

Catherine A. Cooper
Authorized Signature

Number: SPD-PT-06-001
Issue Date: 01/03/2006

Topic: Other

Transmitting (check the box that best applies):

- New Policy
 Policy Change
 Policy Clarification
 Executive Letter
 Administrative Rule
 Manual Update
 Other: _____

Applies to (check all that apply):

- All DHS employees
 County Mental Health Directors
 Area Agencies on Aging
 Health Services
 Children, Adults and Families
 Seniors and People with Disabilities
 County DD Program Managers
 Other (please specify):

Policy/Rule Title:	OAA legal assistance standards		
Policy/Rule Number(s):		Release No:	
Effective Date:	1/01/06	Expiration:	
References:			
Web Address:			

Discussion/Interpretation: Attached are the Older Americans Act legal assistance standards to be applied by area agencies on aging in contracting with legal assistance providers.

Implementation/Transition Instructions: AAAs should apply these standards to all future requests for proposals for OAA legal assistance providers, and incorporate provisions required by the standards into their new contracts as current contracts expire.

Training/Communication Plan: Formal training took place 7 & 8 November 2005. State Unit on Aging staff will provide additional and ongoing technical assistance on request/as needed.

Local/Branch Action Required: Adoption of standards into contracts and contract proposals by first contract period after January 1, 2006.

Central Office Action Required:

Field/Stakeholder review: Yes No

If yes, reviewed by: area agency appointed representatives, legal assistance providers, area agency directors and contract providers

Filing Instructions:

If you have any questions about this policy, contact:

Contact(s):	Janay Haas		
Phone:	503 945 8999	Fax:	503 9474245
E-mail:	Janay.haas@state.or.us		

Legal Assistance Program Standards

**Under the Older Americans Act
(July 25, 2005)**

**Prepared by
Department of Human Services
Seniors and People with Disabilities
Office of Home and Community Supports
State Unit on Aging
500 Summer Street NE, E-10
Salem OR 97301**

TABLE OF CONTENTS

I. Background	
a. Introduction	2
b. Definitions	2
II. Legal authority	4
III. Program purpose	4
IV. Priority issue areas	4
V. Targeting	5
VI. Reaching targeted groups and Addressing priority issues	6
VII. Provider roles and responsibilities	7
VIII. Role and responsibilities of area agencies	9
IX. Role and responsibilities of state unit on aging	12
Appendix A –unduplicated client count	
Appendix B—outcome measures	
Appendix C—client satisfaction measures	
Appendix D—case category coding	

I. Background

a. Introduction

The overriding goal of the Older Americans Act (OAA) is the protection and enhancement of the rights, dignity, autonomy, and financial security of older Americans. 42 USC 3001. OAA regulations state that the State Unit on Aging (SUA) must assert leadership on issues affecting elders throughout the state, and that area agencies on aging (AAA) must provide the same advocacy leadership at the local level. 45 CFR 1321.7. To assist these agencies in achieving these goals, the OAA specifically requires funding of legal assistance programs. 42 USC 3023(c)(2), 42 USC 3026(a)(2)(C). In addition, amendments to the OAA in 2000 require that states have the capacity to improve both the amount and the quality of legal assistance. 42 USC 3058j(6).

The mission of the Older Americans Act legal assistance program in Oregon is to help older residents to maintain their independence and dignity by providing outreach, education, full-service legal advice, advocacy, and representation to those in social or economic need for whom other legal services are not available from the private bar or other sources within the means of those to be served.

b. Definitions

Abuse: willful infliction of injury, unreasonable confine, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or willful deprivation by a person, including a caregiver, or goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. 42 USC 3002(13)

Community legal education: preparation and presentation of programs to inform elderly persons specifically about their rights, some aspect of the legal system, or alternative courses of legal action.

Exploitation: illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary benefit, profit, or gain. 42 USC 3002(24)

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

Legal assistance: legal advice and representation provided by an attorney to older individuals with economic or social needs; and includes to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and counseling or representation by a nonlawyer where permitted by law. 42 USC 3002(31) Representation includes direct assistance that goes beyond advice and referral, for the purpose of achieving a solution to a legal problem, and encompasses research, negotiation, preparation of legal documents, correspondence, appearance at administrative hearings or in courts of law and legal appeals.

