

# Legal Issue Spotting, Intake and Referrals

PRACTICE GUIDE • June 2018

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*This Practice Guide is part of our Skills-Based Training curriculum, focused on providing practical tools for working with older adults.*

## Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

## American Bar Association Commission on Law & Aging

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

## Introduction

Civil legal aid plays a critical role in ensuring that older adults with economic or social needs have access to health care, housing, income, prevention and intervention on abuse, and more. The provision of holistic legal and supportive services promotes the overall legal health of clients, and alleviates the effects of poverty and systemic barriers.

Strong skills in intake, issue spotting, and referrals can create a legal services experience that meets the full and varied needs of older adults. A clear and accessible intake process can better welcome older clients and create an open environment designed to encourage client conversation. It is also the frontline for issue spotting and screening for urgent issues. Attorneys and advocates also better serve their clients by identifying and addressing underlying and "hidden" issues that their clients are facing. Recognizing that legal services programs have limited resources, a robust and organized referral process can help attorneys connect their clients to the supportive services that will promote ongoing success and empowerment for older adults.

## Decision Guides

This Practice Guide contains sample Decision Guides, which are designed in PowerPoint and intended to be customized to fit the needs of individual legal services programs. Adapted from a concept developed by Legal Assistance Foundation of Metropolitan Chicago, Decision Guides provide clear visual aids to assist intake staff, attorneys, and community partners in determining follow-up questions, intake decisions, and referrals. They can be used in print or electronic format, depending on the preferences of the user.

The Decision Guides included in this Practice Guide are examples of how visual aids can be utilized to assist with intake, issue spotting, and referrals. If you'd like to use them in your program, they should first be edited to reflect the policies and procedures of your individual office and include local resources and information.

For assistance with creating or customizing your own Decision Guides, contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).

## Intake Strategies

Effective issue spotting starts with a good intake system. During the intake process, potential clients generally share information that is critical to assess urgency and correctly route or refer the case.

At intake, staff should look for cues indicating if there are other issues to be addressed that might be more urgent than the client's self-identified issue. Identifying this information and notating it for the next case handler can help guide the proper case assignment within the office, as well as help to identify the most pressing legal needs of the client.

### Information vs. advice

Distinguishing between providing legal information and legal advice is an important distinction for non-attorney intake staff to understand. Non-attorney intake staff may provide legal information to the caller, particularly if the caller is being referred. Non-attorneys should avoid giving legal advice; when pressed the best answer may be, "the attorney will need to review this to give you the best answer." Some ways to distinguish between legal advice and information include:

Legal Information	Legal Advice
<ul style="list-style-type: none"><li>• Not fact specific</li><li>• Definitions, not interpretations (what the law says, not what it means)</li><li>• Examples of forms—not which form to use</li><li>• How court works, not how court will rule</li><li>• General referrals</li></ul>	<ul style="list-style-type: none"><li>• Fact specific</li><li>• Involves judgment or interpretation</li><li>• Includes recommendations about legal course of action</li><li>• Answers questions of "what should I do"</li><li>• Can include conducting legal research</li></ul>

### Cultural competency & accessibility

The population of older adults who are in need of legal services are diverse, and come from varied cultures and backgrounds. A legal services program's intake procedures should be culturally competent in order to best address the needs of all older adults and ensure that they feel they can trust the program and its staff. Cultural competency can be achieved through many different practices, but the basic outcome is that it signals that you have an understanding of the unique issues, concerns, experiences, and history of a group. Additionally, the intake process should be accessible to people with disabilities. Here are a few examples of cultural competency and accessibility considerations:

- Call scripts with inclusive language, such as asking whether someone has a spouse, partner or significant other;
- Intake forms or fields that have a blank space for gender identity, rather than just Male or Female;
- Include marketing materials or posters in your waiting lobby with photos and information for people

from a diverse spectrum, including race, same-sex couples, and diversity of gender presentation;

- Utilize language line, translators and interpreters ([LEP.gov](http://LEP.gov) provides the concentration of and languages spoken by individuals with limited English proficiency in your region);
- Provide assisted listening devices; and
- Assume that there will be cultural differences, in communication, relationships, and decision making.

