

The Essential Role of the State Legal Assistance Developer

ISSUE BRIEF • February 2018

Adapted from the Best Practice Notes by The Center for Social Gerontology

The Center for Social Gerontology

The Center for Social Gerontology, Inc. (TCSG), is a non-profit research, training and social policy organization dedicated to promoting the individual autonomy of older persons and advancing their well-being in society.

TCSG's mission is to help society adapt to the dramatic increase in the numbers of old and very old, and to insure that older persons at all socio-economic and health levels are able to meet their needs and use their talents and abilities in a changing society.

Introduction

A central tenet of the Older Americans Act (OAA) is ensuring access to benefits and services for older adults in the greatest social and economic need. The State Legal Assistance Developer (LAD) plays a key role in meeting this goal. The LAD has the opportunity to work with the State Unit on Aging (SUA) to set a vision for an effective legal services delivery system for older adults. The LAD is an important advocate for legal services, and a strategic connector, working across the network to strengthen the legal services delivery system. From advocating for resources critical to legal providers, to helping an older adult find an attorney with proper expertise, the developer is critical to championing the rights of older adults and ensuring that the promise of the OAA is fulfilled.

This issue brief is intended to assist SUAs and other entities in the aging/legal services delivery networks meet the challenge of providing leadership on legal assistance development. The brief describes the key roles the State Legal Assistance Developer plays in the delivery of legal services to older adults. The issue brief is adapted from The Center for Social Gerontology's *Best Practice Note: The Essential Role of the State Legal Services Developer*.¹

Older Americans Act Guidance on Legal Services

The OAA calls for states to provide leadership by a LAD in two places. First, in the state plan section, Title III requires that "(t)he 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."² Second, Chapter 4 of Title VII (Vulnerable Elder Rights Protection) reinforces this with very similar language.³ Further, Chapter 4 of Title VII provides guidance on role of the LAD. Specifically, under Chapter 4, the state agency is instructed to:

...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;
- (2) State capacity for coordinating the provision of legal assistance;

1 See The Center for Social Gerontology Best Practice Note: The Essential Role of the Legal Services Developer: Blueprint for a Model Job Description, tcs.org/bpnotes/december04/dec04BPN_01.pdf.

2 42 U.S.C. §3027(a)(13) (2016).

3 42 U.S.C. §3058j.

- (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.⁴

Title VII also continues to call on states to develop a vulnerable elder rights plan, as part of the State Plan, which prioritizes activities to ensure older persons “have access to, and assistance in securing and maintaining benefits and rights.”⁵ The LAD has a key role in designing and implementing the Elder Rights Plan.

Legal Assistance Developer and the State Plan

Title III of the OAA requires states to develop and implement a State Plan on Aging to provide a framework to guide the state’s programs, activities and services for older adults.⁶ Each Plan must clarify how legal services will be coordinated in the state, specifically, as noted above, each State Plan must:

“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.”⁷

The State Plan requires the state to provide other assurances regarding legal services. The state must:

- Evaluate the need for legal assistance and other supportive services;⁸
- Specify a minimum proportion of Title IIIB funds to be expended by each Area Agency on Aging (AAA) on each of the three priority services (access, in-home, and legal services);⁹
- Assure that AAAs will enter into contracts with legal providers who have experience and capacity to deliver the needed services and who will be subject to regulations adopted by the Assistant Secretary for Aging, and
- Assure that AAAs and providers attempt to involve the private bar in furnishing services on a pro bono and reduced fee basis.¹⁰
- Assure that no legal services will be provided unless the grantee has a program designed to serve older persons with social or economic need, and has agreed, if not a LSC grantee, to coordinate with existing LSC projects in the area to concentrate the use of IIIB funds on those in greatest need, and
- Assure that each AAA makes a finding after assessment, that any legal grantee selected for funding is the entity best able to provide the needed services.¹¹
- Provide for coordination of legal services within the State and provide advice and technical assistance in the provision of services, and support the furnishing of training and technical assistance.¹²
- Assure that services furnished with IIIB funds will be in addition to services furnished with non-OAA

⁴ 42 U.S.C. §3058j.

⁵ 42 U.S.C. §3058d(a)(3).

⁶ 42 U.S.C. §3027.

⁷ 42 U.S.C. §3027(a)(13)(Emphasis added.)

⁸ 42 U.S.C. §3027(a)(2)(A).

⁹ 42 U.S.C. §3027(a)(2)(C).

¹⁰ 42 U.S.C. §3027(a)(11)(A).

¹¹ 42 U.S.C. §3027(a)(11)(B).

