

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Legal Assistance Developer 101

Technical Assistance Webinar

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Housekeeping

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Welcome

Justice in Aging is producing this webinar with support from the Administration on Community Living. Justice in Aging is working with The Center for Social Gerontology to provide increased training and technical assistance for legal services development. This resource support is designed to enhance the quality, cost effectiveness, and accessibility of legal assistance and elder rights programs provided to older persons with the greatest social or economic need.

Overview of the Session

- **Part One: (Penny Hommel)**
 - Overview of OAA requirements affecting the role of LADs
- **Part Two: (Sarah Halsell)**
 - How LADs can ensure that older adults with the greatest social and economic needs are successfully targeted without means testing

Part One: Overview of Older Americans Act Requirements Affecting the Role of LADs

Importance of LADs is directly linked to achieving overriding objectives of the OAA

- OAA is more than just the programs and services it creates.
- Its higher purpose—set forth in Title I—is to advance a number of objectives intended to secure and protect essential rights, benefits and opportunities for older persons.

Title I Objectives

- **Title I Objectives include the right to:**
 - adequate income in retirement;
 - the best possible physical and mental health without regard to economic status;
 - obtaining and maintaining suitable and affordable housing;
 - opportunity for employment without discrimination; and
 - freedom, independence, and choice in planning and managing their own lives.

More on OAA Title I

- **Joint duty** of the aging network at federal, state, local, and tribal levels to secure these objectives.
- This requires strong and impactful legal and elder rights advocacy, and it is a key role of the **LAD to ensure such an advocacy system across the state.**
- It is this **key role that sets LADs apart** from legal services/elder rights advocates, and others in the aging network. S/he is the one person in the state who must conceptualize, and then implement, a statewide vision of the delivery of legal advocacy services to the state's most vulnerable elders.

OAA Statutory Provisions Re Legal Services That Drive Specific Leadership Roles of LADs

- Statutory requirements re legal services outlined below mean that a key role of LADs must be to provide strong **leadership to ensure all requirements are met** at the State, AAA, and legal provider levels.
- Underlying this role is leadership in ensuring that there is understanding and appreciation of the **value of legal services and impact it has on the lives and well being** of the most vulnerable elders.

OAA Statutory Provisions Re Legal Services That Drive Specific Leadership Roles of LADs

- Perhaps most important—provisions re targeting without means testing
 - Throughout the Act, there are numerous provisions that legal services—as other OAA services—must be **strategically targeted to older persons in greatest social and economic need**, with particular attention to low-income minority elders, those with limited English, and those residing in rural areas. (e.g., 42 USC §3025(a)(2)(E))
 - Targeting requirement even greater for legal assistance than other Title III services **due to the definition**. Part of the definition is an explicit directive that legal services are to go to “older individuals with economic or social needs” (42 USC §3002(33)).

OAA Statutory Provisions Re Legal Services That Drive Specific Leadership Roles of LADs (cont.)

- Provisions re targeting without means testing (cont.)
 - While Targeting is required, **means testing**—the use of income and resources to determine eligibility for services—is prohibited. (42 USC 3030c-2(b)(3))
 - Requirement that legal services/AAAs give priority to legal issue areas that reflect most critical life problems confronting target populations. A basic guide to priority setting is provided in the 11 broad case priorities set forth in the OAA—*income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination*. (42 USC §3027(a)(11)(E))

OAA Statutory Provisions Re Legal Services That Drive Specific Leadership Roles of LADs (cont.)

- Other (non-targeting) provisions that drive LAD leadership
 - Legal services is one of only three priority services in the Act, and as such, each AAA in every state must fund (42 USC §3026(a)(2)) with at least a minimum percentage of its III B funds as established by the SUA (42 USC §3027(a)(1) & (2)).
 - AAAs must contract only with legal providers that demonstrate capacity to deliver needed assistance to elders with social or economic need, and make a finding after assessment that the grantee is the best entity to provide the services (42 USC §3027(a)(11)(A) & (B)).