## Decision Guide 1: Basic Intake

The sample Decision Guide for Intake is an example of a guide that could be utilized to help intake staff distinguish the intake guidelines for older adults from the intake guidelines for other programs within the office. This sample intake guide was designed to assist an intake staff member in determining whether to disqualify for income, and where the potential case may be referred or assigned within the office. For programs that receive Older Americans Act Title III-B funding, adjusting or delaying the usual income or asset determination may be one of the first steps in your intake guidelines, and important to note in the process to avoid improper disqualification for services. This guide could be modified to include information such as funding code assignments and notate whether certain issue areas require different qualifiers for services, such as location or housing type.

## Decision Guide 2: Screening for Urgency

The accompanying Decision Guide for Determining Urgency provides a reference that can be utilized by intake staff or community partners to help them determine which cases need to be routed to an attorney or brought to the attention of an attorney immediately. Before being used by an individual program, this sample guide should be modified by individual programs to reflect their internal procedures and preferred referral for emergencies, such as 911 or a crisis hotline.

## Issue Spotting

Some clients will come to a legal services program with a clear need, such as representation in an eviction action, responding to a lawsuit for a debt, or disputing a denial of health insurance coverage. These types of issues are often self-identified as a legal problem by the client. Asking additional questions will sometimes reveal that the legal issue the person is caused by, or has a solution in another legal issue. However, many people do not recognize that other problems have or require legal solutions. A recent study by Rebecca Sandefur of the American Bar Foundation found that of the people she surveyed, very few of them sought out legal assistance when faced with a civil justice issue. This was primarily because they did not see their issue as being “legal” in nature, particularly if there was no court involvement.<sup>1</sup> By taking a deeper look at the various issues that might be affecting their clients, attorneys and non-attorney advocates can identify additional ways that they can help, even if the client does not recognize their issue as a legal one.

## Red flags

There are many statements that an older adult could make in the course of intake or a client interview, that are “red flags” that something else may be going on in their life that requires legal intervention. If a red flag is raised, attorneys should ask more questions. Some of these red flags include:

- Neglect, Abuse or Exploitation:
  - » Client requests that you do not call them at home because their son/daughter/caregiver/etc. might answer—this is an indicator that there might be an elder abuse issue and further questions or screening should be conducted.

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1 [americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf)

- » Client is having difficulty paying basic utility bills or housing costs, but has adequate income—this could be an indicator of financial exploitation or other abuse. Additional screening should be done.
- » Client mentions a new friend who calls them every day—this is an indicator that the client may be being targeted for a scam. Additional questions should be asked.
- Nutrition Service Eligibility:
  - » Client mentions that they are hungry—this could be an indicator that the client should be screened for nutrition service eligibility. If they have sufficient income, it could also be an indicator of financial exploitation or neglect.
- Consumer and Health Insurance Assistance:
  - » Client refers to a large medical bill they are paying on each month—additional screening for a health insurance issue or consumer issue should be considered. They could be paying a bill that should have been covered by insurance, or be eligible for Medicaid and not enrolled.
  - » Client never answers their phone because they receive a lot of calls—the client could be behind on credit card or other bills and need assistance with budgeting or collection issues.

### Screening Tools

There are national and local tools that can assist with helping you determine if a client is eligible for public benefits programs. The local Area Agency on Aging or Aging and Disability Resource Center may conduct free benefits checkups for older residents in their service area. [Benefits Check-Up](#) is a free online service from the National Council on Aging that can help in the screening process for federal, state and private benefit programs. Using the tool, clients or their advocates can answer basic questions to get a report detailing some of the benefits that the client may be eligible for. It may be necessary to do more follow-up research to fully determine eligibility, but Benefits Check-Up can be a useful tool for identifying programs and serve as a starting point for screening. Available information varies by location.

### Decision Guide 3: Screening for Issues Affecting Older Adults

The sample Decision Guide on Screening for Issues Affecting Older Adults is designed to encourage attorneys and advocates to ask questions that can encourage clients to reveal more information about their day-to-day circumstances. The questions are focused on issues of safe living environment, medical bills, and food access, and abuse, because these are issues that people may not typically think of as having a legal solution. By asking these types of questions, advocates could get information that their client may not mention otherwise. Advocates can take the information they receive in response from their client and provide legal help or connect them to supportive services.

### Decision Guides 4 & 5: Issue Screening—Consumer & Income

These sample Decision Guides are examples of utilizing visual guides to provide a walk-through of screening for potential income, fraud, consumer or exploitation issues based on a client's comment, situation or complaint. These could be used to walk an attorney or advocate through the initial steps of investigating a specific matter, and lead to a determination of next steps or assigning to an additional case handler. These guides also utilize links to outside resources and checklists. Before being used, programs should customize the guides to include their individual program procedures and location-specific remedies.

