

# Elder Rights and Issue Spotting for Legal Services Referrals in Oregon:

A Review of Older Americans Act Priority Legal Service Areas, Other Typical Legal Issues Facing Older Oregonians, and Making Referrals to Lawyers.

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# Presentation Summary

- Elder Rights, Generally:
  - Retain all rights that have not been taken away
  - Common legal issues as people age
- Common Issues for Older Oregonians needing Legal Advice or Representation:
  - General civil (non-criminal) matters
  - Priority issues under Older Americans Act (OAA)
  - Referrals to Adult Protective Services (APS)
  - Referrals / cross-referrals to Law Enforcement (LEA)
- Referrals to Lawyers:
  - Representation and fee arrangements
  - Client access to lawyers
- Resources

# Elder Rights, Generally

- Federal - OAA:
  - DECLARATION OF OBJECTIVES FOR OLDER AMERICANS
    - “The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to ... equal opportunity to the full and free enjoyment of the following objectives:

# OAA objectives: (1 – 5)

- An adequate income in retirement
- The best possible physical and mental health which science can make available
- Obtaining and maintaining suitable housing
- Restorative services for those who require institutional care, and a comprehensive array of community-based, long-term care services
- Opportunity for employment with no discriminatory personnel practices because of age

# OAA objectives: (6 – 10)

- Retirement in health, honor, dignity
- Civic, cultural, educational and training and recreational opportunities
- Efficient community services, including access to low-cost transportation
- Benefit from research knowledge which can sustain and improve health and happiness
- Freedom, independence ... planning and managing their own lives ... and protection against abuse, neglect, and exploitation.

# Some additional Oregon rights:

- Nursing Home Patients' Bill of Rights
  - ORS 441.600 – 620.
- Adult Foster Homes
  - ORS 443.739 (rights of residents)
- Residential Care Facilities
  - ORS 443.450 (rules to be adopted by Department of Human Services)
- Services Provided by Home Health Agencies
  - ORS 443.085 (rules to be adopted by Oregon Health Authority)

# Some common legal issues in aging

- Applying for, or keeping, government benefits
- Housing (buying, selling, renting, care homes, reverse mortgage)
- Prescription coverage and hospital bills
- Estate planning (wills and changes)
- Financial management help
- Marrying or divorcing later in life
- Grandparents rights
- Loss of mobility (physical, and ability to drive)
- Domestic violence or other abuses
- Scams

# Challenges to elder rights:

- People not aware of their rights
- People don't know how to get access to a lawyer
- Loss of cognitive function – Alzheimer's and related dementias
  - May need assistance with exercising rights



# Community / Advocacy organizations

- Oregon's Long-term Care Ombudsman's office
- American Association of Retired Persons
- Disability Rights Oregon
- Elders in Action
- Area Agencies on Aging (service delivery, including adult protective services where contracted)

# Legal Services

- Older, traditional methods of access:
  - The “family” attorney
  - The “high street” attorney
  - Yellow Pages
  - Word of mouth
- Modern methods of access:
  - Aging and Disability Resource Centers (referrals)
  - Oregon State Bar (referrals)
  - Senior Centers (senior law clinics)
  - Internet
  - Community advocates
  - Word of mouth

# Legal Services

- “Civil” court cases and cases in front of agencies or administrative law judges
  - Referrals can be made to attorneys for:
    - Regular “market-rate” fees
    - Reduced fee, or fee covered by legal aid grants
    - “*Pro bono*,” no fee cases
      - All of the above should have an attorney-client representation agreement
- Criminal prosecution
  - Handled by a district attorney after referral from a law enforcement agency
- Criminal defense
  - Typically not covered by legal aid grants; very few reduced fee or *pro bono* cases

# Legal Services Standards

- Last updated in 2005:  
<https://www.dhs.state.or.us/policy/spd/transmit/pt/2006/pt06001.pdf>
  - Standards and Policy Transmittal
- Next collaborative update coming in 2017-18, as part of the latest, recently-approved State Plan on Aging

# Legal Services Standards

- “Targeting” of clients means making efforts to prioritize delivery of legal services to those with:

**Greatest economic need**: that which results from an income at or below the federal poverty line. 42 USC 3002(27)

**Greatest social need**: need caused by non-economic factors, which include 1) physical and mental disabilities, 2) language barriers, and 3) cultural, social or geographic isolation including isolation caused by racial or ethnic status, that (a) restricts the ability of an individual to perform normal daily tasks or (b) threatens the capacity of the individual to live independently. 42 USC 3002(28)

# Legal Services Standards

- Priority issue areas:
  - Income
  - Health care
  - Long-term care
  - Nutrition
  - Housing and utilities
  - Defense of guardianship
  - Abuse, neglect, and exploitation
  - Age discrimination

# Income, and protection of income

## Sources of income

- Social security
- Supplemental security income (based on age or disability)
- Disability benefits
- Employment income
- Retirement income
  - Pensions
  - IRA / 401k / 403b
- Other (investments / trust income / inheritance etc.)

