

Oregon Legal Assistance Program Standards **(updated August 2018)**

Under the Older Americans Act
As reauthorized and amended

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Preface

These Oregon legal assistance program standards have been jointly-developed by representatives from area agencies on aging (AAAs), legal services providers, and the Aging and People with Disabilities program (APD) legal assistance developer, who together formed the 2018 Legal Services Standards Revisions Committee. The standards include programmatic requirements under the Older Americans Act and various requirements under other federal and state laws, as well as recommended practices for providing effective legal services to older adults.

I. Legal Authority

The Older Americans Act of 1965 as amended (OAA), designates legal assistance as a priority service funded under Title III-B. 42 USC 3026(a)(2)(C). The funding of legal assistance by each area agency on aging is mandatory unless such funding is waived pursuant to 42 USC 3026(c). Services should be accessible and available throughout each of the planning and service areas of the state.

II. Program

A. Mission

The mission of the OAA legal assistance program in Oregon is to provide legal assistance to older individuals (aged 60+) who have the greatest economic or social need, with an emphasis upon serving those who face certain barriers, such as: disability, language, isolation, ethnicity, or residence in a rural area.

B. Goals

The goal of these standards is to ensure that APD, AAAs, and legal assistance providers work together on the delivery of high quality legal services, which are designed to address the unmet legal needs and issues faced by vulnerable older Oregonians. The overriding goals of the OAA, on which these standards are based, are the protection of equal opportunity and enhancement of the rights, dignity, autonomy, and financial security of older Americans as set out in the objectives of the OAA. See 42 USC 3001. OAA regulations require both that APD is to provide leadership for certain issues impacting elders throughout the state, and that area agencies on aging (AAAs) should provide the same advocacy leadership at the local level. 45 CFR 1321.7. To assist AAAs in achieving their OAA mission as set out in 45 CFR 1321.53, the OAA requires and provides funding for legal assistance programs. 42 USC 3023(c)(2), 42 USC 3026(a)(2)(C).

C. Purpose

The broad purposes under this legal assistance program are: 1) to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, maintaining their rights when at risk of guardianship, and increasing their independence when seeking to terminate a guardianship; and 2) to provide access to the justice system by providing advocacy, advice, and representation to older individuals. 42 USC 3058j(5), 42 USC 3002(33).

Programs should:

- focus service on those people who are the most socially or economically needy;
- formally address those issues specified in Section VI of these standards and establish priority issues that reflect local needs of each AAA's target populations;
- foster cost-effective, high quality services, having maximum impact on these priority issues;
- be accessible in each county throughout each planning and service area; and
- develop and maximize use of other resources to expand the provision of legal assistance to older individuals, including alternative dispute resolution where appropriate.

These standards inform the collaborative work of APD, the AAAs, and AAA-contracted legal services providers and do not create any third-party beneficiary rights for current or prospective clients of program legal services, or for any other person.

III. Standards for Targeting Scarce Resources—Target Populations

The National Center for Law and Elder Rights (NCLER) has developed guiding principles for providing legal services to elders with the greatest social and economic need, without means testing, to determine service eligibility:

1. identify the target population;
2. establish the legal issue/case priority;
3. provide legal services with cultural sensitivity and effective communications;
4. develop strategic outreach and education materials;
5. coordinate with other entities in the legal services and aging network; and
6. make legal services accessible and user friendly.

NCLER issue briefs and other resources for delivering targeted legal services are available on the NCLER website.

IV. Standards for Establishing Priority Issue Areas

Area agencies and providers should ensure that the following broad categories of legal assistance are available as specified by the OAA throughout each planning and service area:

- income;
- health care;
- long-term care;
- nutrition;
- housing;
- utilities;
- protective services;
- defense of guardianship;

- abuse, including neglect and financial exploitation; and
- age discrimination.

42 USC 3027(a)(11)(E).

Area agencies should establish specific objectives for and in partnership with legal service providers for the provision of these services to:

- older individuals with greatest economic need;
- older individuals with greatest social need;
- older individuals residing in rural areas;
- older individuals with physical or mental disabilities;
- older individuals with language barriers;
- older individuals facing barriers due to racial or ethnic status;
- older individuals with Alzheimer's disease or cognitive disorders (and the caretakers of such individuals); and
- older individuals at risk for institutional placement.