## Aging Network Referrals

The Older Americans Act (OAA) supports a network of services, including legal services, which empower older adults to remain independent, healthy and safe, in their home and communities for as long as possible. Other federal, state, and local agencies as well as non-profit organizations, provide important services to older adults as well. This aging and social services network can provide valuable assistance to older adults and maximize the positive impact of legal assistance. The time to develop understanding and connections with other service providers is before your client needs them. Civil legal aid attorneys working with older adults should be familiar with these partners and the services they offer in order to provide a holistic approach to the legal health of their clients. Some services of the services that can be beneficial to older adult clients include:

- Shelter options;
- Emergency funds;
- Nutrition services (i.e.: Meals on Wheels);
- Long-Term Care Ombudsman;
- Adult Protective Services;
- Area Agency on Aging;
- Aging & Disability Resource Centers; and
- Consumer Credit Counseling services.

When referring a client to a third party, it is helpful to be familiar with the eligibility, intake procedures, and timeline for services from the other provider. Developing relationships with local aging services providers can also provide direct contacts for emergency cases and facilitate warm handoffs. The Administration for Community Living's [ElderCare Locator](#) can assist with locating local services, including Area Agencies on Aging and Aging & Disability Resource Centers.

### Decision Guide 6: Referral Guide for Older Adults

The Decision Guide on Referrals for Older Adults is an example of a guide that all staff in a legal services office should have available in order to connect their clients to supportive services. The guide can serve as a quick reference to identify which referrals might make the most sense, and if there are any special qualifying factors. This guide can be customized to include local resources, contact information and eligibility guidelines.

## Conclusion

Providing a holistic approach to legal services for older adults requires skills in intake, issue spotting and referrals. These skills build with practice, as well as with guidance from experienced practitioners. However, having clear systems and guides in place, such as the included sample Decision Guides, can also be helpful for new advocates to provide quality legal services to older adults.

## Additional Resources

- Sarah Galvan, Justice in Aging: [sgalvan@justiceinaging.org](mailto:sgalvan@justiceinaging.org)
- David Godfrey, ABA Commission on Law & Aging: [david.godfrey@americanbar.org](mailto:david.godfrey@americanbar.org)
- [Accessing Justice in Contemporary USA: Findings from the Community Needs & Services Study](#) by Rebecca L. Sandefur, American Bar Foundation.

- [Administration for Community Living: Programs](#)
- [Innovations in Legal Services \(LSC\): Decision Guides](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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# Legal Services for Older Adults Decision Guides