## Threats to income

- Benefits overpayments
- Loss of eligibility for benefits
- Debt recovery / debt collectors
- Garnishments
- Bankruptcy
- Financial abuse or theft
- Taxes

# Social Security - retirement

- Retirement benefit
  - Income to eligible workers and their families at retirement age
  - Need: a minimum of 40 credits and be 62 or older
  - Up to half of benefit available to a spouse or partner
  - Refer callers to SSA or local SS office
  - Personal Earnings and Benefit Estimate Statement
  - [www.ssa.gov](http://www.ssa.gov)
- Right to appeal decision on claim
  - If benefit is denied, reduced or ended
  - If notice of overpayment received
  - 60-days in which to present a written appeal



# Supplemental security income, age-based

- Small cash payment based on financial need
- For those aged 65+ with low income and few assets
- Important as qualifying provides access to medical coverage and Medicare prescription coverage
- Fairly complex rules about what assets “count” for determining eligibility
- Right to appeal decision on claim
  - If benefit is denied, reduced or ended
  - If notice of overpayment received

# Social security – disability benefit

- SSD is available for those under age 65 who have significant work experience (history) and a severe disability
- Requires medical proof of impairment(s) that prevent an applicant from being able to work at any job and that will last for at least 12 months or result in death
- 20 quarters of SS-covered work history in the 10 years before becoming disabled
- Getting SSD benefits leads to qualification for Medicare (currently 2 years later)
- Referral to SSA / attorney as appropriate
- Lengthy application process
- Frequent denials:
  - Reconsideration
  - Hearing
  - Appeals council
  - Judicial review

# Health care

- Medicare eligibility, denials and appeals
- Medicaid eligibility, denials and appeals; Medicaid planning
- Oregon Health Plan denials and appeals
- VA health care denials and appeals
- HIPAA release forms
- Making and delegating health care decisions (advance directive)
  - [http://www.oregon.gov/DCBS/shiba/Documents/advance\\_directive\\_form.pdf](http://www.oregon.gov/DCBS/shiba/Documents/advance_directive_form.pdf)
- POLST in Oregon
  - <https://static1.squarespace.com/static/52dc687be4b032209172e33e/t/594850802994cada930b9072/1497911425257/2017.06.19+POLST+Brochure+Tri-fold.pdf>
- Oregon's death with dignity law
  - <http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/requirements.pdf>

# Health care

For Oregon's laws on:

- Powers of attorney
- Advance directives for health care
- Physician orders for life-sustaining treatment registry
- Declarations for mental health treatment
- Consent to health care services by person appointed by a hospital
- The Oregon Death with Dignity Act

See: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors127.html](https://www.oregonlegislature.gov/bills_laws/ors/ors127.html)

# Long-term care

- Housing options:
  - Stay in own home (in-home care agreements as needed)
  - Renting a home
  - Adult foster homes
  - Assisted living facilities / community-based care
    - HCBS rules implementation
  - Nursing facilities / skilled nursing facilities (institutionalized care)
  - Memory care / dementia facilities
- Residents' Bill of Rights
- Complaints about facility living

# Long term care (cont.)

- Resource: <http://www.oregon.gov/LTCO/Pages/Selecting-a-Long-Term-Care-Facility.aspx>
  - (web page on how to select an assisted living or residential care facility, provided by Oregon's Long-term Care Ombudsman)
- Resource: <http://www.oregon.gov/LTCO/docs/Consumer%20Guide%202016.pdf>
  - (PDF publication by Oregon DHS; a consumer guide on how to choose an Oregon assisted living or residential care facility)
- Resource: <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/LTC/Pages/Facilities-Licensing.aspx>
  - (web page for licensing and the complaint, investigation and reporting process for Oregon's care facilities), by DHS Safety, Oversight and Quality unit

# Nutrition

- USDA guidelines
- SNAP – supplemental nutrition assistance program
- Assistance with shopping, food preparation, eating
- Dietary and menu requirements in facilities
  - Licensing Complaint Unit, a part of Oregon's DHS
- Neglect
- Self neglect
- Criminal mistreatment

# Housing and utilities

- Oregon's landlord / tenant law

- Illegal discrimination
- Landlord's obligations
- Tenant's obligations
- Evictions
- Recovery of personal property after eviction
- Recovery of security deposit after move-out

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors090.html](https://www.oregonlegislature.gov/bills_laws/ors/ors090.html)

- Utility shut-offs

- Collections – unpaid utility bills (collections laws)



# Defense of guardianship

- What is guardianship?
- Alternatives to guardianship
- Incapacitated
- Financially incapable
- “Plenary,” limited, and temporary (emergency) guardianships
- Guardianship process
- Challenging a guardianship
  - Objections – before or during
  - Removal of guardian (replacement)
  - Termination of guardianship

# Defense of guardianship

## **Incapacitated**

a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety.

“Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

## **Financially incapable**

a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance.

“Manage financial resources” means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

# Guardianship process

Petition and notices

Court visitor

- Opportunity to object

- Hearing if objection filed

Fiduciary is appointed (or not)

- Clear and convincing evidence standard

Letters of guardianship / conservatorship issued

- Powers of and/or limitations on guardian or conservator are listed in statute and may also be included in the “letters”

Duration?

# Challenging a guardianship

- Objections
  - Not incapacitated / does not need a guardian
  - Incapacitated but does not want the proposed guardian
  - Limitations on powers or authority of proposed guardian
  - Other
- Removal of guardian (replacement)
  - “Bad” guardian
  - Better guardian available and willing to serve
  - Professional fiduciary or family member/friend?
- Termination of guardianship
  - Person no longer needs protection (recovery?)

# Finding a guardian

Generally, a family member or friend may petition to serve as a person's guardian.

When a suitable guardian is not readily apparent, try the following resources:

- **Guardian/Conservator Association of Oregon:** <http://www.gcaoregon.org/looking-for-help/gca-member-directory/>
  - For persons with resources to pay for a professional fiduciary, or for use when family members may not be appropriate or qualified to serve
- **Oregon state public guardian and conservator:** <http://www.oregon.gov/LTCO/Pages/Oregon-Public-Guardian.aspx>
  - For persons with limited income and resources, with severe risk of harm from abuse or neglect, or profound self-neglect or serious medical issues
- **Multnomah County public guardian:** <https://multco.us/ads/public-guardian-program>
  - For persons with limited income and resources, with severe risk of harm in Multnomah County

# Abuse, neglect, exploitation (elders)

- Adult protective services (APS)
  - Statewide reporting phone #:
  - Local office phone numbers:
- Types of abuse
- Varying definitions:
  - State definitions
  - Federal definitions (i.e. relevant to nursing facilities)
- Extensive collaboration among state and federal agencies is available
- Mandatory reporting of abuse
  - Confidentiality of report
  - Reporter's identity is kept confidential
- Urgent matters – call 911

# Abuse

- Physical abuse
- Neglect
- Abandonment
- Verbal or emotional abuse
- Financial exploitation
- Sexual abuse
- Involuntary seclusion
- Wrongful use of a physical or chemical restraint

# Neglect

- Neglect by a “caregiver”

(A) Failure to provide the basic care, or services necessary to maintain the health and safety of an adult:

(i) Failure may be active or passive.

(ii) Failure creating a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

(iii) The expectation for care may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to, where an individual has a fiduciary responsibility to assure the continuation of necessary care or services.

OAR 411-020-0002

- Self neglect

"Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

OAR 411-020-0002



# Exploitation (financial abuse)

- APS rule definition

(A) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult reasonably believes that the threat conveyed maybe carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

- Civil cause of action (lawsuit)

## CIVIL ACTION FOR ABUSE OF VULNERABLE PERSON

124.100 Definitions for ORS 124.100 to 124.140; action authorized; relief; qualifications for bringing action; service on Attorney General

124.105 Physical abuse subject to action

124.110 Financial abuse subject to action

124.115 Persons not subject to action

124.120 Relief available

124.130 Statute of limitation

Criminal prosecution may also be applicable

# Reporting abuse

- Call **911** in an emergency
- Call **1-855-503-SAFE (7233)** (statewide reporting)  
or
- For a listing of local adult protective services phone numbers and office addresses: <http://www.oregon.gov/DHS/Offices/Pages/Seniors-Disabilities.aspx>
- General informational website:  
<http://www.oregon.gov/DHS/ABUSE/Pages/index.aspx>

