

# State Legal Services Capacity Assessments: Ensuring State Systems Target Older Adults with the Greatest Social or Economic Needs

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*Adapted from Best Practice Notes by The Center for Social Gerontology<sup>1</sup>*

## 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.

## Key Lessons

This issue brief details guidelines for assessing the capacity of a state's legal services delivery system to deliver high-impact legal assistance to older adults with the greatest social or economic needs. This brief is for Legal Assistance Developers (LADs), particularly those in states with Model Approaches grants, legal service providers and others involved with conducting state capacity assessments. An assessment should examine the extent to which the delivery system achieves the following key high level components:

1. **Targeting** limited legal resources to older adults with the greatest social or economic needs;
2. **Focusing on priority legal issues** that reflect the most critical needs of target populations;
3. **Coordinating** with other legal, aging and disability network members to minimize duplication of efforts and get people the right level of assistance; and
4. **Integrating** legal services as part of the aging service network so that legal services are recognized and valued as a critical component of the aging network.

## Introduction: The Importance of Capacity Assessments

The purpose of undertaking a Legal Services Delivery Capacity Assessment is to learn what the system does well, what could be done better, and where changes are needed. This capacity assessment should focus on the two core components of a state's legal services delivery system: Older Americans Act (OAA) Title IIIB full service legal services and statewide legal helplines.

When developing the assessment, it is important to consider how the data and information will be used, and how various stakeholders in the system will be energized to build on strengths and address weaknesses identified in the assessment. To further promote engagement from all stakeholders, a "top down" approach to assessment is not recommended. Instead, an approach that brings together and actively involves key players at all levels will be

1 The Center for Social Gerontology, Inc., *Guidelines for Assessing Capacity of a State's Legal Services Delivery System to Meet Critical Legal Needs of Vulnerable Elders*, Best Practice Notes, Vol. 15, Nos. 3 & 4 (March 2015), available at: [tcsg.org/bpnotes/mar15/mar15.pdf](https://www.tcsg.org/bpnotes/mar15/mar15.pdf).

more productive and lead to joint efforts to improve the system.

Any capacity assessment should examine the legal services delivery system at three levels:

- **State Unit on Aging (SUA)/Legal Assistance Developer (LAD) Level**
- **Area Agency on Aging (AAA) Level**
- **Legal Provider Level**

This issue brief outlines the core components of an assessment for each level, and describes how to use the capacity assessment to improve the state's legal services delivery system for older adults.

For all three levels, it is essential to assess the extent to which the system achieves OAA requirements for **targeting, priority setting and outreach**. The OAA requires that legal services focus on older individuals with the greatest economic and social needs. However, since means-testing is prohibited, providers can reach target populations by establishing priority legal issues that focus limited legal resources on meeting basic needs (such as income, shelter, nutrition, health care) and conducting strategic outreach.

## Assessing Capacity at the State Unit on Aging/Legal Assistance Developer Level

One of the most important determinants of a high-quality legal services delivery system is strong leadership by the state LAD.<sup>2</sup> A few examples of state leadership that LADs should be providing include:

- Working with IIIB providers and AAAs to coordinate IIIB services with Legal Service Corporation (LSC) organizations, protection and advocacy providers, helplines, ombudsmen, and others to improve the quality of legal services statewide
- Determining need and providing/arranging for education and training for attorneys on elder rights and legal issues
- Determining need and providing/arranging for technical assistance and regular communication forums for AAAs, legal providers, and elder rights advocates
- Staying informed about emerging trends and changes to federal and state laws and regulations that impact elder rights
- Providing leadership and guidance for legal providers to coordinate with the long-term care ombudsman at the local level
- Identifying high priority elder rights legal issues to be included in the Elder Rights section of the State Unit on Aging's State Plan

To adequately perform these functions, the LAD should have current information on the overall delivery system and its component parts, including information on:

- Who are the providers the AAAs contract with and what types of entities are they? Are they the best entity to provide legal services?
- What level of funding is provided by each AAA to each provider and does the IIIB funding meet the minimum percentage?
- Does funding include funds beyond IIIB, and if so, what are those other funding sources?

<sup>2</sup> The OAA calls for state leadership by a State Legal Services Developer in two places: Title III, in the requirements for the State Plan (42.U.S.C. §3027(a)(13) and in Chapter 4—State Legal Assistance Development Program—of Title VII of the Act on Vulnerable Elder Rights Protection Activities (42 U.S.C. §3058j).

