

The Older Americans Act and Home and Community-Based Services

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NATIONAL
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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 have focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

Key Lessons

1. The Older Americans Act (OAA) makes up the foundation of the nation's home and community-based services network.
2. The OAA is a federal law. OAA programs are administered through federal-state-and local partnerships from the federal Administration for Community Living, to the State Units on Aging and Disabilities, and through the local Area Agencies on Aging (AAA).
3. OAA legal services are funded under Title III, and are often referred to as "III-B Legal Services."
4. The OAA provides funding for legal services programs representing adults who are 60 years and older. The law and its enacting regulations include requirements and guidance on priority issues, targeting, and cost-sharing.
5. Legal services programs can help their older adult clients access the full array of home and community-based services by partnering with the many agencies and organizations supported by the OAA.

The OAA supports the foundation of the nation's home and community-based services (HCBS) network.

Over 50 years ago, Congress passed and President Lyndon B. Johnson signed the Older Americans Act into law. As President Johnson signed the law, he noted its lofty goal: to affirm "our nation's sense of responsibility toward the well-being of older citizens. But even more...(to)...help us expand our opportunities for enriching the lives of all our citizens in this country, now and in the years to come."¹

Congress enacted the OAA in 1965, and in the same year, Medicare and Medicaid were signed into law. While Medicare and Medicaid established critical health and long-term care protections for older adults, the OAA's bold vision was to support older adults aging at home and in their communities.

In the last half-century, Congress amended the OAA several times to reflect the evolving needs of the nation's older adults. Congress enacted the Congregate Nutrition Program in 1972; the Home-Delivered Nutrition Program, the Long-Term Care Ombudsman Services, and Services for Native Americans Program in 1978; and the National Family Caregiver Support Program in 2000.²

Today, older adults overwhelmingly prefer to age in their community. To age and thrive at home, older adults need access to transportation, nutrition, employment support, legal assistance, housing, and more. OAA

1 Administration for Community Living, "Celebrating 51 Years of the Older Americans Act," (last modified April 21, 2017), available at: acl.gov/news-and-events/announcements/celebrating-51-years-older-americans-act.

2 Id.

services provide the foundation of the aging and disability network to meet these needs. In the last year, OAA supported services provided:

- Over 221 million meals through Congregate Nutrition, Home-Delivered Nutrition, and the Nutrition Services Incentives Program;
- 5.7 million meals and 840,000 rides for Native American seniors;
- 21.7 million rides to support older adults, access to medical, and other activities;
- 42.3 million hours personal care, homemaker, and chore assistance; and much more.³

Harkening back to the OAA's original goal, of providing the wrap-around, non-medical services to help older adults age with dignity, the OAA continues to fulfill that mission in a cost-efficient manner. OAA programs have strong partnerships with state and local governments, philanthropic organizations, and private donations that contribute funding.⁴ States typically leverage resources of \$2 or \$3 per every OAA dollar, significantly expanding the federal investment to support the community-based services network.⁵

This Chapter Summary is focused on introducing the basics of OAA services, and highlighting the way that legal services are embedded into the home and community-based services network. For a deeper exploration on OAA funding and regulations, the Congressional Research Service⁶ annual reports provide a thorough guide.

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The Older Americans Act is a unique example of federal, state, and local government and organizations partnering to deliver critical services to older adults. The OAA is a federal law. Title II of the OAA establishes the Administration on Aging (AoA) as the federal agency designated to advocate for older adults and establish AoA responsibilities.⁷ Today, AoA is part of the federal agency known as the Administration for Community Living (ACL), an agency within the Department of Health and Human Services.

Title II also establishes the State Units on Aging (SUAs) and the Area Agencies on Aging (AAAs). The SUAs serve as the state agency responsible for planning and policy development, as well as administration of OAA activities.⁸ The AAAs serve as local entities who oversee the comprehensive service system for the delivery of social, nutrition, and long-term services and supports to older adults. The AAAs either oversee this system directly or they contract with local service providers.

ACL allocates federal funds authorized under the OAA statutory funding formula to the SUAs and tribal organizations.⁹ SUAs award funds to AAAs based on an interstate funding formula developed in accordance with AoA guidelines and approved by the Assistance Secretary on Aging.¹⁰

Currently, there are 56 SUAs, 622 AAAs, and over 250 tribal and native Hawaiian organizations, and tens of thousands of aging and social service providers in local communities that comprise the Aging Network.

3 Administration for Community Living; Justification of Estimates for Appropriations Committees FY 2020, available at: acl.gov/sites/default/files/about-acl/2019-04/FY2020%20ACL%20CJ%20508.pdf.