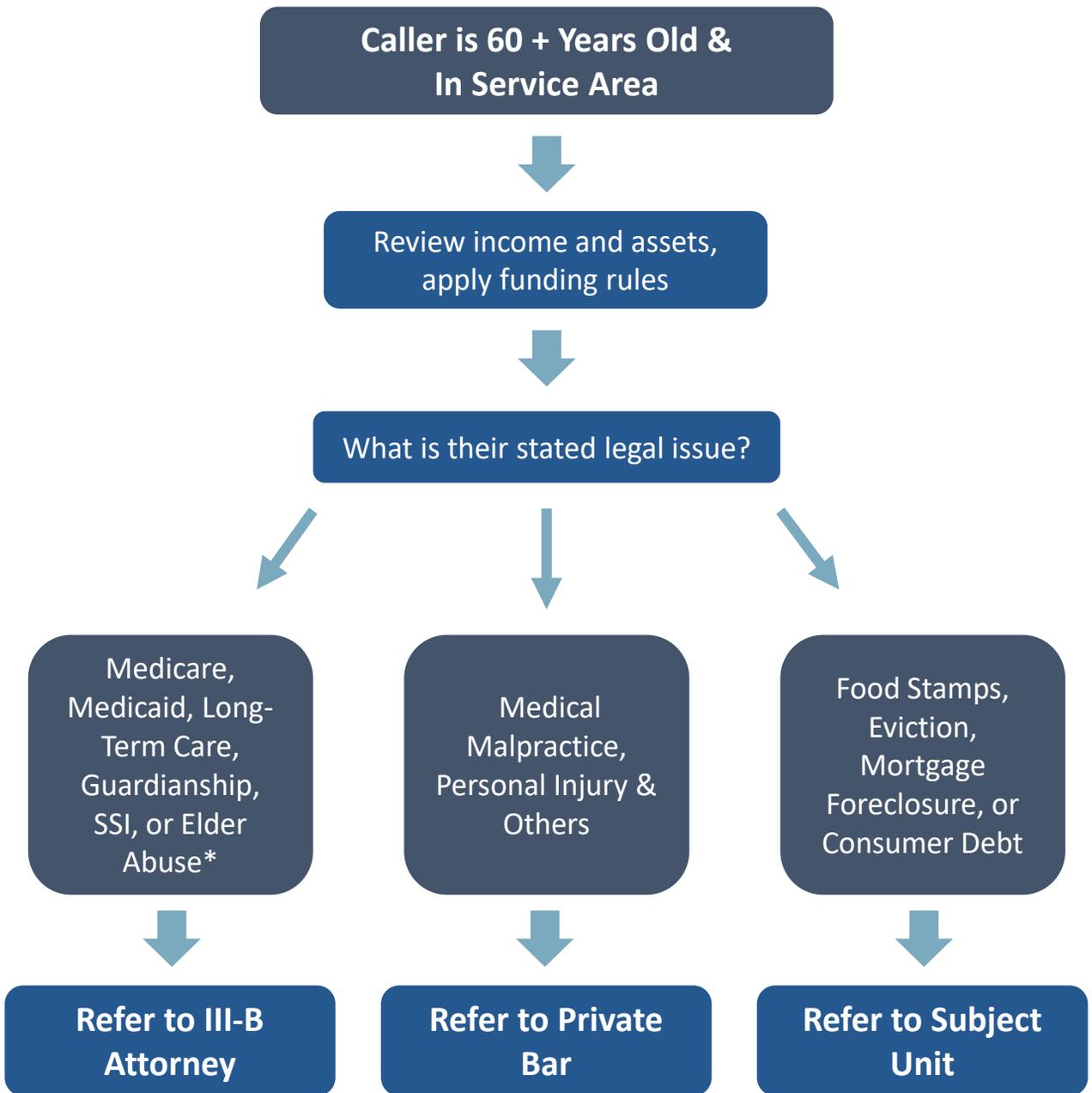
## Skills Training Series: Legal Issue Spotting, Intake & Referrals

*The Decision Guides are clear visual aids intended to assist intake staff, attorneys, and community partners in determining follow-up questions and making intake decisions and referrals. They can be used in print or electronic format, depending on the preferences of the user.*

*The Decision Guides are samples, and should be modified to include program-specific and local information before use by an individual program.*