42 USC 3026(a)(4)(B)(i).

These categories of service are of highest priority and value where, in the judgment of the legal service provider, the impact of taking a particular case may lead to better outcomes for classes or groups of persons (higher impact cases). Such classes or groups may be actively targeted by AAAs for referral to legal services providers rather than taking the approach of providing referrals only to persons who initiate contact with the AAA asking about legal service providers. Individuals from the above categories seeking or targeted for legal assistance (lower impact cases) may still be considered priority clients when higher impact cases have not been identified or referred.

Area agencies will categorize legal service types within the above priorities according to their efficiency in achieving the purposes of these standards based on apparent need and significance in each AAA's service area communities. AAAs and legal service providers are encouraged to collaborate on the setting of service priorities at least every two years. Legal assistance providers will prepare a simple case-category coding system to allow the area agencies to ascertain the kinds of cases the legal assistance providers accept, to ensure compliance with OAA case priorities.

V. Techniques for Reaching Targeted Groups and Addressing Priority Issues

Programs have insufficient resources to meet all of the legal needs of older individuals, so legal assistance should be targeted to the most vulnerable older Oregonians to protect their health, welfare, independence, and security. The services should be those most needed by those persons and least available from other sources.

Among those older individuals who are the most vulnerable may be residents of care facilities; persons with health problems; persons with poor access to health care; homeless persons; institutionalized persons with cognitive impairments and/or mental illnesses; persons with language barriers; persons proposed for or under guardianship; victims of elder abuse, neglect, or exploitation (including fraudulent and deceptive financial and consumer practices); physically isolated persons; etc. 42 USC 3026(a)(4)A(ii)(III), (a)(4)(B); 42 USC 3027(a)(11)(E). See also the definitions of greatest economic need and greatest social need, in the Glossary.

When a provider must choose whether to represent a potential client based on a shortage in time, funding, or personnel, the decision should be based on the targeting factors in these standards.

Federal data that may assist with identifying underserved or underrepresented communities are available on the U.S. census website and on the U.S. Administration on Community Living (AoA) website.

AoA toolkit for serving diverse communities

As one example of an approach to service planning, the AoA has developed guidance on how to plan service delivery to target populations. The publication “A Toolkit for Serving Diverse Communities” is available online and includes worksheets for AAA and community partner service planning.

The Toolkit consists of a four-step process and a questionnaire that assists aging services networks and partners with every stage of program planning, implementation, and delivery of diverse population services. The four steps are (1) Assessments, (2) Identifying Resources About the Community, (3) Designing Services, and (4) Program Evaluation. The Diverse Community Questionnaire provides questions to assist agency staff through each step of the process. These questions enable agencies and their partners to consider how to improve services for diverse and specifically-targeted communities.

Area agencies and legal assistance providers may confer with the APD legal assistance developer, NCLER, and other resources to design outreach strategies for services with the potential to affect older Oregonians locally or statewide.

VI. Roles and Responsibilities of Legal Assistance Providers

A. General provider requirements

Each legal assistance provider should:

- be licensed or otherwise authorized to practice law in Oregon;
- have education or demonstrated experience in elder and poverty law, or propose a viable plan for obtaining timely training in priority areas;
- have access to an appropriate law library, current materials, and continuing legal education in the field, and commit to attending or giving at least one relevant training annually for the duration of the contract;

- commit to provide accessible services throughout the service area, subject to resources;
- provide effective, high quality administrative and judicial representation for eligible individuals in the mandated priority issue areas set forth above, except when the provider can demonstrate to the satisfaction of the area agency and the Aging and People with Disabilities program that another provider is delivering representation in accordance with these standards; and
- adhere to the standards set forth in this document now and as amended.

B. Specific provider requirements

Each legal assistance provider should:

- work with the area agency to assess and develop local program plans to reach target populations and address the priorities set forth in Part IV above;
- be willing and able to involve the private bar in the delivery of legal assistance, including pro bono and reduced-fee services;
- use all means available to serve clients according to an impact approach, including training, legislative advocacy not otherwise prohibited by the Older Americans Act or the provider's other Federal restrictions, the administrative process, judicial forums, and alternative dispute resolution;
- provide a readily available grievance procedure that is clearly available in each provider's office;
- ensure that its other activities do not constitute a conflict of interest under Oregon law or create other interference with its professional responsibilities under the OAA;
- establish procedures for the referral of fee-generating cases, ensuring that the provider uses no funds received under the OAA to provide legal assistance in a fee generating case unless other adequate representation is unavailable or an emergency necessitates immediate legal action;
- use Title IIIB funds or other funds as contracted for from the area agency to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and not use Title IIIB funds to supplant funds from other federal or non-federal sources;
- not require an older person to disclose information about income or resources as a condition for providing legal assistance funded under Title IIIB. A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible;
- recognize that client donations for legal services are acceptable but not required (any program income must be used to further fund the program);
- not subcontract any interest or obligation arising under a Title IIIB contract without advance written agreement of the area agency;