OAA Statutory Provisions Re Legal Services That Drive Specific Leadership Roles of LADs (cont.)

- Other (non-targeting) provisions that drive LAD Leadership (cont.)
 - AAAs and SUA must honor professional obligations to honor client confidentiality which includes not requiring any client identifying information from Legal Providers. (42 USC §3026(e)).
 - Definition of legal assistance addresses level of service to be provided: “*advice and representation*” (42 USC §3002(33)).
 - AAAs and legal must follow strictures on client contributions for services-method of solicitation must be non-coercive and all contributions must be used to expand legal services (42 USC §3030c-2(b)(1)).

What does the OAA Say Specifically about Legal Assistance Development?

- LAD is addressed in both Titles III and VII
- Title III - Grants for State and Community Programs on Aging
 - The (State) plan shall provide assurances that each State will assign personnel (one of whom shall be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State. (42 USC §3027(a)(13))
- Title VII (Vulnerable Elder Rights Protection), Chapter 4 (State Legal Assistance Development Program) reinforces the Title III requirement, stating that -
 - A State agency shall provide the services of an individual who shall be known as a State legal assistance developer, and the services of other personnel, sufficient to ensure—
 - (1) State leadership in securing and maintaining the legal rights of older individuals;

Title VII, Chapter 4 LAD Language (cont.)

- (2) State capacity for coordinating the provision of legal assistance;
- (3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;
- (4) State capacity to promote financial management services to older individuals at risk of conservatorship;
- (5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and
- (6) State capacity to improve the quality and quantity of legal services provided to older individuals. (42 USC §3058j)

Limited Language in Act Does Not Mean Limited Role for LADs

- Though language in the Act is limited, it doesn't limit importance of Legal Services Developers
- It defines in broad terms, the essential and critical roles of the developer and the rich and wide variety of activities that, **if undertaken fully, would result in substantial improvements** in the lives of elders, particularly those least able to advocate on their own behalf.
- **Add to this the leadership necessary to ensure that all the statutory requirements regarding legal services discussed above are met by the SUA, AAAs, and legal providers, and it is obvious that LADs have extremely important and challenging roles and responsibilities.**

On to Part Two

- Now to Sarah to put some “meat on the bones” of this outline, and give concrete suggestions for how LADs can fulfill their roles/responsibilities.

Part Two: How do LADs go about fulfilling the roles/responsibilities outlined above?

- How LADs can ensure that older adults with the greatest social and economic needs are successfully targeted without means testing

The Means Testing Prohibition

What is means testing?

- The use of an older person's income or resources to deny or limit that person's receipt of services.

Where is the prohibition?

- In the Older Americans Act Regulations - Issued in 1988 for the 1987 Amendments. They remain in effect and are found at 45 CFR § 1321 et seq.

Is the prohibition in the Act itself?

- Yes, in the provision about cost sharing and voluntary contributions:
 - Cost-sharing is prohibited for certain essential services, such as legal assistance.
 - Voluntary contributions are allowed as long as methods of solicitation are non-coercive.

The Means Testing Prohibition

The prohibition in the Regulation:

- *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. 45 CFR § 1321.71(d)*

The prohibition in the Act:

- AAAs and service providers shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the services. 45 USC §3030c-2(b)(3)

The Dilemma

- Can the provider even ask about income?
- What does this mean for LSC providers?
- Then how do legal providers target to low-income seniors?

Can the legal provider ask about income?

Yes!

A legal assistance provider may ask about the person's financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible. (45 CFR §1321.71(e)).