Lobbying: activities intended to influence any decision or activity by any nonjudicial federal, state, or local individual or body. 45 CFR 1321.7(h)(3)(i)

Neglect: the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide those goods or services. 42 USC 3002(34)

Older individual: person aged 60 years or older. 42 USC 3002(35)

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.

II. Legal authority

The Older Americans Act of 1965 as amended 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(b). Services shall be accessible and available throughout each of the planning and service areas of the state.

III. Program purpose

The broad purposes of legal assistance are to assist older individuals in understanding their rights; exercising choice; benefiting from services, opportunities and entitlements, and maintaining rights promised and protected by law; and to provide access to the justice system by offering advocacy, advice, and representation to older individuals. 42 USC 3058j(5), 42 USC 3002(31).

Programs are to

- Serve particularly those 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 the target population;
- Foster cost-effective, high quality services, having maximum impact on these priority issues;
- Be accessible in each county throughout each planning and service area;
- Develop and maximize use of other resources to expand the provision of legal assistance to older individuals, including alternative dispute resolution where appropriate.

IV. Priority issue areas

Area agencies and providers shall assure that the following broad categories of legal assistance are available as specified by the Older Americans Act throughout each planning and service area:

Income
Health care
Long-term care
Nutrition
Housing and utilities
Defense of guardianship

Abuse, neglect, and exploitation
Age discrimination

42 USC 3026(a)(11)(E).

Area agencies must establish specific objectives for the provision of these services to low-income minorities and to rural residents. 42 USC 3026(a)(4)(ii)(III)

Area agencies will categorize service types within the above priorities according to their significance in achieving the purposes of these standards. For example, an agency may assign a high-priority rating to the rights of individuals in nursing facilities and foster homes, the rights of applicants for and recipients of Medicaid and SSI, the rights of persons facing possible guardianship or conservatorship; medium priority to preventing housing discrimination or the loss of affordable housing, obtaining access to health care, and the prevention or rectification of physical or financial abuse; and low priority to unfair debt collection practices, age discrimination in employment, food stamps, etc. If an agency intends for a legal assistance provider to offer low priority or out-of-priority services, it must demonstrate that the higher priority areas are handled adequately by other programs or methods.

In conjunction with the state unit on aging, area agencies and legal assistance providers will draft a simple case-category coding system to allow the area agencies to ascertain the kinds of cases the legal assistance providers accept, to assure compliance with OAA case priorities. See Appendix D.

The preparation of wills does not constitute compensable legal assistance except when a will is part of a strategy to address an OAA-prioritized legal problem.

V. Targeting

Programs have insufficient resources to meet all of the legal needs of older individuals. Within the case categories listed in Part IV, above, legal assistance shall be targeted, therefore, 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 all types of long-term care facilities, persons with chronic health problems; persons with particular problems of access to health care; homeless persons; institutionalized mentally ill or mentally retarded persons; 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).

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. Under no circumstances should a person 60 years of age or older be denied legal assistance on the basis of his or her income or assets. 45 CFR 1321.71(d)

Area agencies and legal assistance providers will jointly develop plans to target legal assistance to the particularly needy persons described above. The plan will be reviewed and revised from time to time to reflect changing priorities. In developing such plans, the agencies and providers will consider a range of ways in which the legal assistance providers can assist such groups, e.g., through litigation, permitted legislative and administrative advocacy, community education, etc. The agencies and the providers will confer from time to time with the legal assistance developer and other providers to consider how to address issues with the potential to affect older Oregonians statewide.

VI. Reaching targeted groups and addressing priority issues

Congress has directed that OAA funding address certain core legal problems, as delineated in Part IV, above, and focus on older individuals in greatest economic or social need, with particular attention to low-income minority individuals and rural persons. Outreach is the key to implementing the targeting and priority-setting goals.