- Are there any waivers granted by the SUA, and were proper procedures followed by the SUA in granting the waiver?

The LAD should be a leader in the state in fostering best practices for the legal services and aging network. To this end, the developer should work with AAAs and providers to establish programmatic goals, objectives, and outcomes that promote **statewide standards**. This involves developing and implementing a **uniform statewide reporting system**.

Finally, the assessment should examine any limitations and real or potential conflicts that are placed on the developer by the SUA/AAAs or that result from the LAD's multiple responsibilities.<sup>3</sup>

## Assessing AAA Capacity and Compliance with OAA Requirements

Paralleling the OAA's LAD requirements, AAAs are mandated<sup>4</sup> to expend at least the minimum percentages of their IIIB funds set by the SUA on each of the OAA's three categories of priority services: access to services (including transportation, health services, outreach, information and assistance), in-home services, and legal assistance. The capacity assessments should examine the level of IIIB funding provided by each AAA to its legal providers. The AAA may have received a funding waiver, but this should only occur if the AAA demonstrates to the SUA that legal services being furnished in the area are sufficient to meet client need.

The basic roles and responsibilities of AAAs that should be included in an assessment include:

- Monitoring performance of legal providers
- Assuring adequate reporting by providers on client demographics, types of legal issues handled, levels of service provided, and the impact for older persons receiving services and supplying reported information to the LAD
- Utilizing a sample RFP and contract for legal services to assure some uniformity of services provided from area to area
- Working with providers and LADs to enhance financial resources for legal services beyond Title IIIB
- Undertaking activities, in collaboration with providers and the LAD, to obtain private bar involvement
- Assuring that providers have procedures for assessing client satisfaction
- Working with providers and the LAD to develop and conduct strategic targeted outreach and preventive education to help older adults with the greatest social or economic needs avoid legal problems
- Assuring that legal services are seen as an essential and integral component of the aging services network
- Ensuring a smooth transition when an AAA changes its legal provider. There should be a statewide policy or guidance for AAAs to follow to make such a change as seamless as possible.

## Assessing Capacity at the Legal Provider Level

This section first describes assessing Title IIIB full service legal services providers and then addresses senior legal helplines. The basic roles and responsibilities against which the Title IIIB providers should be assessed include:

- Client focus, services, and outcomes:
  - » Extent to which direct representation of older adults with the greatest social or economic needs is

<sup>3</sup> Since there is no funding under Title VII of the OAA for Chapter 4, the State Legal Assistance Development Program, what any particular developer can do varies from state to state and depends on support, financial and otherwise, on the state level.

<sup>4</sup> 42 U.S.C. §3026(a)(2)(2012).

the primary focus of the IIIB program

- » Extent to which services to such older adults is a clearly identifiable part of the provider's program, as distinct from services to other populations, such as individuals served through Legal Services Corporation funding
- » Program provides reporting, at a minimum, on demographics of clients served, types of legal issues handled, level of service provided, and supplies information to the LAD as well as AAAs
- Staff experience, training, and evaluation:
  - » Program staff have experience and training in the priority areas of law set forth in the OAA/state standards and there is an established mechanism for training new and existing staff
  - » All program attorneys are licensed to practice in the state and all paralegals and non-lawyer program staff operate under direct and regular supervision of an identified, licensed attorney
  - » Program staff are knowledgeable about and adhere to Rules of Professional Conduct of the State Bar
  - » Program has an established mechanism for formal staff evaluations
- Program infrastructure:
  - » Program has and utilizes clear policy/procedures to guard against conflicts of interest that might interfere with ability to reach and serve older adults with the greatest social or economic needs, and for evaluating the potential for conflict in specific circumstances
  - » Program coordinates with the long-term care ombudsman program at the local level, according to guidance from the LAD to address conflicts of interest, case acceptance and referral procedures, and measures to protect confidentiality
  - » Program has clear mechanisms in place if the AAA should transition from one provider to another
- Collaboration with SUA, LAD and AAA—the Program collaborates with these entities to:
  - » Ensure that legal services are an essential and integral component of the aging service network
  - » Obtain private bar involvement through pro-bono and reduced fee services
  - » Develop and conduct preventive community education, focused on helping older adults with the greatest social or economic needs avoid legal problems

Finally, it is important to note that the definition of legal assistance in the OAA states that it must include representation and the provision of advice is not sufficient to meet that definition. Title IIIB legal programs must be able to provide direct and full representation to the target populations who are often those least able to advocate on their own behalf. The *2006 ABA Standards for the Provision of Civil Legal Aid*<sup>5</sup> provide guidance and best practices in this area. Assessing the IIIB Program's capacity to provide direct representation is a core component of a capacity assessment.

