) Debt Collection & Repossessions; (3) Deceptive Practices & Warranties; and (4) Consumer Credit & Usury. NCLC also produces a bi-monthly newsletter, *NCLC Energy & Utility Update* that covers current utility and energy law developments, including customer service and utility termination issues, special utility payment plans and rates for low-income customers, and federal LIHEAP and weatherization developments.

Contact: NCLC (617) 523-8089

**J. Comprehensive Guide to Delivery of Legal Assistance to Older Persons**

In 1988, TCSG published the *Comprehensive Guide to Delivery of Legal Assistance to Older Persons* (Guide). Since then, Chapter I was updated in April 1994 and Chapter IV updated in December 1992. The *Comprehensive Guide* 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. The Guide responds to two very important needs related to delivery of legal assistance: (1) the aging network's 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; and (2) their need for assistance in building coordinated systems that effectively use the combined resources of Title III providers, the private bar, law schools, nonlawyer advocates, State and area agencies on aging, and others to provide access to the system of justice to all older persons.

All Legal Services Developers should already have a copy of the Guide in their offices. Developers who do not have access to the Guide should contact The Center for Social Gerontology at (313) 665-1126.

**K. Guide to the Development of Statewide Standards for the Delivery of Legal Assistance to Older Individuals**

See Chapter V, Section E on page 55 of this manual for a description of the Standards Guide.