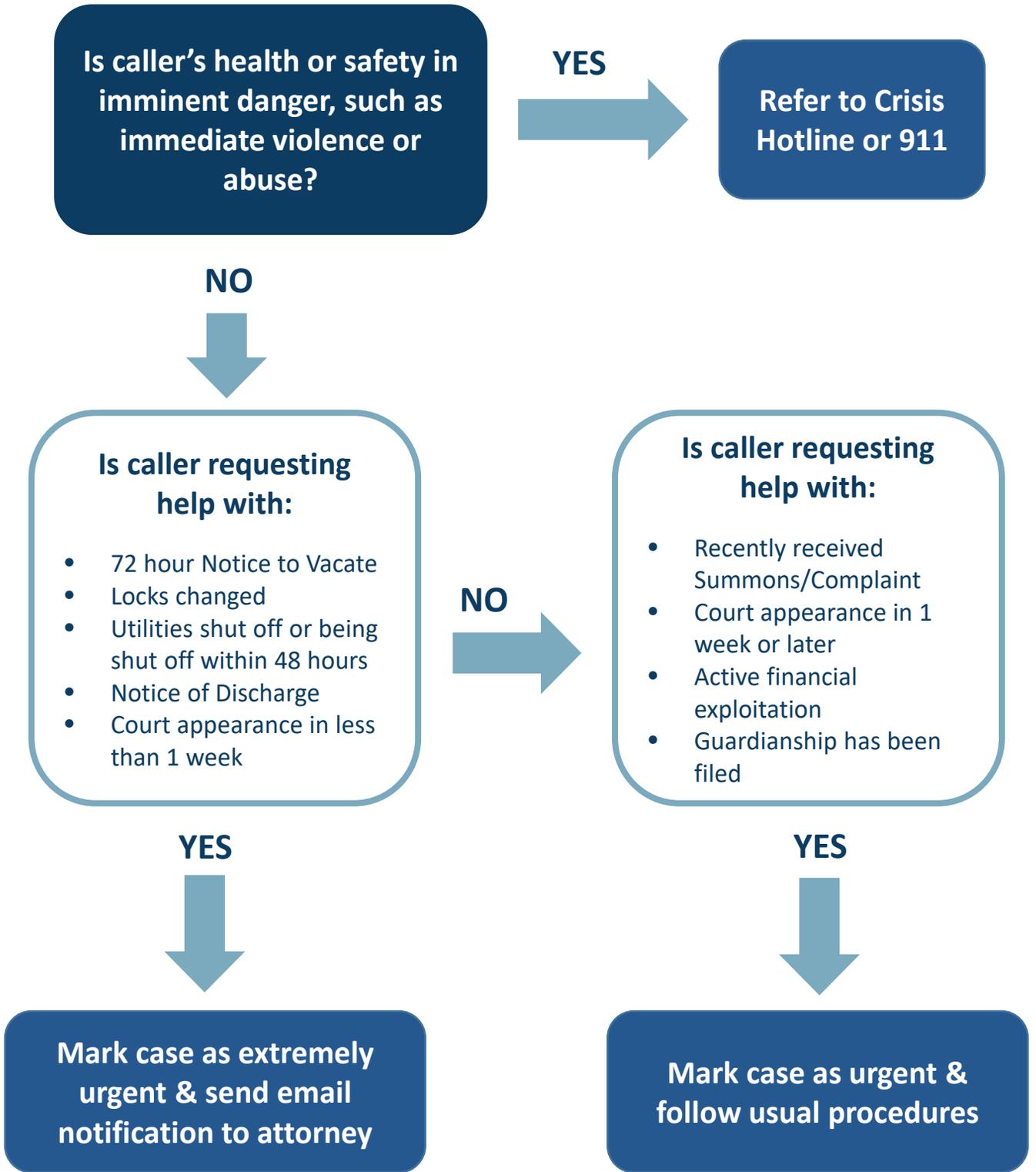
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## Decision Guide 1: Basic Intake Model



\* If issue is elder abuse, get a safe phone number for caller. If caller is in immediate danger, refer to Crisis Hotline/911.

## Decision Guide 2: Screening for Urgency



## Decision Guide 3: Follow-Up Questions

Before you close your file, consider some additional questions to determine...

Does your client have a safe living environment?

Does your client have their health care needs met?

Does your client have adequate nutrition?

Is your client at risk of abuse or exploitation?

Tell me about your apartment. What is it like?

Do you pay a lot each month for your doctor visits and prescriptions?

Do you feel like you have enough food to eat on most days?

Has anyone recently asked you to change your POA or will?

Are you comfortable having friends over to visit you?

Are there any medical bills that you are currently paying?

Have you ever applied for food stamps?

Have you noticed anything unusual or different about your bank accounts?

Do you have any trouble getting in or out of your home?

Have you ever gone without medical care because it was not covered or you couldn't afford it?

Are you able to get what you need at the grocery store each month?

Is there anyone in your life right now who makes you nervous or anxious?

## Decision Guide 4: Screening for Consumer & Income Issues

Client has mentioned having too many bills, running out of money each month, receiving collection calls, or struggling to pay for basic necessities.

Review client's budget. Ask them to provide bills & collection notices.

Does client recognize all debts as belonging to them or remember opening all accounts?

YES

NO

Proceed with Income Review. Does client have adequate income to cover their expenses?

Proceed with Fraud/Exploitation Review. Try to obtain **credit report** for client and review for unrecognized accounts.

YES

NO

Proceed with review for possible financial exploitation. If no exploitation detected, refer for budgeting assistance.

**Benefits Check Up** for eligibility for income assistance, food stamps and other benefits to help increase available income.

Review debt options with client, including settlement, cease communication letters and bankruptcy. Verify there are no pending lawsuits.