The important distinction:

Prohibited

- Asking up front about the person's financial situation and using that information in any way to determine the person's eligibility to receive an OAA service

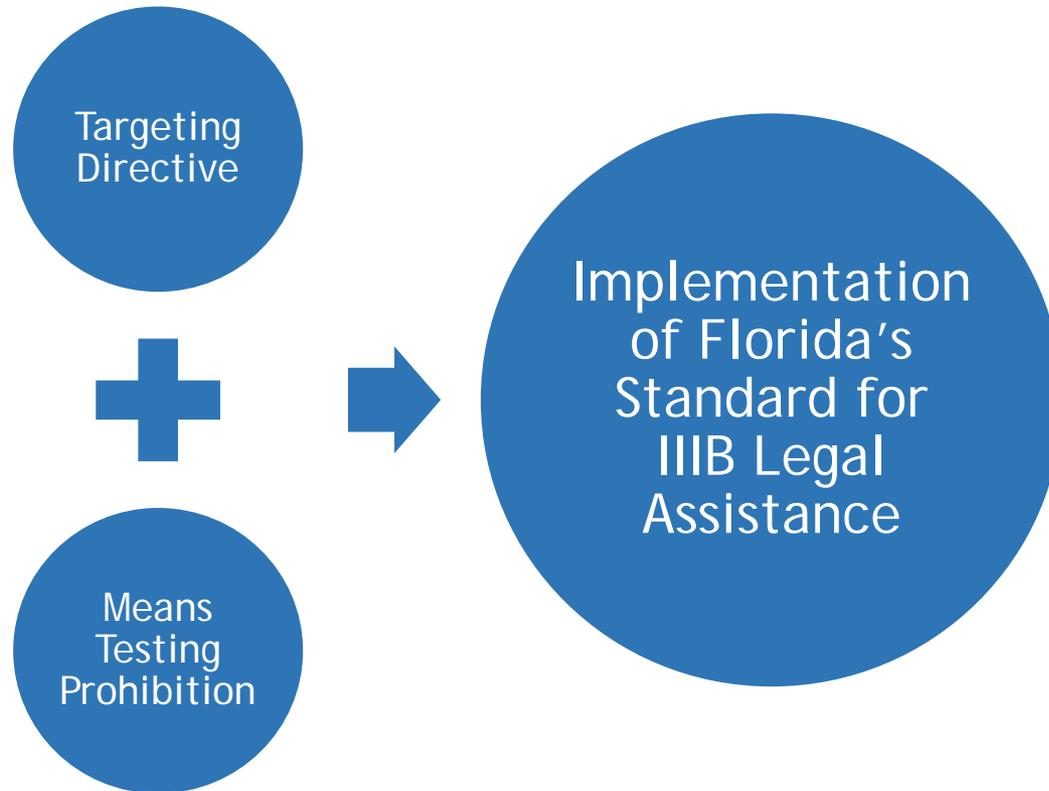
Allowed

- Asking in the course of providing service as a part of providing the service OR to ascertain if the person might be eligible for benefits they are not receiving (including other legal services)

What does this mean for LSC providers?

- LSC providers must condition the receipt of LSC-funded services on a client's meeting LSC income and asset eligibility limits.
- LSC regulations extend LSC restrictions to the entire program (with exceptions - one of the exceptions is the LSC means test)
- So LSC programs can accept IIIB funds and follow OAA requirements. In fact, the OAA provides preference for LSC programs to do IIIB-funded work!
- However, look at other program restrictions...

Resolving the Tension



Florida's Standard for IIIB Legal Assistance

- Defines targeting requirements for legal services, with flexibility to meet local needs (through joint planning)
- Defines priority issue areas with requirement for examining local needs (through joint planning)
- Lays out prohibition for means-testing
- Outreach is identified as the key strategy for implementing targeting and priority setting goals
- Defines roles and responsibilities of major stakeholders

Why Joint Planning?

Targeting is a Joint Obligation

- **Role of the AAA [see s. 306(a) of OAA, re: area plans]**
 - Set specific objectives, consistent with State policy, for providing services to older individuals with greatest economic and social need, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas
 - Include proposed methods to achieve these objectives
- **Role of the Service Provider**
 - Meet specific objectives established by the AAA for providing services to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas within the PSA.