Contact: The Center for Social Gerontology (313) 665-1126

1. This discussion is taken in part from a memorandum written by Paul Lichterman in 1980, on behalf of the Administration on Aging, Department of Health and Human Services, to the Bi-Regional Advocacy Assistance Resource and Support Centers. [↑](#footnote-ref-1)
2. For the most recent draft of AoA's Legal Services Developer job description, see Chapter V. [↑](#footnote-ref-2)
3. By 1980, all states had received a Developer grant. [↑](#footnote-ref-3)
4. AoA-II-78-12, June 7, 1978. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. The Older Americans Act uses the term "Legal Assistance Developer," but since the more commonly used description is "Legal Services Developer," that is what will be used in this manual. [↑](#footnote-ref-6)
7. 42 U.S.C. § 3027(a)(18); OAA § 307(a)(18). [↑](#footnote-ref-7)
8. 42 U.S.C. § 3058j(b)(2); OAA § 731(b)(2). [↑](#footnote-ref-8)
9. Older Americans Act Reauthorization Amendments of 1991, S. Rep. No. 102-151, 102d Cong., 1st Sess., 107 (1991) (emphasis added). [↑](#footnote-ref-9)
10. 10 If you are interested in obtaining a list of available tapes and/or borrowing a tape, contact Bill Graham, the NY Developer, at the phone number and address listed in Appendix C. [↑](#footnote-ref-10)
11. 11 42 U.S.C. § 3058j(b)(3)(A); OAA § 731(b)(3)(A). [↑](#footnote-ref-11)
12. 42 U.S.C. § 3002(33); OAA § 102(33). [↑](#footnote-ref-12)
13. S. Rep. No. 136, 100th Cong, 1st Sess. 52 (1987). [↑](#footnote-ref-13)
14. 42 U.S.C. §§ 3027(a)(15); OAA § 307(a)(15). [↑](#footnote-ref-14)
15. *See supra*, Chapter II. [↑](#footnote-ref-15)
16. 42 U.S.C. §§ 3026(a)(2), 3027(a)(3), 3027(a)(22), and 3027(a)(15)(D); OAA §§ 306(a)(2), 307(a)(3), 307(a)(22), 307(a)(15)(D). [↑](#footnote-ref-16)
17. 42 U.S.C. § 3027(a)(22); OAA § 307(a)(22). [↑](#footnote-ref-17)
18. \*\*Conf Rep No 427, 100th Cong, 1st Sess 70-71 (1987). [↑](#footnote-ref-18)
19. 42 U.S.C. § 3027(a)(3)(A); OAA § 307(a)(3)(A). [↑](#footnote-ref-19)
20. 42 U.S.C. § 3058d(a)(4); OAA § 705(a)(4). [↑](#footnote-ref-20)
21. 42 U.S.C. § 3027(a)(15)(A); OAA § 307(a)(15)(A). [↑](#footnote-ref-21)
22. 42 U.S.C. § 3027(a)(15)(A)-(B); OAA § 307(a)(15)(A)-(B). [↑](#footnote-ref-22)
23. 42 U.S.C. § 3027(a)(15)(E); OAA §307(a)(15)(E). [↑](#footnote-ref-23)
24. 42 U.S.C. § 3012(a)(25); OAA § 202(a)(25). [↑](#footnote-ref-24)
25. Regulations under the 1992 Amendments to the Older Americans Act have not been issued. [↑](#footnote-ref-25)
26. 45 C.F.R. § 1321.71(c). [↑](#footnote-ref-26)
27. 42 U.S.C. § 3026(a)(1); OAA § 306(a)(1). [↑](#footnote-ref-27)
28. 42 U.S.C. § 3027(a)(10); OAA § 307(a)(10). [↑](#footnote-ref-28)
29. 42 U.S.C. § 3002(33); OAA § 102(33). [↑](#footnote-ref-29)
30. The 1984 Amendments substituted the phrase "legal assistance" for "legal services." [↑](#footnote-ref-30)
31. 42 U.S.C. § 3026(a)(5)(A)(ii); OAA § 306(a)(5)(A)(ii). [↑](#footnote-ref-31)
32. *See* 42 U.S.C. §§ 3025(a)(1)(E), 3025(a)(2)(E), 3026(a)(5), 3026(a)(24); OAA §§ 305(a)(1)(E), 305(a)(2)(E), 306(a)(5), 306(a)(24). [↑](#footnote-ref-32)
33. The definitions were again slightly modified by the 1992 Amendments. They appear here in their current form. [↑](#footnote-ref-33)
34. 42 U.S.C. § 3002(29); OAA § 102(29). "Poverty line" refers to the official poverty line defined by the Office of Management and Budget. 42 U.S.C. § 3002(41); OAA § 102(41). [↑](#footnote-ref-34)
35. 42 U.S.C. § 3002(30); OAA § 102(30). [↑](#footnote-ref-35)
36. 42 U.S.C. § 3002(41); OAA § 102(41). [↑](#footnote-ref-36)
37. 42 U.S.C. § 3027(a)(24)(A); OAA § 307(a)(24)(A). [↑](#footnote-ref-37)
38. 42 U.S.C. § 3027(a)(24)(B); OAA § 307(a)(24)(B). [↑](#footnote-ref-38)
39. S. Rep. No. 151, 102d Cong., 1st Sess. 91 (1991). [↑](#footnote-ref-39)
40. 45 C.F.R. § 1321.3. [↑](#footnote-ref-40)
41. 45 C.F.R. § 1321.71(d)-(e) (1988). [↑](#footnote-ref-41)
42. 42 U.S.C. § 3027(a)(15)(A); OAA § 307(a)(15)(A). [↑](#footnote-ref-42)
43. 42 U.S.C. § 3027(a)(15)(A)-(B); OAA § 307(a)(15)(A)-(B). [↑](#footnote-ref-43)
44. *Id.* [↑](#footnote-ref-44)
45. Stephanie Edelstein and Jan May, *Senior Attorney Volunteers: A Resource for Legal Services Programs*, 27 Clearinghouse Rev. 619 (1993). [↑](#footnote-ref-45)
46. For more information on senior attorney projects, contact Jan May at the AARP Legal Counsel for the Elderly, (202) 424-2170, or Stephanie Edelstein at the ABA Commission on Legal Problems of the Elderly, (202) 662-1000. [↑](#footnote-ref-46)
47. Like compensated private attorneys the use of private, for-profit legal clinics needs to be examined in terms of its ability to effectively target and serve those in greatest social and economic need. [↑](#footnote-ref-47)
48. Like compensated private attorneys the use of judicare needs to be examined in terms of its ability to effectively target and serve those in greatest social and economic need. [↑](#footnote-ref-48)
49. However, note that monetary contributions by clients of Title III-B funded legal services programs are not prohibited by the Older Americans Act. [↑](#footnote-ref-49)
50. Social Security retirement and survivors benefits are paid to retired workers and their dependents and survivors. [↑](#footnote-ref-50)
51. SSI Benefits are paid to aged (over 65), blind, or disabled persons who have low income and few resources [↑](#footnote-ref-51)
52. Social Security Disability Benefits are paid to disabled workers, their dependents and survivors, disabled widow(er)s, and disabled adult children. [↑](#footnote-ref-52)
53. 42 U.S.C. § 3058j(b)(3)(A); OAA § 731(b)(3)(A). [↑](#footnote-ref-53)
54. 42 U.S.C. § 3058j(b)(2); OAA § 731(b)(2). [↑](#footnote-ref-54)
55. This draft was issued by AoA on November 14, 1995. [↑](#footnote-ref-55)
56. 42 U.S.C. § 3058j(b)(3)(A); OAA § 731(b)(3)(A). [↑](#footnote-ref-56)
57. 42 U.S.C. § 3058j(b)(2)(C); OAA § 731(b)(2)(C). [↑](#footnote-ref-57)
58. 42 U.S.C. § 3058j(b)(4),(9); OAA § 731(b)(4),(9). [↑](#footnote-ref-58)
59. 42 U.S.C. § 3025(b)(5)(A); OAA § 305(b)(5)(A). [↑](#footnote-ref-59)
60. 42 U.S.C. § 3012; OAA § 202. [↑](#footnote-ref-60)
61. 42 U.S.C. § 3025(a)(1); OAA § 305(a)(1). *See* OAA §§ 305, 307. [↑](#footnote-ref-61)
62. 42 U.S.C. § 3058g(a)(3); OAA § 712(a)(3). [↑](#footnote-ref-62)
63. 42 U.S.C. § 3058g(h)(7); OAA § 712(h)(7). [↑](#footnote-ref-63)
64. 42 U.S.C. § 3026(a)(6)(D); OAA § 306(a)(6)(D). [↑](#footnote-ref-64)