

# How Legal Aid Programs Can Address the Growing Problem of Senior Poverty

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Justice in Aging

#### **Justice in Aging**

"Forget about living from paycheck to paycheck. Let's talk about day to day," Myrtle says. Myrtle, a senior, is chatting with three other senior women in Northern







Jennifer Goldberg (L); Fay Gordon (Ctr.); Kate Lang (R).

California, sharing coffee and swapping stories about getting older. "Let's talk about eating versus buying your medicine, let's talk about that," she says. The four women discuss their shared life experiences—taking care of families, building careers, and experiencing loss. Now, in their older years, they share another experience: living in poverty.

The conversation these four women, Myrtle, Dottie, Sandy and Lidia, shared in a *Justice in Aging* video, is echoed at tables across the country. 6.4 million seniors are aging into poverty and are facing the very choices Myrtle articulates. For women, a lifetime of lower earnings, the devastating recession, and barriers to the social safety net, contribute to a perfect storm driving up the numbers of poor seniors. While the current rates of poverty are a concern, without major policy changes, by 2050, senior poverty will quadruple and 25 million seniors will be poor.

With the rising number of poor seniors comes an increase in the consequences of poverty in later life: more homeless seniors, greater food insecurity, and seniors aging without retirement savings to pay for rising health care costs. In the early 1990s, 11% of the

adult homeless population was 50 and over. Today, half of America's homeless are over 50. Since the beginning of this decade, the number of food insecure seniors increased by 130%. Younger seniors face a bleak economic forecast, as one-third of U.S. heads of households age 55 and older have no pensions or retirement savings and a median annual income of about \$19,000. Finally, despite their fixed incomes, seniors pay much more of their income in health expenditures than non-Medicare beneficiaries.

The stories and the numbers demonstrate that today's seniors are aging on what sociologist Corey Abramson describes as an "uneven playing field":

While Americans from diverse backgrounds face shared predicaments as they grow old, they do not do so on equal footing. The end game faced by American seniors is defined in part by an un-level playing field, filled with resource disparities operating on both the individual and neighborhood levels.

— Corey Abramson, The End Game: How Inequality Shapes our Final Years

On a neighborhood level, legal services have a role in mediating poverty's challenges and helping older

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adults age with dignity. Unlike younger clients, poor seniors have struggled through decades of inequality. While legal services cannot right the wrongs of the past, like discriminatory employment policies that harm LGBT seniors, or predatory lending practices that left seniors, particularly seniors of color, without any home equity, legal aid programs can provide crucial services that help alleviate the impact of poverty.

## Prioritizing Seniors with the Greatest Economic and Social Needs

Legal services can provide life-sustaining help for poor seniors, however, too many older adults do not receive the legal help they need. The access-to-justice gap is well-documented: Legal Services Corporation (LSC)-funded programs turn down one individual for every individual they serve, and even under the rosiest analysis of case data, only one in four low-income older adults receives the legal assistance they require. While Title IIIB of the Older Americans Act (OAA) provides some dedicated funding for legal services for seniors, these funds are wholly inadequate to meet the needs of older adults across the country. Given these circumstances, setting priorities is one of the most effective ways to ensure that services reach those with the greatest need. OAA services are required to be dedicated to older adults with the greatest economic and social needs, however, OAA prohibits denying services based on income and assets. So, determining how to prioritize cases for those with the greatest economic and social needs is a must for programs (whether or not they receive Title IIIB services), especially in light of the increasing older population as the baby boomers age.

While case selection criteria for seniors can match overall program priorities — services should also be targeted to the specific needs of older populations. For example, prioritizing public benefits cases that focus on access to critical income supports, such as Social Security and SSI, can ensure older adults have the income they require to keep a roof over their head and food on the table. If we focus resources on helping seniors access Medicaid and Medicare Savings Programs such as QMB and SLMB, then older adults can have medicines in the cabinet and see their doctors. Because of the complexity of the Medicaid program, seniors frequently need legal help to become eligible for

long-term services and supports — through Medicaid home and community-based services or in nursing facilities — and to be sure that they remain eligible for these services. Seniors are targeted in consumer scams, pushed into costly reverse mortgages, and even low-income seniors are at risk of financial exploitation. Legal needs assessments that include questions specifically targeted at older populations in your service area will help you identify the most critical legal needs for the seniors you serve.