4 Administration for Community Living; Report to Congress FY 2013, pg. 13, available at: acl.gov/sites/default/files/about-acl/2017-04/AOA_2013_AnnualReport.pdf

5 Id.

6 See Congressional Research Service, Older Americans Act: Overview and Funding, available at: fas.org/sgp/crs/misc/R43414.pdf.

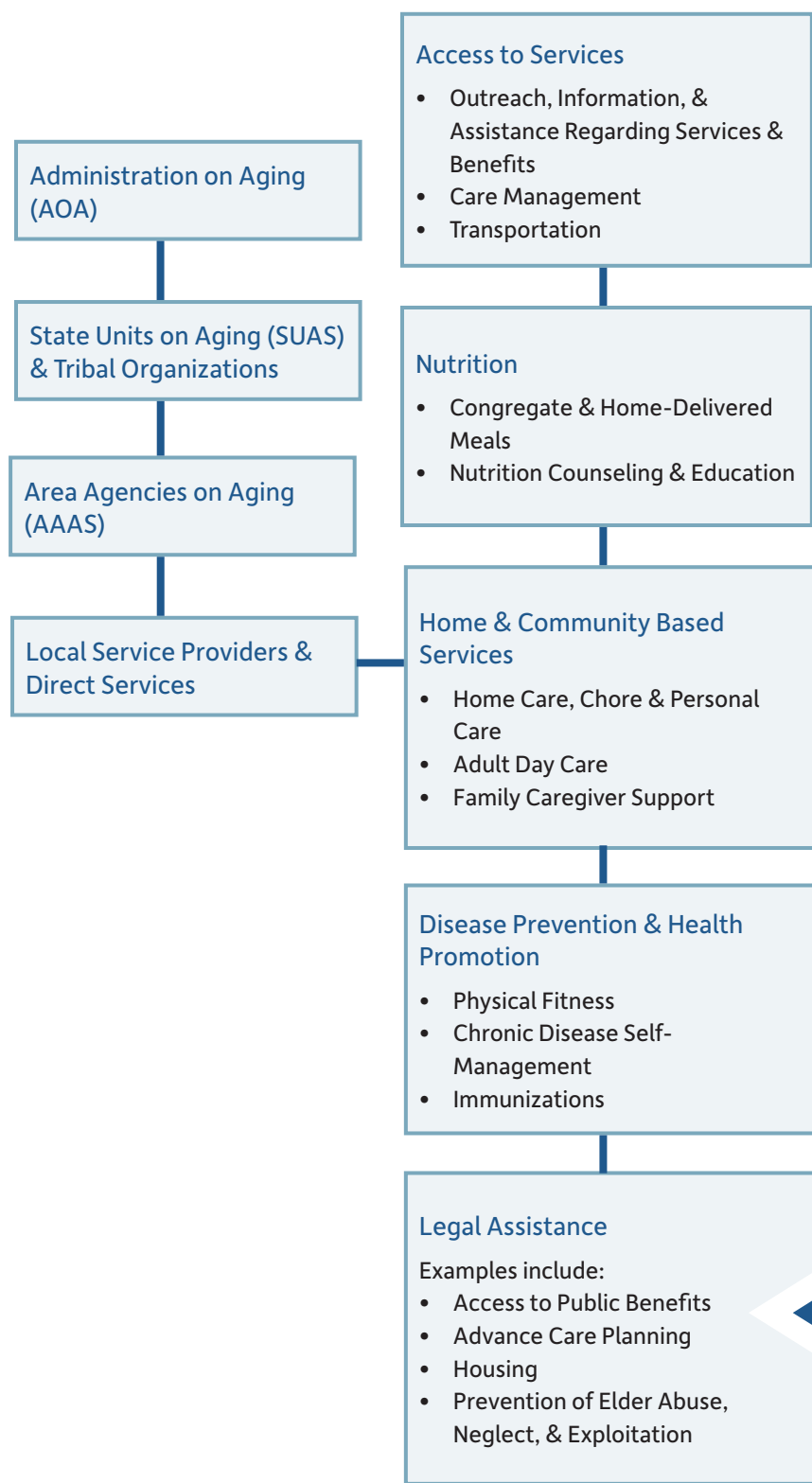
7 Id.