## Assessing the Capacity of Senior Legal Helplines

Senior Legal Helplines play an important role within the legal service delivery system as they are designed to provide a limited scope of legal assistance to a large number of elders at a low cost. The capacity assessment should examine the following:

- Range of legal issues handled and levels of service provided

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<sup>5</sup> American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, *Standards for the Provision of Civil Legal Aid* (August 2006).

- Demographic characteristics of older persons being served
- “Indicators of impact” and/or outcomes for helpline clients. It is important to remember that outcomes should be limited to that which can be known at the time of case closure and will not require later follow up (focusing on the immediate and direct impact of the delivered assistance on the lives/well-being of clients served).
- Staffing, including the use of volunteers, and operations. For multi-site programs, this includes the process for coordination/communication, supervision, and monitoring for both staff and volunteers.
- Referral protocols. Some sample questions include: Are referrals made to (1) IIIB legal providers, (2) pro bono attorneys, (3) private attorneys who will charge a fee, (4) others? How are the referrals made, e.g. direct referral to the attorney/warm hand off or older person given a name/phone number to contact? Does helpline conduct follow up? How is “informed consent” addressed, and does the referral protocol address the issues of privacy/confidentiality?
- How the Senior Legal Helpline is integrated into the broader, full-service legal delivery system. To explore this, look at the number/types of cases that are referred for further legal assistance beyond what the helpline provides and the number and types of legal agencies and entities where such referrals are made.

In addition to assessing the three core entities described above (LADs, AAAs and legal services providers) it is helpful to obtain the perspective of other aging advocates, such as the Long-Term Care Ombudsman program, Adult Protective Services (APS), Senior Health Insurance Information Programs (SHIPs), Senior Medicare Patrol (SMP) and other aging network providers.

## Developing Recommendations Based on the Capacity Assessment

Once the necessary information has been gathered, it should be assembled and analyzed to determine how well the overall system, and its component parts, are meeting its goals and intended purpose. The Georgia Legal Services Developer created an excellent final report based on the capacity assessment, which can serve as a helpful guide.<sup>6</sup>

The Assessment Report should include sections that focus on (1) the SUA and LAD, (2) the AAAs, (3) the IIIB Providers, and (4) the Helpline(s).

Each section should profile each entity’s role, with identification and contact information for each. Based on information gleaned from the assessment, the report should highlight:

- The role of each entity and the relationship with the aging network
- How each entity is funded and how funding streams work in the aging network
- Partnerships between the entity and other legal programs (i.e. universities, the private bar, government agencies)
- Explanation of history of role and a chart of responsibilities and activities (for LAD)
- Substantive issue areas handled by each entity (for III-B Programs and Helplines); and types of services provided
- Referrals and protocol mechanisms to help clients transition between levels of service (for III-B Programs and Helplines)

<sup>6</sup> *At this time—A Report on the Capacity of the Legal Assistance Delivery System Serving Vulnerable Older Georgians*, (July 2012) (hereafter Georgia Report), Natalie K. Thomas, Division of Aging Services, Georgia Department of Human Services, available at: [tcsd.org/ma/GACapacityAssess7-12.pdf](https://tcsd.org/ma/GACapacityAssess7-12.pdf).

After summarizing each of these components, the report should include some analysis. The assessment should indicate where there are gaps and weaknesses in each of the four entities and indicate where there are strengths in the current delivery system. Finally, the report should conclude with directions and next steps to strengthen the overall legal services delivery system in each state.

## Conclusion

This issue brief was adapted from the complete guide to capacity assessments by The Center for Social Gerontology. The complete guide, *Guidelines for Assessing Capacity of State's Legal Services Delivery System to Meet Critical Legal Needs of Vulnerable Elders*, should be consulted before embarking on a complete Capacity Assessment. The complete guide includes an Appendix of example questions to include in each of the four core elements of capacity assessments. This issue brief is intended to orient Legal Assistance Developers, Model Approaches States, and others beginning to embark on legal services delivery system improvements with the basic components of a state capacity assessment.

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](mailto:ConsultNCLER@acl.hhs.gov).

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