Legal services organizations need to think carefully about how to structure delivery of legal services for seniors to maximize their impact. To serve older adults most effectively, the legal services system in a state needs to provide a mix of brief services and extended representation. Over thirty states provide free legal services to clients age sixty and over through senior legal helplines. This form of service delivery can be effective and efficient in providing advice and brief services, as hotline staff can develop expertise in the most common cases and serve greater numbers of older adults. However, advice is not enough to address the growing problem of senior poverty — legal services delivery systems must include legal services providers who can provide robust extended representation to seniors with the greatest needs. More complex cases — such as foreclosures that result from reverse mortgage scams, denial of Medicaid long-term care services, and elder abuse - can threaten seniors' health and economic security and put their housing at risk. These cases require specific expertise in elder law. Programs must carefully consider how to develop case priorities and organize caseloads to allow staff to receive sufficient training and develop such expertise.

Expanding access to justice for poor seniors also includes looking for ways to involve private bar and maximize pro bono representation. Pro bono help can be used to staff hotlines or provide low or no-cost services in specific areas of law. For example, programs that provide low-cost or no-cost advance directives, powers of attorney, or simple estate administration can free up legal services staff attorneys to handle cases that pro bono attorneys are unlikely to take because of time commitment and legal complexity. Advanced planning resources can be focused on cases where drafting a will would clear title to property, or a power of attorney would provide an alternative to imminent guardianship. Further, emeritus attorney pro bono programs can provide opportunities to meet unmet civil legal needs, and such attorneys can be involved in a myriad of ways — from outreach to intake to full representation.

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In addition to thinking about legal services delivery, civil legal aid programs must consider the diverse populations in need of services. From 1999 to 2030, the older minority population is expected to increase by over 200%, more than 2.5 times the rate of the older white population. Recent estimates show that at the same time, the 1.5 million lesbian, gay, bisexual, and transgender (LGBT) older adults will double by 2030. Legal aid providers must consider these diverse populations when designing and delivering legal services. Whether or not these populations are currently knocking at your door, developing creative outreach strategies will ensure that your program is not inadvertently leaving out diverse elders with great need.

#### Partnering with the Aging Network: AAAs, ADRCs, LTC Ombudsman, APS and Other Possible Partners

The Older Americans Act (OAA) supports a network of services that empower older adults to remain independent, healthy and safe, in their home and communities for as long as possible. The Administration for Community Living (ACL), the federal agency with jurisdiction over OAA programs, views legal assistance and elder rights programs as a critical factor in furthering this mission.

In reality, legal services programs are sometimes overlooked as a component of the home and community-based services network. This is unfortunate, as legal services—whether through direct client counseling, hotlines, or aging network trainings—provide the necessary link between older adults and social safety net programs. For example, when a low-income older adult requires long-term services and supports following a hospitalization, by default, she will likely move into a nursing facility. With the assistance of a legal services attorney, the older adult may be able to access Medicaid waiver services to provide nutrition, home modification, and other personal care assistance, to help her remain in her home.

Title III-B of the Older Americans Act requires local area agencies on aging (AAAs) to fund legal assistance providers to meet the needs of older adults. With funding focused at the local level, funding is variable and fragmented, both within states and from state to state. Further, due to lack of quality metrics, local funders have a tendency to focus on quantity of cases rather than outcomes or systemic change.

While advocacy efforts continue to address OAA shortcomings, in the absence of changes to the law, legal services programs can strengthen their

partnerships with the aging network programs to improve services. The OAA charges Aging and Disability Resource Centers (ADRCs) with providing older adults streamlined access to long-term services and supports. Like Title III-B providers, ADRCs vary significantly in their effectiveness and presence in the community. The ADRCs should be a primary referral entity for legal services programs, and legal services programs can offer ADRCs insight into important legal challenges to screen for when assisting older adults and their families. Similarly, the state long-term care ombudsman programs and adult protective services (APS) should work in concert with legal services programs to help prevent and combat elder abuse in the community. Another effective way to improve services for older adults is to educate OAA program staff about the legal resources available for seniors in their service area. Older adults who have both a caseworker from the local AAA and a legal services attorney are more likely to be able to access the full range of services available in their communities. Increasing referrals between OAA and legal services staff can strengthen the efficacy of such services and improve outcomes for vulnerable older adults.