# Age discrimination

- Civil Rights
- In employment – federal and state law protections
  - BOLI – Bureau of Labor and Industries
  - Unlawful to refuse to hire, refuse to promote, or fire someone because of race, religion, color, sex, national origin, disability, marital status, or age
  - Discrimination may not be illegal if a job requirement that leads to discrimination is necessary to the operation of the business
  - ADEA – federal Age Discrimination in Employment Act (protects workers age 40+)
  - ADA – Americans with Disabilities Act (applies to most private employers)
  - Rehabilitation Act (applies to government workers)
- In housing – federal and state law protections
  - Oregon landlord / tenant act – protections for tenants and applicants

# Legal issue spotting

Section adapted from training materials by:

MO Department of Health & Senior Services

Access to Justice Foundation, Lexington, KY

AARP Foundation, Athens, GA

National Center for Law and Elder Rights, Administration on Aging

# Information, advice, and referral services

- Health and social issues

- Identify the urgency of the situation
- Probe for basic information that will assist with your referral choice(s)
- Be alert to mental health issues
- Refer to, or directly contact, relevant health or social services

- Legal issues

- Identify the urgency of the situation
- Understand the difference between legal advice and legal information
- Probe for basic information that will assist with your referral choice(s)
- Try to limit extraneous discussion to protect the caller's personal information and to limit the number of times the caller will have to retell her story

# “Easy” legal issue indicators

- I need to talk to a lawyer
- I need a divorce
- I need a will
- I want to change my power of attorney
- I am being sued
- I have been arrested
- I am being evicted
- I am being hassled by debt collectors

# Some pertinent questions

- Do you have family members living with you or nearby?
- What Oregon county do you live in?
- Have you given anyone power of attorney over your money?
- Do you have an advance directive or health care POA?
- Has a guardian or conservator been appointed for you?
- Are you living in your own home / rental / care facility?
- Have you applied for, or do you receive, government benefits?
- Do you support any adult children?
- What expenses do you have?
- Are all of your current bills paid?
- Who else has access to your money?

# Is there an underlying legal issue?

- Health problems – heating or cooling needs?
  - Landlord / tenant law
- Food shortage or late utility payments?
  - Reduction in income or benefits, or financial exploitation?
- Money / debt problems?
  - Guarantor on someone else's car loan
  - Home equity loan or reverse mortgage to “help” a family member or stranger?
  - Loss of cognitive function, dementia or some temporary health problem affecting ability to handle finances?



# Indicators of need for legal advice

- Caller being urged to “sign something” quickly (investment opportunity, wire money abroad, purchase gift cards, pay for a stranger’s plane ticket, unnecessary home renovation, or reverse mortgage)
- Property transfers contemplated or recently completed (add someone to title of home, title of car, or title of bank account)
- Court papers received (re: guardianship, lawsuit, notice of default, etc.)
- Concern for physical safety, abuse, fear of family or neighbors
- Loans offered with collateral that caller does not need to risk
- Investments that are inappropriate for age / risk tolerance of elder

# More indicators of need for legal advice

- Domestic violence
- Stalking
- Caregiver neglect
- Physical or sexual abuse
- Financial exploitation
- Changes in personal and household income
- Changes in family status
- Change in residence needed due to health concerns
- Estate planning or Medicaid planning

# More indicators of need for legal advice

- Income issues:
  - Surviving spouse of a person who had received government benefits
  - Recent unemployment
  - Serious illness or injury (SSI, SSDI, workman's compensation, personal injury claims)
  - Child support / alimony
  - Grandparent visitation rights
  - Pensions
  - Lost benefits
  - Reverse mortgage issues

# More indicators of need for legal advice

- Debts that a caller may not have to pay:
  - Student loans
  - Credit cards
  - Car loans
  - Mortgages
  - Debts of a deceased spouse
  - A grandchild's debts
  - Term life insurance
    - Issues: is it the caller's loan or have they cosigned someone else's loan?
    - Issues: Fraud, identity theft, or undue influence?

# Eligibility for benefits

- Additional useful websites for referrals to callers:
  - [www.aarp.org/quicklink](http://www.aarp.org/quicklink)
  - <http://www.benefitscheckup.org>
  - <http://www.needymeds.org/>

# Reasons for calling:

Callers have their own individual approach to seeking help and information:

- Some seek help in making good decisions to avoid problems in the future (proactive)
- Some seek help only when they become aware of a risk or problem (reactive)
- Some seek help only in a moment of crisis (reactive, delayed response)

# Triage – how urgent is the response?

- Legally urgent (deadlines for a lawsuit or time limit for submitting a claim)
- Time sensitive (various non-urgent benefit or legal rights issues)
- Non-emergency – planning and advice can be arranged in a more planned and coordinated manner
  - Will the caller lose legal rights or options within 72 hours?
  - Is the caller's health or safety at imminent risk of harm?
  - Is there a pending scheduled court appearance?
  - Has the caller just lost a case in court and wants to appeal?
  - Has the caller received a notice of garnishment, lien, or move-out notice?