¹² 42 U.S.C. §3027 (a)(11)(C).

funds (for example LSC or IOLTA), and that efforts will be made to maintain existing levels of services through these other funding sources.¹³

- Assure that AAAs give priority to legal assistance related income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect and age discrimination.¹⁴

The Role of the Legal Assistance Developer

The OAA details the core responsibility of a LAD: working with the AAAs, IIBB legal providers, State Units on Aging, and others to coordinate and oversee legal assistance throughout the state. In practice, a strong LAD can help strengthen the state's legal services delivery system. Here are some examples of ways the LAD plays an integral role improving the legal services delivery system.

Lead and assist with program quality, integrity and compliance

While the LAD's role in program quality varies from state-to-state, the LAD can improve program integrity by providing leadership in developing the State Plan, ensuring legal services are appropriately targeted to those in greatest need without means testing,¹⁵ and working with the state and local agencies to develop statewide guidelines¹⁶ for legal services delivery.

For example, in 2015, the California LAD, working in conjunction with the AAAs, legal services providers, Long-Term Care Ombudsman programs, California Association of Area Agencies on Aging (C4A), and the State Bar, developed Statewide Guidelines for Legal Services Delivery.¹⁷ As a result of this statewide collaboration, the LAD and legal services programs have a clear roadmap for providing OAA-funded legal services. The guidelines defined core legal concepts, clarified the target client population, established priority legal issues, and detailed roles and responsibilities for different entities in the legal services delivery system.¹⁸

Build and maintain provider relationships and network partnerships

The LAD can also lead partnerships across the state, bringing together the legal and aging network to create a seamless delivery system. In this role, the LAD can both provide strategic advocacy to improve systemic challenges in the delivery system, and educate partners across the delivery system. One partnership example is the relationship between the LAD and the State Long-Term Care Ombudsman (LTCO). The OAA requires each state to have an LTCO that empowers residents, addresses complaints and advocates for improvements in the long-term care system.¹⁹ According to a 2015 National LTC Ombudsman Resource Center (NORC) survey of LADs and LTCOs, respondents reported working together on the following: training opportunities, policy collaboration, technical assistance, jointly contributing to task forces, and collaborating to secure the availability of legal assistance to residents of long-term care facilities.²⁰ Here are some specific examples of the LTCO-LAD partnership from the report:

- The LAD worked closely with the LTCO on Legal Assistance Guidelines and Ombudsman Policies and Procedures, as well as on contracts with AAAs.

13 42 U.S.C. §3027(a)(11)(D).

14 42 U.S.C. §3027(a)(11)(E).

15 Targeting Older Americans Act Services without Means Testing: Meeting the Challenge, ncler.acl.gov/pdf/Targeting-OAA%20Services-Without-Means-Testing-Issue-Brief.pdf.

16 For more on developing statewide guidelines, see: Developing Statewide Standards for Delivery of Legal Assistance under the Older Americans Act, ncler.acl.gov/pdf/NCLER-Developing-Statewide-Standards-for-Delivery-of-Legal-Assistance-Under-the-OAA.pdf.

17 California Statewide Guidelines on Legal Services Delivery, (April 2015), aging.ca.gov/docs/Legal/2015%20CA%20Statewide%20Guidelines%20for%20Legal%20Assistance.pdf.

18 Id.

19 National Long-Term Care Ombudsman Resource Center, Long-Term care Ombudsman Programs and Legal Assistance Developers Collaboration, lcombudsman.org/uploads/files/support/lcop-lad-report.pdf.

20 Id. at 10.

- The LTCO worked with the LAD to gather information on guardianship while working together on complex cases.
- Joint efforts to update policy manuals and sharing information and resources regarding guardianship, fraud prevention, tax protection, abuse, neglect and the exploitation of older adults.²¹

Determine education needs and provide and arrange for training

Similar to the partnerships discussed above, the LADs connect the aging and legal network through educational programs. Using the state guidelines²² and targeting priorities²³ as a guide, under the LAD's leadership, III-B legal services programs can offer training for non-legal service providers and older adults, as well as training for attorneys and elder rights advocates. As discussed above, when developing this training, it is particularly beneficial to coordinate with ombudsman, health insurance benefits counselors, and other training organizations in the aging network.

The LAD can utilize many resources when developing their training material. The National Center on Law & Elder Rights created a National Legal Training Curriculum,²⁴ which includes presentations on both basic and advanced legal topics. The NCLER website offers a webinar recording, slide deck and written materials on each core topic. The LAD can adapt these materials to state-specific training for a variety of audiences. The Administration for Community Living funds Resource Centers which also provide training material on a variety of OAA issues, for example: the National Center on Elder Abuse,²⁵ the National Long-Term Care Resource Center (NORC),²⁶ and the National Aging and Disability Transportation Center.²⁷

Provide leadership for strategic advocacy on systemic issues

The LAD is in a unique position to identify systemic challenges across the legal and aging network and work with partners to address them at a state level. To do this effectively, the LAD must stay informed of emerging trends, as well as legal and policy issues impacting older adults. State-level support is also important to ensure the LAD has the authority and resources needed to effectively support legal services and assist with systemic improvements. Recently, Delaware updated the State Plan²⁸ and included an explicit objective to develop and expand the role of the legal services developer:

“Delaware is focused on addressing some of the more challenging critical needs of its older population, including the need for legal services and supports. With the expanded role of DSAAPD's Legal Services Developer and a focus on financial exploitation, Delaware is addressing the need head on:

Objective 4.4 Develop and expand the role of the legal services developer.