Almost by definition, the most vulnerable populations are the most difficult to reach and serve. Only focused outreach will achieve the goals of reaching these populations. Outreach in its broadest sense encompasses a variety of strategies. "First-come-first-served" is the result of unfocused and ineffective outreach.

A program can achieve success only if people know of its existence; if it is easily accessible; and if people recognize that certain problems are in fact legal in nature. A legal assistance program devised by the area agency and the provider will include

- **Accessibility:** services must be available and accessible to target population groups throughout the planning and service area
- **Outreach:** providers must include specific techniques to achieve effective outreach, tailored to the targeted groups in the service area
- **Community legal education:** information for elders about their legal rights,

through speeches, presentations, radio and television shows, and other appropriate media, will equip seniors, caregivers, and family members with knowledge to help them avoid costly legal problems later

Area agencies and legal assistance providers will confer with the legal assistance developer to consider outreach strategies on issues with the potential to affect older Oregonians statewide.

VII. Provider roles and responsibilities

In keeping with the broad program purposes outlined in Part III above, the goal of these standards is to ensure that the state unit on aging, area agencies on aging, and legal assistance providers work together on delivery of high quality legal services designed to address the unmet legal needs of vulnerable older Oregonians. To that end, legal assistance providers will govern themselves in accordance with the Oregon State Bar Rules of Professional Conduct, and will use all appropriate available legal advocacy tools, including litigative, administrative, and permitted legislative strategies, in diligent and zealous representation of clients. While other legal assistance activities, such as community legal education, are acceptable under these standards, the primary focus of Title IIIB legal assistance is direct representation in legal matters.

A legal assistance provider shall

- 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 training timely in priority areas
- Have access to an appropriate law library, current materials, and continuing legal education in the field; and commit to attending at least one training in the field annually for the duration of the contract
- Commit to provide accessible services throughout the service area
- Be willing and able to involve the private bar in the delivery of legal assistance, including pro bono and reduced-fee services
- Provide legal information, community legal education, direct client representation
- Provide direct supervision of non-attorney staff by a licensed attorney who is, or is employed by, a legal assistance provider designated as a provider under an approved area plan for legal assistance

- Confer with the area agency and the legal assistance developer from time to time to identify issues with the potential to affect older Oregonians statewide and consider strategies to address those issues most efficiently and effectively
- Adhere to the standards set forth in this document now and as amended
- Measure and report to the area agency survey results of client satisfaction, taking care to protect client confidentiality. See Appendix C for model survey form.
- Assist the area agencies and the State Unit on Aging in developing and amending as needed a monitoring and appraisal tool
- 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.
- At a minimum, 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 State Unit on Aging that another provider is delivering the service in accordance with these standards
- Use all means available to serve clients according to an impact approach, including training, legislative advocacy not otherwise prohibited by the Older Americans Act, the administrative process, judicial forums, and alternative dispute resolution
- 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
- As required by the Older Americans Act and regulation, not condition provision of Title IIIB legal assistance to any person 60 years of age or older on the basis of the person's income or resources. Provider may question client only about financial circumstances as part of the process of providing legal advice, counsel and representation, and for the purpose of identifying additional resources to which the client may be entitled, and to assist in targeting clients with the greatest social and economic need
- Offer the client an opportunity to contribute to the cost of the services the client receives *only after* services have been completed, in a way that will not discourage the client from returning for additional services or discourage potential clients
- Not subcontract any interest or obligation arising under a Title IIIB contract without advance written agreement of the area agency

- Demonstrate 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
- Provide complete, accurate, and timely programmatic and fiscal reports that reflect the Older Americans Act 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
- If not an LSC-funded program, must develop a coordination of services agreement with the Legal Services Corporation program for the area agency's planning and service area. The agreement will detail the type of coordination and cooperation each program can expect from the other while providing legal assistance to the elderly throughout the planning and service area
- Provide due process grievance procedure for denial of service or inadequate service
- Identify personnel to perform work under contract and duties of each person; specify time to be dedicated to contract
- Develop and operate advocacy program in coordination with the Long Term Care Ombudsman (LTCO), Senior Health Insurance Benefits Assistance Program (SHIBA), etc.
- Demonstrate the capacity to provide legal assistance to institutionalized, isolated, and homebound older individuals effectively
- Ensure that its other activities do not constitute a conflict of interest or create other interference with its professional responsibilities under the Act
- Establish procedures for the referral of fee-generating cases, ensuring that provider uses no funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or an emergency necessitates immediate legal action.