8 Id.

9 Id.

10 Id.

The Aging Network Diagram



The Older Americans Act: Legal Services for the Elderly

The Older Americans Act (OAA) recognized legal services as an “essential service.” OAA requires funding by every state and contracting with Area Agencies on Aging to support the provision of legal assistance to adults over age 60 with “economic or social needs” without cost. There are roughly 1,000 OAA funded legal services programs. These programs assist older adults with a variety of legal issues including access to public benefits, housing, prevention of and protection from abuse, and advance care planning. While the legal services provided under the OAA are critically important in expanding access to justice to older Americans, there are still significant unmet needs and access barriers for this population.

Adapted from the National Center for Medical Legal Partnership, “Socially Vulnerable Older Adults & Medical-Legal Partnership,” March 2019, available at: medical-legalpartnership.org/wp-content/uploads/2019/03/Socially-Vulnerable-Older-Adults-and-MLP.pdf. Information adapted from Congressional Research Service, Older Americans Act: Overview and Funding, November 2018, available at: fas.org/sgp/crs/misc/R43414.pdf.

OAA legal services are funded under Title III, and are often referred to as “III-B Legal Services.”

Legal services organizations that receive funding from their Area Agency on Aging (AAA) to provide Older Americans Act legal assistance are often called III-B legal services providers, because they are funded under OAA Title III. Title III authorizes grants to the SUAs and the AAAs to coordinate programs for older adults. Title III programs are the fabric of the local HCBS system, as these grants fund home-delivered meals, congregate meals, rides to medical appointments, personal care, homemaker and chores services, adult day services, and legal assistance.

The OAA and its regulations provide guidance to the AAAs on how to select a legal assistance provider to receive the Title III-B funds. These requirements include staff expertise in public benefits and alternatives to institutionalization; capacity to provide effective representation; capacity to provide support to other advocacy programs, like the long-term care ombudsman program; capacity to provide legal services to older adults who are institutionalized or isolated; and 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 principle language.¹¹

In addition to the Title III legal assistance provisions, Title II and Title IV fund programs critical to promoting elder rights and helping older adults age in community. Title II provides discretionary funding for Elder Rights Support Activities, which include the National Center on Elder Abuse and the National Long-Term Care Ombudsman Resource Center. Title IV provides discretionary funding which supports programs like Adult Protective Services and Legal Assistance Supports.¹²

The OAA provides funding for legal services programs representing adults who are 60 years and older. The law and its enacting regulations include requirements and guidance on priority issues, targeting, and cost-sharing.

The growing number of low income older adults track the nation’s overall demographic shift: in the next decade, one in five people will be 60 and over,¹³ and, if current retirement trends continue, over twenty-five million older adults will live in poverty by 2050.¹⁴ Unfortunately, despite a growing number of older adults living in poverty, and the increasing incidence of elder abuse and mistreatment, many older adults do not receive legal assistance. A Justice Gap report¹⁵ found that older adults are receiving inadequate or no professional legal help for an estimated 87% of their legal problems.

OAA guides III-B legal services programs to address this issue in three ways: 1) identify priority case types, 2) target older adults with the greatest social and economic need, and 3) prohibit means-testing and cost-sharing for legal services.

Priority Case Type

The OAA identifies priority case types for III-B legal services programs.¹⁶ They are: income, Health care, Long-Term Care, Nutrition, Housing, Utilities, Protective Services, Defense of Guardianship, Abuse, Neglect, and Age Discrimination.

11 45 CFR § 1321.71 (c).

12 NCLER is funded through a contract with the Administration for Community Living under Title IV.

13 US Census Bureau, “Older People Projected to Outnumber Children for First Time in US History,” (2018), available at: [census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html](https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html).

14 Teresa Ghilarducci, “By 2050, There Could be as Many as 25 Million Poor Elderly Americans,” (2015), available at: theatlantic.com/business/archive/2015/12/elderly-poverty-america/422235.

15 The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

16 See 42 U.S.C. §3027.

Targeting

The OAA contains numerous requirements that states and AAAs target OAA services specifically to older adults with the greatest social and economic need.¹⁷ The OAA defines greatest social and economic need as:

“The term ‘greatest economic need’ means the need resulting from an income level at or below the poverty line. The term ‘greatest social need’ means the need caused by non-economic factors, which include: a) physical and mental disabilities; b) language barriers; and c) cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that” i) restricts the ability of an individual to perform normal daily tasks or iii) threatens the capacity of the individual to live independently.¹⁸

Throughout the OAA’s history, Congress has added clarification about groups of older adults legal services should target. The OAA specifies states and AAAs should target older individuals:

- Residing in rural areas;
- With greatest economic need (paying particular attention to low-income minority individuals and older individuals residing in rural areas);
- With greatest social need (paying particular attention to low-income minority individuals and older individuals residing in rural areas);
- With severe disabilities;
- With limited English proficiency;
- With Alzheimer’s disease and related disorders, and with neurological and organic brain dysfunction (and caretakers of such individuals); and
- At risk for institutional displacement.¹⁹

Prohibition Against Means Testing and Cost-Sharing for Legal Assistance

The OAA requires targeting, but it prohibits “means testing.”²⁰ “Means testing” is a process of using income and resources to determine eligibility for services. For legal services programs, balancing the requirement to target services to those in greatest need, while avoiding means testing, can present a challenge, particularly for providers who also receive funding from the Legal Services Corporation (LSC). Providers who receive funding from both LSC and ACL must be careful to assure their compliance with requirements of both funding sources.

In addition, the OAA specifically prohibits cost-sharing for certain Title III services, which includes legal assistance.²¹ The OAA *does* allow voluntary contributions for these services, **provided there is no coercion²² or means test used.**²³ Further, if a provider accepts voluntary contributions for legal services, those contributions must be used to augment legal services and should not be used for other services or purposes.

17 See for example, 42 U.S.C. § 3025(a)(2)E.

18 42 U.S.C. §3002(23) – (24) (2016).

19 42 U.S.C. § 3026 (a)(4)(B)(2016). Similar language about State Plans is in 42 U.S.C. § 301(a)(16)(2016), with the exception that older individuals at risk of institutional placement are not mentioned. See [NCLER Guide on Targeting](#) for more information.

20 45 C.F.R. §1321.71(d)(2012), stating: “a legal assistance provider pay not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.”

21 42 U.S.C. §3030c-2(a)(2) and (3)(2016).

22 42 U.S.C. §3030c-2(b)(1)(2016).

23 42 U.S.C. §303c-2(b)(3)(2016).

Legal services programs can help their older adult clients access the full array of home and community-based services by partnering with the many agencies and organizations supported by the OAA.

The OAA thrives on partnerships between public and private organizations dedicated to helping older adults age with dignity. Many successful legal assistance programs incorporate a variety of disciplines and partners, including lawyers, social workers, case managers, medical providers, insurance counselors, ombudsman, and more. Additionally, partnerships can help extend the reach of individual programs, particularly when resources are limited for one or both partners. In rural settings or in programs with large service areas, having connected services makes an important difference to meet more of the community's needs.

Community-based organizations can provide legal services clients with the critical nutrition, home assistance, and transportation services that they need to age at home and in their community. Legal services are encouraged to develop relationships with these organizations in their community:

- State Legal Assistance Developer
- Area Agency on Aging
- Nutrition Services (i.e. Meals on Wheels and meal sites)
- Long-Term Care Ombudsman
- Adult Protective Services
- Aging & Disability Resource Centers
- Pension Resource Centers
- State Health Insurance Assistance Program (SHIP)
- Veteran's services
- HUD Housing Counseling Providers
- Consumer credit counseling service providers
- Local PRIDE centers
- Utility services community liaisons
- United State Postal Inspection Service
- Domestic violence and shelter services

Many of these local aging services providers can be found by using the [ElderCare Locator](#) or by contacting the local Area Agency on Aging.

Conclusion

For over fifty years, the Older Americans Act has delivered on the bold promise that a nationwide partnership of federal, state, and local agencies and organizations can work toward a shared mission of helping older adults age with dignity at home and in the community. Legal assistance for seniors is a critical component of ensuring older adults understand their rights to these community services and are connected to the community services that can help them age in dignity. NCLER offers consultation assistance to programs looking to strengthen their partnerships with the aging and disability network to better represent older adults. Please contact NCLER@acl.hhs.gov for more information.

Additional Resources

Statutes and Regulations:

- [Older Americans Act of 1965, as amended in 2016](#)
- [45 CFR Subchapter C: The Administration for Community Living](#)

Federal Agency:

- [Administration for Community Living](#)

National Organizations:

- [National Association of Area Agencies on Aging](#)
- [Advancing States \(formerly National Association of State Units on Aging\)](#)

Reports and Analysis:

- [Congressional Research Service: Older Americans Act: Overview and Funding](#)
- [Congressional Research Service: Funding Formulas](#)

NCLER Resources:

- [Legal Assistance and the Aging Network: Strengthening Connections through Partnership](#)
- [Creating Effective Legal Outreach Programs](#)
- [The Older Americans Act in Action: Building and Cultivate Your Elder Law Program](#)
- [Targeting OAA Services without Means Testing](#)
- [Legal Issue Spotting, Intake and Referrals](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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