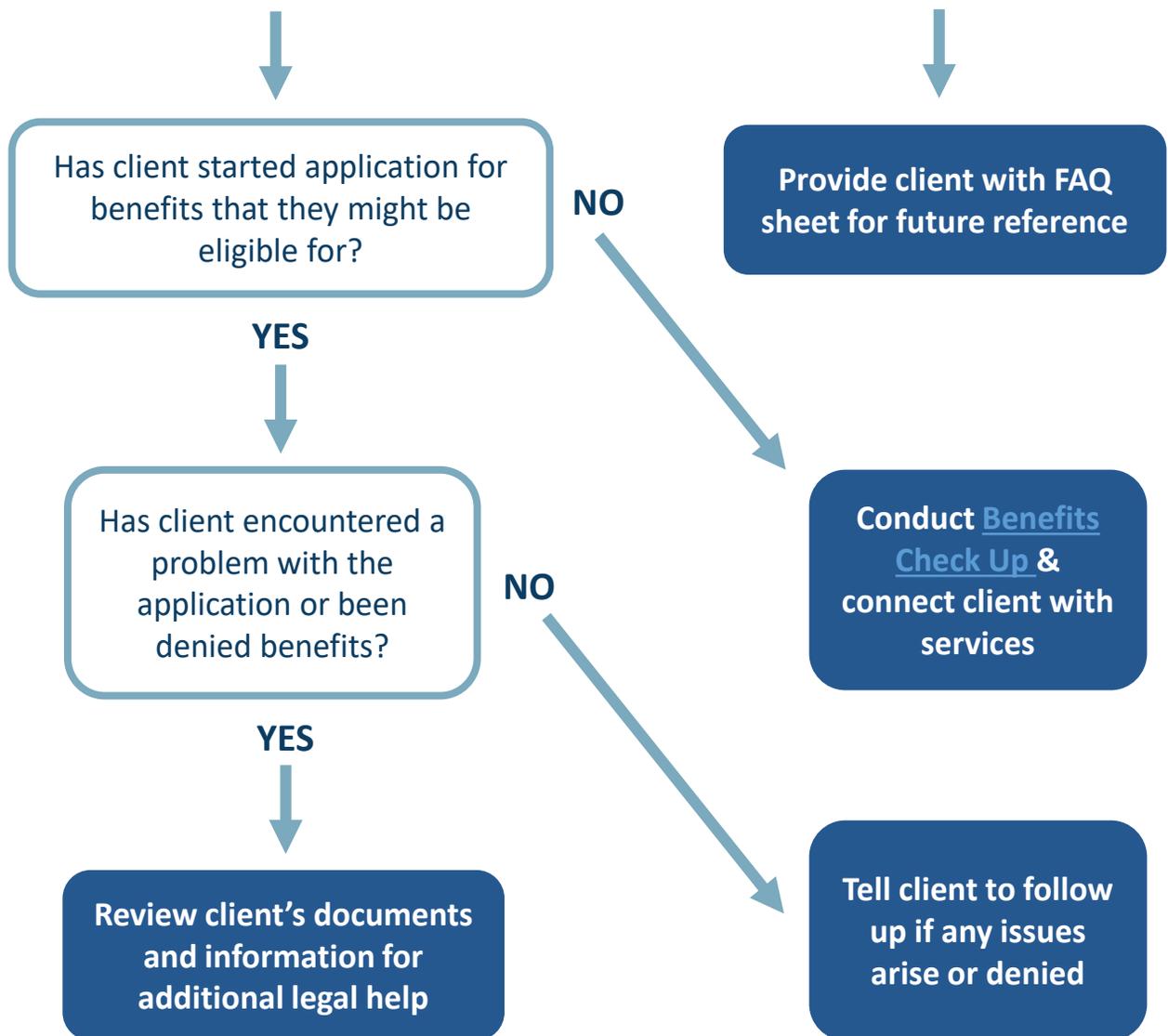
If unrecognized accounts are found in credit report, **take steps** to help client resolve identity theft.

## Decision Guide 5: Screening for Income Issues

1. Is client disabled and not receiving SSI or SSID?
2. Is client a veteran and not receiving VA benefits?
3. Is client a surviving spouse of a veteran and not receiving VA benefits?
4. Is client's income level under \$750 per month?
5. Is client unable to afford basic necessities?
6. Did client have previous employment that might entitle them to a pension, but are not currently receiving pension income?

**Yes to any of the above**

**No to all of the above**



## Decision Guide 6: Older Adults Referral Guide



*This Decision Guide is a sample guide only, and it is intended to be customized by individual programs to include their specific office procedures, local resources, and information before use.*