VIII. Role and responsibilities of area agencies on aging

Each state-designated area agency on aging must provide leadership relative to all aging issues in its planning and service area, including overall planning, advocacy, coordination of services, interagency linking, information sharing, monitoring, evaluation and support to assure the integration of legal assistance services into the rest of the area's aging network and to assure that the focus of legal assistance is consistent with agency-identified regional goals.

Each area agency shall

- Incorporate legal assistance standards into area plan process, requests for proposals, selection of provider, processing and monitoring contract
- Provide briefing for area agency advisory committee regarding legal assistance program standards and direction
- Plan legal assistance program in light of these standards and the priorities established in Part IV above, and assure program funding, emphasizing a conceptual framework for legal services that constitute a coherent program and not just “buying a lawyer’s time”
- Provide local leadership in coordinating outreach, access, and communication among related programs, e.g., Adult Protective Services, LTCO, SHIBA, guardianship programs, etc
- If screening clients for legal assistance, offer due process appeal procedure for denial of service
- Maintain client confidentiality
- Select the legal assistance provider best able to demonstrate the experience and capacity to meet the requirements of these standards, federal law, and state law
- Adhere to these standards
- Assure that programs are funded in accordance with federal and state requirements and that legal assistance services are available throughout the planning and service area
- Assure that the primary focus of the TIIIB legal assistance provider is the direct representation of clients in legal matters, emphasizing an impact approach where the outcome will apply to many people
- Require the legal assistance provider to make available client satisfaction surveys or a summary of such surveys to assure that the views of older individuals are considered in the operation of the legal assistance program. See Appendix C for model form.
- Work with providers in developing their program plans to reach target populations and address priority needs. Providers will review and revise these plans with input from the AAA annually
- At a minimum, monitor the program annually to assess compliance with state and federal laws and regulations and contractual requirements
- Assure that providers have a client grievance system in place
- Assure that competition for funds will be available only to programs that meet the ethical and disciplinary standards of the Oregon State Bar

- Review and approve provider policy and protocol for referral of fee generating cases and conflicts of interest.
- Assist the SUA and providers in developing a system to monitor the quality of legal assistance, including the assessment of lawyering skills and provider capacity to furnish legal assistance under TIIIB of the Older Americans Act
- Assist state legal assistance developer in developing a model Request for Proposals
- Assist providers in establishing local goals for the future of the legal assistance program
- Set no requirement for program income, and assure that provider has a policy and procedure for acceptance of program income that complies with these standards
- Assure that program income generated by legal assistance is used to benefit the legal assistance program
- Monitor LSC-funded providers to assure that provider attempts to involve the private bar in delivery of legal assistance, including pro bono and reduced-fee services; and monitor non-LSC-funded providers to ensure that providers have and use a coordination-of-services agreement with the LSC-funded provider in the area agency's planning and service area.

Area agencies will obtain input on training and support needs of providers and legal assistance clients, working with the SUA to ensure that providers can take advantage of relevant training opportunities.

Area agencies must ensure that providers can demonstrate that all relevant TIIIB legal staff have sufficient training. To that end, agencies will review and approve the provider's description of the methods used to keep staff current on priority issue areas.

The Older Americans Act requires annual reporting of the numbers of unduplicated clients served by or through area agencies. The law recognizes two categories of countable clients—those receiving “registered services” and those receiving “non-registered services”. Registered services include personal care, homemaker, chore, home-delivered meals, nutrition counseling, respite and caregiver services, and assisted transportation. Registered services require unduplicated client counts for each service and across services. Non-registered services include legal assistance, transportation, nutrition education, information and assistance, and outreach. Non-registered services must be counted by only a “best estimate” of unduplicated persons served, broken down by client characteristics (minority, rural, poor, minority

poor). Legal assistance is counted by only a best-estimate measure to protect the right of privacy of individuals receiving services.