Strategy 4.4.1 Lead the state's elder rights advocacy efforts by promoting critical legal needs of older individuals, including income, housing, access to healthcare and long-term services and supports, and defense against guardianship when appropriate.

Strategy 4.4.2 Expand capacity for coordinating legal assistance.

21 Id. at 14-15.

22 National Center on Law & Elder Rights, Developing Statewide Standards for the Delivery of Legal Assistance Under the Older Americans Act, ncler.acl.gov/pdf/NCLER-Developing-Statewide-Standards-for-Delivery-of-Legal-Assistance-Under-the-OAA.pdf.

23 National Center on Law & Elder Rights, Targeting Older Americans Act Services without Means Testing: Meeting the Challenge, ncler.acl.gov/pdf/Targeting-OAA%20-Services-Without-Means-Testing-Issue-Brief.pdf.

24 National Center on Law & Elder Rights, National Legal Training Curriculum, ncler.acl.gov.

25 National Center on Elder Abuse, Training Resources on Elder Abuse, <http://trea.usc.edu>.

26 National Long-Term Care Ombudsman Resource Center, Training Programs and In-Services, lcombudsman.org/omb_support/training/training-programs.

27 National Aging and Disability Transportation Center, Training and Webinars, <http://www.nadtc.org/training-webinars/category/training-webinars/>.

28 Delaware State Plan on Aging October 1, 2016 to September 30, 2020, pg. 7, available at: dhss.delaware.gov/dhss/dsaapd/files/draft_state_plan_april_2016.pdf.

Strategy 4.4.3 Provide technical assistance, training and other supportive functions to DSAAPD, legal assistance providers, ombudsmen, and other related persons and/or organizations.”²⁹

Explicit guidance, like this, to lead the state’s elder rights advocacy and expand the LAD role, empowers the LAD to provide leadership in strengthening legal services and improving the delivery system.

Recommendations for Strengthening the LAD Role

As states look to strengthen their legal services delivery system, they can take several steps to strengthen the LAD position. They include:

Protecting confidential client-attorney relationships. The LAD should not be required to disclose information regarding the identity of a client eligible person who contacts the LAD for information and referral for legal assistance unless the older person, in writing or orally, authorizes the LAD to reveal the information. The LAD should also not be required to disclose the identity of any person who registers a complaint with the LAD regarding legal assistance services.³⁰

Maintaining strong SUA, AAA, and LAD relationships. The LAD should work collaboratively with the SUA, AAA and Title IIIB legal assistance providers. The SUA and the LAD should work in partnership to improve the delivery system.

Provide full-time status. In order to complete the duties and functions outlined in the OAA and described in this job description, the LAD should be a full-time position with staff sufficient to ensure that all the duties and responsibilities can be carried out.

Adhere to LAD qualifications. An ideal LAD would have experience and competency in:

- Legal analysis, consultation and negotiation
- Formulation of policies and procedures around contracting, data collection, and state administrative procedure
- Program administration, management and coordination of aging network services
- Effective written and oral communication skills
- Demonstrated ability to work with, and build partnerships with, groups serving older adults, including: area agencies on aging, long-term care ombudsman, social workers, residential services, transportation services, legal services programs, and nutritional services
- The OAA and legal assistance programs for older individuals
- Areas of the law affecting older persons, particularly those with economic or social need
- The aging network and aging services providers in the state
- State and local bar associations, law schools, and the private practice of law
- Social and protective services systems

Conclusion

A strong LAD correlates with an effective and efficient legal services delivery system for older adults. This issue brief provided guidance on how to clarify the LAD’s role and coordinate responsibilities across the legal and aging network. Given the variation on LADs from state-to-state, the guidance provided here should help states support state leaders as they work to strengthen the legal services delivery system.

29 Delaware State Plan on Aging October 1, 2016 to September 30, 2020, pg. 15–16, available at: dhss.delaware.gov/dhss/dsaapd/files/draft_state_plan_april_2016.pdf.

30 Confidentiality requirements are consistent with OAA confidentiality requirements for legal assistance. 42 U.S.C. §3027 (f), 42 U.S.C. §3026(d), 42 U.S.C. §3058(b).

Further technical assistance is available for attorneys and aging network professionals seeking more information to help older adults and improve the legal services delivery system. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Issue Brief was supported by a contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201.