Indicators of Strong IIB Legal Programs

Programs are well-coordinated and fully integrated:

- Are legal providers involved in the AAA's community needs assessments?
- Are legal providers involved in the area planning process?
- Are legal providers participating in the AAA's regular provider meetings?
- Are legal providers training the aging I&R staff on properly identifying legal needs of seniors?
- Is the AAA involved in the legal provider's priority setting process?
- Is the AAA training the legal provider staff on ADRC resources?
- Does the AAA include legal resource materials in broad outreach efforts?

Approaches to Successful Targeting of Legal Services without Means Testing

1. Clearly identify specific groups of elders who are the most needy, most vulnerable and least able to advocate on their own behalf

Use the OAA targeting language as a STARTING PLACE

- Look at clients actually receiving services; then compare to list of target groups and other needy groups specific to the service area. Is there a gap?
- Work in collaboration to close the gap. AAAs have valuable demographic information on target groups

Approaches to Successful Targeting of Legal Services without Means Testing

2. Establish Legal Issue / Case Priorities

Again, Use the OAA targeting language as a STARTING PLACE

- Think about identified target groups and identify specific types of life problems that are most critical to target groups in meeting basic needs (income, shelter, nutrition, health care).
- Legal providers can translate life problems into types of legal issues that they will/will not handle in order to maximize impact of limited resources.

Approaches to Successful Targeting of Legal Services without Means Testing

3. Ensure cultural competence and effective communication

- [AoA/ACL's Toolkit for Serving Diverse Communities](#)
- Capacity to communicate with hearing impaired, language barriers, or mental disabilities.

Approaches to Successful Targeting of Legal Services without Means Testing

4. Strategic Outreach

- The KEY to implementing targeting and priority setting goals
- AAAs and legal providers should develop strategic plans for informing targeted groups of their legal programs and of available services.
- NOTE - The most vulnerable and needy older persons are the hardest to reach and serve!

More on Outreach

- Most needy may not request services without some special outreach and education.
 - May not recognize life problems as legal problems
 - Cannot or will not come to a legal services office
 - Are often least able to advocate on their own behalf

Approaches to Successful Targeting of Legal Services without Means Testing

5. Coordinate with social and other non-legal service providers

- Social services providers may be more likely to come into contact with targeted populations.
- Ensure these providers are trained on indicators of legal problems and on making appropriate legal referrals.
- Some examples: LTCOP, volunteers & staff who deliver meals and provide in-home services, APS, and organizations that serve immigrants or victims of domestic violence.

Approaches to Successful Targeting of Legal Services without Means Testing

6. Ensure services are accessible and user-friendly
 - Office and intake sites should be located with targeted client communities, near public transportation.
 - Coordinate legal and AAA transportation services to ensure attendance at legal meetings or court appearances
 - Programs should be well-coordinated with the statewide Senior Legal Helpline for convenient access to legal information and brief advice.

Concluding Thoughts on Targeting

- One of the of the hallmarks of the OAA is its promotion of flexibility and cooperation in State and local planning.
- Means-testing prohibitions and targeting provisions are not meant to bind programs but to give them great flexibility to develop and conduct legal programs.

Additional Resources

- Penny Hommel, "[Targeting Older Americans Act Services Without Means Testing: Meeting the Challenge](#)," Best Practice Notes, Vol. 15, Nos. 1 & 2 (TCSG, July 2013).
- The Center for Social Gerontology www.tcsg.org
- Issue Brief:
 - [State Legal Services Capacity Assessments: Ensuring State Systems Target Older Adults with the Greatest Social or Economic Needs](#)
- Technical Assistance
 - Assistance is available for LADs, legal services attorneys and other professionals seeking more information to help older adults. Contact NCLER at NCLER@justiceinaging.org.
- Save The Date
 - Legal Assistance Developer 102 training: Standards & Capacity Assessments
 - July 12 at 11:00 a.m. PT/2:00 p.m. ET - watch for registration information