- provide complete, accurate, and timely programmatic and fiscal reports that reflect the OAA measures for units of service and other required program data to the area Agency, and additional information as may be requested by the area agency and the state legal assistance developer, while maintaining client confidentiality; and
- measure and report to the area agency survey results of client satisfaction, taking care to protect client confidentiality.

C. Coordination requirements

Where a legal service provider lacks experience or resources to resolve or (potentially) litigate a matter, the provider should consult with a Legal Aid Services Organization attorney or an Oregon Law Center attorney (depending on which program is available to potentially assist in the relevant program service area) for such coordination of legal services as may be required in the client's interest. The two providers should enter into a working agreement, memorandum of understanding or other arrangement, in writing, to establish appropriate coverage in the geographical area needing additional services access. This requirement does not obligate the furnishing of additional legal assistance by the consulted organization.

D. Ombudsman referrals

Oregon's long-term care ombudsman program (LTCO) provides complaint investigation and advocacy services for persons living in state-licensed care facilities. To assist the LTCO, legal service providers should work to reach agreement with the LTCO on how referrals to and from the LTCO should be made, including requirements for resident consent for release of resident information by the LTCO. See 45 CFR 1324.13(h)(10). Direct legal assistance may be provided to residents of long-term care facilities where such clients are otherwise eligible and prioritized under these Standards. Legal service providers should not provide legal advice to, or represent, the LTCO.

E. Ethical standards for providers

Legal assistance providers will govern themselves in accordance with the Oregon State Bar Rules of Professional Conduct and OSB ethics opinions. Additional ethical standards may be included in the relevant AAA contract.

VII. Roles and Responsibilities of Area Agencies on Aging

A. General Area Agency requirements

Each AAA should:

- incorporate these legal assistance standards into the area plan process, requests for proposals, selection of and contracts with the chosen provider, processing and monitoring of contracts;
- provide briefings for each area agency advisory committee regarding legal assistance program standards and direction on a regular basis;

- plan its legal assistance program using these standards and the priorities established in Part IV above, and ensure program funding, emphasizing a conceptual framework for legal services that constitutes a coherent program and that they are not just “buying a lawyer’s time;” and
- provide local leadership in coordinating outreach, access, and communication among related programs, including: state adult protective services, the Oregon Long-Term Care Ombudsman program, and the Oregon Senior Health Insurance Benefits Assistance program.

B. Specific Area Agency requirements

Each AAA should:

- select the legal assistance provider best able to demonstrate that it has the experience and capacity to meet the requirements of these standards, federal and state law;
- maintain client confidentiality if a client seeking a legal assistance referral discloses information relating to a legal issue;
- if screening elders for referrals, provide a readily available grievance procedure that is clearly available in office;
- review the program every two years to assess its compliance with these standards and contractual requirements;
- periodically require the legal assistance provider to make available client satisfaction surveys, or a summary of such surveys, to ensure that the views of older individuals are considered in the operation of the legal assistance program;
- adhere to these standards;
- assist APD, when requested, in developing a system to monitor and develop legal assistance programs;
- ensure that the legal service provider has a policy and procedure in place for acceptance of program income that complies with these standards and the OAA;
- ensure, through standards monitoring and review of provider invoices, that program income and donations (if any) generated through legal assistance are used to benefit the legal assistance program; and
- assist with provider efforts to involve the private bar in additional services delivery.

C. Coordination, training and support responsibilities

Each AAA should coordinate and/or establish public education on legal services availability and elder rights as funding may permit and is encouraged to share information on upcoming events and activities its legal service provider and with APD.

VIII. Roles and Responsibilities of the Aging and People with Disabilities program

A. General requirements

The legal assistance developer within APD should be available, as practicable, to assist AAAs and their contracted legal service providers with the planning and review of the locally-prepared education, outreach, and service delivery plans, goals, and outcomes. The legal assistance developer may also engage in permitted advocacy efforts through APD regarding the local and statewide provision of Title III-B legal services and other legal services.