# Screening for potential abuse

- Is there a relative or caregiver taking money or other property from the caller?
- Is the caller fearful of retaliation or physical abuse from someone?
- Has a guardianship been filed against the caller?
- Is the caller being urged to sign legal documents against his/her will?
- Is the caller paying for a caregiver that does not show up?
- Does your employer have safety protocols for how to return a phone call to a person who may be a victim of abuse?
  - How to leave a message, and what message to leave? Visitation?



# Less urgent referrals

- Caller wants to sue someone
- Caller needs assistance with claim for benefits (no appeal deadline)
- Caller complains about something that happened many years ago
- Caller has already filed paperwork in court and is “just waiting”
- Situations that involve planning
- Caller wants to get a new will
- Caller is faced with bills for a deceased relative
- Caller already has a lawyer, or has seen a lawyer about an issue

# Some indicators of need:

- My sister is selling my mother's house and putting her in a home. Do I have any rights?
- My elderly brother is being evicted.
- My grandma needs a power of attorney so I can help her with her money.
- My dad wants to change his will.
- My neighbor has built a fence on my land and his dog keeps barking.
- I keep getting bills that I don't understand.
- My granddaughter has taken my car.
- I just got served legal papers.
- My disabled son needs a guardianship.
- I need loan papers drawn up.

# Information or Advice?

- For I & R staff:

- Not fact-specific
- What law says, not what it means
- Point to where to find forms
- How court process works
- Referrals not recommendations

- For licensed attorneys:

- Fact-specific advice
- Legally-trained judgment and interpretation
- Recommendations about legal courses of action
- Legal research
- Representation agreement
- Anything that leads a caller/person to think they are being represented by a lawyer

# Sources of legal information

- Oregon Law Help
  - A variety of legal topics (civil law)
  - <https://oregonlawhelp.org/>
- Oregon State Bar
  - Legal information
  - <https://www.osbar.org/public/legalinfo.html>
- State Courts
  - Oregon Judicial Department, Self-Help Center:
  - <http://www.courts.oregon.gov/help/Pages/default.aspx>

# Legal Aid Services of Oregon

- Legal Aid Services of Oregon (LASO) is an effective, high-quality legal services program with a mission to achieve justice for the low-income communities of Oregon. LASO emphasizes areas of law where these needs are greatest and where representation and advocacy can have the most impact for vulnerable Oregonians.

<https://lasoregon.org/>

# Oregon Law Center

- Oregon Law Center (OLC) provides legal help to people struggling to make ends meet on matters related to their homes, livelihoods, medical care and physical safety against domestic violence.

<http://oregonlawcenter.org/>

# Oregon State Bar Lawyer Referral Service

- **Lawyer Referral Service** <https://www.osbar.org/public/ris/>

While we cannot provide any legal advice or answer any legal questions, we can refer you to a lawyer who may be able to assist you with your legal matter. When you call us for a referral we will ask you for your name, phone number, email address, preferred location, and a brief description of your legal problem. We will then provide you with the name and telephone number of a lawyer who may be able to help you with your legal matter and who is close to you or the location where assistance is needed. We can also send a confirmation to your email address so that you have the lawyer's contact information for future reference. You will need to contact the lawyer within two business days in order to make an appointment for an initial consultation about your legal issues.

You are entitled to an initial consultation of up to 30 minutes for a maximum fee of \$35. Any additional fees must be arranged between you and the lawyer. We do not set a limit on the fees attorneys charge beyond the initial consultation.

Please note that all of our lawyers do charge for their services. The Lawyer Referral Service does not have any free or pro bono lawyers.

If you are unsure whether you need to speak with a lawyer, you may still want to call the Lawyer Referral Service. We can help you figure out what kind of assistance you may need and give you more information about other Oregon State Bar, government, and community service programs that may be able to assist you.

# Referral numbers:

Oregon State Bar, lawyer referral service:

- **Hours:** 8 am to 5 pm Monday-Friday  
**Phone:** 503-684-3763 or toll-free in Oregon at 800-452-7636.
- [Online Referral Request Form](#)

Aging and Disability Resource Centers:

1-855-ORE-ADRC

1-855-673-2372

[ADRC.WebMessages@state.or.us](mailto:ADRC.WebMessages@state.or.us)

Find resources and services available in your local area!

Note: your Area Agency on Aging contracts with a legal service provider with federal Older Americans Act money.



# Follow-up questions?

Contact:

**Christian Hale**

**APD legal assistance developer and policy analyst**

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