(See Appendix A, for examples of forms used by a legal assistance provider to track the necessary information without disclosing client identifiers. Outcome measures: See Appendix B for examples of appropriate measures.)

IX. Role and responsibilities of SUA

The SUA shall develop an annual elder rights plan as a part of the state plan, which shall include and delineate a program to provide leadership for expanding the quality and quantity of legal and advocacy assistance as a means to ensure a comprehensive elder rights program and in accordance with the program purposes outlined in Part III of these standards. This function must involve coordination with providers in the state that assist vulnerable older persons.

The SUA shall establish a focal point for elder rights policy review, analysis, and advocacy at the state level that will include coordination of information submitted by area agencies under their elder rights plans.

The state will provide a legal assistance developer and other personnel sufficient to ensure

- State leadership in securing and maintaining legal rights of older Oregonians
- Capacity for coordination of the provision of legal assistance funded under Title III-B
- Technical assistance, training and supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other appropriate persons
- The capacity to improve the quality and quantity of legal assistance to older individuals in the state

The state legal assistance developer must have the following qualifications:

- Knowledge of poverty law, elder law, and aging network
- Education and/or demonstrated experience in elder/poverty law
- Commitment to provide accessible services throughout the service area
- Access to appropriate law library, materials

The scope of the legal assistance developer's work includes

- Providing technical advice for formulating legal assistance programs per state and federal standards
- Providing technical advice to AAAs that are financially unable to have a full legal assistance program individually
- Reviewing area plans
- Meeting at least annually with AAA contract managers; be available to meet with advisory committees regarding legal assistance
- Reviewing AAA and provider compliance with standards
- Providing leadership for coordination of elder rights advocacy, including securing funding for annual meeting of legal assistance providers, ombudsman, SHIBA volunteers, protective services workers, etc.
- Conducting or facilitating substantive training
- Seeking additional funds and in-kind resources for legal assistance

The state will develop working agreements, as necessary, with relevant state and federal agencies on matters relating to the legal needs of older persons, including legal services programs, the Social Security and Veterans Administrations, the court system and attorney general's office, to improve coordination of legal assistance available to the elderly. The working agreement with legal services programs will address coordination through local program boundaries and varying priorities, state-level relationship and program goals, and ways to assure assistance to vulnerable elders in priority categories while minimizing conflicts between LSC and OAA requirements for programs that are co-located.

Working with area agencies on aging and legal assistance providers, the state will develop a system for monitoring the quality of legal assistance services, including assessment of lawyering skills and provider capacity to furnish legal assistance under Title IIIB of the OAA. The monitoring system shall be designed in such a way as to protect the confidential nature of the assistance provided to clients and will tie into the monitoring function performed by the state unit on aging for all other programs and services.

The state will work with the providers to assure that Title IIIB funds or other funds as contracted through area agencies on aging are used to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and

to assure that Title IIIB funds are not used to supplant funds from other federal or non-federal sources.

The state will periodically provide for education and training of professionals, volunteers, and older individuals concerning the topics of elder rights and the requirements and benefits of certain laws and programs assisting the elderly.

The state will assure that training is available annually in areas of law relevant to the priorities of the state legal assistance programs and the priority areas listed in Part III above.

The state will work to develop low-cost or free relevant training, with choices approved for credit toward continuing legal education requirements of the Oregon State Bar.

From time to time, the state will compile and furnish to area agencies and providers a report showing the status of legal assistance in each area and throughout the state. The state will supply each provider with technical assistance and guidance as needed or requested by the area agency or the provider itself. The state will respect the contractual relationship between providers and area agencies and will not interfere with that relationship unless invited to do so or unless federal or state laws and requirements, included those set forth in these standards, are implicated.

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