B. State training and education responsibilities

APD, through its legal assistance developer, should:

- provide technical assistance for AAAs and legal assistance programs as may be needed;
- be available to meet with AAA contract managers and AAA advisory committees regarding legal assistance programs and elder rights;
- periodically review AAA and provider compliance with these standards at least every two years and more frequently as APD may require;
- conduct or facilitate substantive training on legal services and elder rights within APD and for AAAs as may be requested or needed; and
- collaborate with other state programs, agencies and entities to seek additional funds and in-kind resources for legal assistance and other elder rights program activities.

C. Other responsibilities

The state will respect the contractual relationship between providers and area agencies and will not interfere with that relationship unless invited to do so, unless federal or state laws and requirements, included those set forth in these standards, are implicated.

The state should periodically review and update these standards, with input from the area agencies and legal assistance providers, and should be available to provide guidance on the application of these standards.

IX. Standards to Guide Handling Cases Involving Abuse, Neglect, and Exploitation

Oregon DHS and all AAA employees, contractors and subcontractors should follow relevant mandatory abuse reporting laws and any additional contractual reporting. Technical assistance on abuse reporting methods should be available locally through AAA or APD offices. Assistance should also be available through APS central office.

Legal assistance providers should remain compliant with OSB-required elder abuse reporting education, and should attend or present at least one additional CLE training annually on a topic relating to the practice of elder law or focusing on a topic clearly associated with one or more of the service priority areas noted in these standards.

X. Glossary

Select Federal Definitions

Abuse: the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm. 42 USC 3002(1).

Exploitation: the terms “exploitation” and “financial exploitation” mean the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets. Here, the term “caregiver” means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual. 42 USC 3002(18).

Fee-generating case: any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to the client, from public funds, or from the opposing party. 45 CFR 1321.71(g)(1).

Greatest economic need: the need resulting from an income level at or below the poverty line. 42 USC 3002(23).

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(24).

Legal advice: informed opinion and suggestion of courses of action to be taken to remedy an identified legal problem or clarification of rights under law in a specific circumstance. Legal advice may be provided in person, by telephone or letter, or by any other suitable means.

Legal assistance: legal advice or representation provided by an attorney to older individuals with economic or social needs; counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and counseling or representation by a non-lawyer where permitted by law. 42 USC 3002(33). Representation includes direct assistance that goes beyond advice for the purpose of achieving a solution to a legal problem, and may encompass research, negotiation, preparation of legal documents, correspondence, appearance at administrative hearings or in courts of law.

Neglect: the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or self-neglect.

Older individual: a person aged 60 years or older. 42 USC 3002(40).

Unit of service: one hour of legal assistance or one hour expended in conducting community legal education, regardless of the number of participants or attendees.

Select State Definitions

In statute:

Definitions regarding restraining orders under the Elderly Persons and Persons with Disabilities Abuse Prevention Act are located at ORS 124.005.

Definitions regarding the reporting of abuse are located at ORS 124.050.

Definitions regarding civil actions for abuse of a vulnerable person are located at ORS 124.100.

The definitions for the above are currently available here:

https://www.oregonlegislature.gov/bills_laws/ors/ors124.html.

In administrative rule:

Oregon's definitions for types of abuse and related adult protective services terms are located at OAR 411-020-0002. Select definitions that are current as of the time of adoption of these standards are currently available here:

http://www.dhs.state.or.us/policy/spd/rules/411_020.pdf.

Supplemental program-specific terms

Accessibility: services must be available to target population groups throughout the planning and service area in ways that can be and are likely to be used by potential clients.

Community legal education: information for elders about their legal rights, through speeches, presentations, radio or television shows, and other appropriate media, to equip seniors, caregivers, and family members with knowledge to help them avoid costly legal problems.

Outreach: providers must include specific techniques to achieve general or specific awareness of services available, tailored to the targeted groups or communities in the service area.

Title III-B funds:

Essential to the OAA's ability to support seniors and caregivers are the many home and community-based services authorized in Title III, Part B of the OAA, which ensures that AAAs can meet the individual needs of older adults and their caregivers in the community. The funding for services provided through III-B is flexible, allowing agencies to develop programming to reflect community needs and provide tailored supports for older adults. There are more than 25 authorized services that local agencies can fund through Title III-B, but the most common services are information and referral (e.g., hotlines to help people find local services and resources), case management, in-home care, transportation, adult day care, chore services and legal services.

[An appendix may follow this page as applicable forms or resources are developed]