### Using Back-Up Centers and National Resources Effectively

You are not alone in this effort — Justice in Aging (formerly the National Senior Citizens Law Center) is dedicated to helping legal aid programs fight senior poverty. We were founded in 1972 as a back-up center for legal services programs and later added the same function for Area Agencies on Aging programs and Title III-B attorneys. We regularly answer questions for legal services lawyers, educate programs about key changes in the social safety net programs, and help them navigate the complex maze of health care and economic security benefits for older adults.

More broadly, the Administration on Community Living funds the National Legal Resource Center (NLRC) to support professionals in law and aging so that they can address the legal challenges of seniors with the greatest needs. By providing written materials, case consultations, training, and technical assistance, the Center seeks to improve legal services for older adults and strengthen capacity across the country.

The Center partners include Justice in Aging, the American Bar Association Commission on Law and Aging, the National Consumer Law Center, the Center for Elder Rights Advocacy, and the Center for Social Gerontology. The Center website, as well as the websites for each organization, provide a wealth of information

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on substantive legal areas impacting older Americans, such as health care, consumer protection, housing, income security, elder abuse, and more. Law and aging professionals can also receive free case consultations. If there is a pressing legal issue facing one of your older clients and you need help, you can connect with experts at the partner organizations or other trusted specialists, to get substantive advice on a wide range of legal issues. Technical assistance is not limited to case consultations — you can work with experts on legal services development and delivery for seniors, including developing statewide standards, strengthening delivery systems, maximizing outreach, targeting seniors with the greatest needs, and improving data collection.

Training is also available from the Center— an extensive library of archived webinars is available (http://www.nclc.org/national-elder-rights-training-program), and professionals in law and aging can team up to request in-person training for their state or community. Every fall, the ABA Commission on Law and Aging and Center for Professional Development sponsors the National Aging and Law Conference in the Washington, DC, area, which offers sessions that focus on core substantive legal issues affecting older Americans with the greatest economic and social needs, as well as programming on legal service development and delivery.

The U.S. Administration on Aging's Toolkit for Serving Diverse Communities is another tremendous resource to help programs increase their cultural competency and meet the needs of diverse populations, including best practices for conducting assessments, determining resources, designing services and evaluating programs. The National Resource Center on LGBT Aging, led by SAGE (Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders), also offers a wealth of resources, including specialized training and best practices guides to working with LGBT older adults.

Various electronic resources exist to help elder law advocates remain informed about regulatory and programmatic changes to services that help older adults. Here are just a few helpful resources:

- Justice in Aging: Health Network Alerts and Income Network Alerts, http://www.justiceinaging.org/alert-archives
- The Elder Bar listsery of the ABA Commission on Law and Aging, http://www.americanbar.org/

- groups/law\_aging.html
- The National Association of States United for Aging and Disabilities: Friday Updates, http://nasuad.org/newsroom/friday-update
- National Academy of Elder Law Attorneys (NAELA) News, https://www.naela.org/naelanewsonline.
- National Council on Aging, https://www.ncoa.org/get-involved/sign-up/
- Current Awareness in Aging Report (CAAR) E-Clipping Service, http://www.ssc.wisc.edu/cdha/CAAR.html

#### Conclusion

Legal services programs have a critical role to play in addressing the growing problem of senior poverty. By thinking carefully about how to prioritize cases and structure service delivery for seniors, legal aid managers can ensure that older adults with the greatest social and economic needs get much-needed help with their most pressing problems. Partnering with the broader aging network provides opportunities for legal aid programs to expand their reach and improve outcomes for poor seniors. In addition, legal aid staff and managers can seek out national resources for case consultations, training, and technical assistance, to help provide the kind of quality, high-impact legal services that make an enormous difference in the lives of low-income older adults. Working together, we can all combat senior poverty.

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