

Developing Statewide Standards for Delivery of Legal Assistance Under the Older Americans Act

ISSUE BRIEF • JULY 2017

Adapted from 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.

Key Lessons

This issue brief looks at how Legal Assistance Developers (LADs)—in partnership with State Units on Aging (SUAs), Area Agencies on Aging (AAA), legal providers, and others—can significantly strengthen a state's legal delivery system through development of statewide Standards. It outlines a recommended process, and is particularly directed to current Model Approaches (MA) states that are called on to develop Standards as part of their MA grant.

The issue brief addresses the following:

1. Value of a collaborative process that often leads to strong partnerships and a shared vision of the importance of legal services and the goals of the state's legal assistance delivery system.
2. The many ways in which Standards provide an important tool for SUAs/LADs, AAAs, legal providers and others to enhance legal delivery systems. For example:
 - They set forth agreed-upon policy guidelines and provide a framework for programmatic direction and operation of the delivery system statewide.
 - They define/describe essential elements of a high-quality, high-impact delivery system.
 - They help ensure that limited legal resources are focused on addressing the most critical needs of those in greatest social and economic need.
 - They set out roles, responsibilities, expectations of key actors/agencies at all levels of the legal delivery system.

Introduction: What Are Statewide Standards and Why Do They Matter?

Under the Older Americans Act (OAA), legal services must focus on older adults with the greatest social or economic needs. It is the job of each state's Legal Assistance Developer (LAD) to provide leadership for a legal services delivery system that ensures: that legal rights of older persons are protected and maintained; that the quality and quantity of legal assistance services are enhanced across the state;¹ and that legal providers target

¹ 42 USC §3058(j).

limited resources to those in greatest social and economic need, and that they give priority to legal issues that reflect the most critical life problems of the target populations.² Statewide Standards provide a valuable tool for developing and maintaining legal delivery systems envisioned in the OAA. They provide, in writing, a set of policy guidelines that describe essential elements/components of a high quality, high impact, targeted legal delivery system. They also provide a set of uniform expectations about how legal services should be designed, operated, delivered and funded and they set out roles and responsibilities at all levels of the delivery system—SUA/state developer, AAAs, legal providers and other elder rights advocates. Therefore, each state should have written Statewide Standards.

Value of Standards and Importance of the Process Used to Develop Them

Though state LADs are ultimately responsible for developing the legal services delivery systems that will meet the goals of the OAA, stakeholders at every level are critical partners in the delivery system and are therefore critical in the process of developing Standards. The **recommended process** for developing Standards is a **collaborative one** that involves representatives of all groups who are expected to administer and be governed by the Standards: SUA staff, LAD, AAA staff, and legal providers. Further it should include diverse members, for example, persons with experience and knowledge of various target populations. Though Standards should be developed using a group process, one person, ideally the state LAD, should take the lead in planning and organizing the effort and bringing in the other stakeholders.

There is value in Standards for all levels of the delivery system.

1. At the state level: Standards can help create and maintain a legal assistance system for vulnerable older adults that is uniform across the state with respect to quality and impact.
2. At the AAA level: Standards can help AAA staff understand what constitutes a good legal assistance program, and help them prepare requests for proposals, review proposals, develop contracts, and monitor and evaluate their legal programs.
3. At the provider level: Standards can clarify what elements should be part of their programs and make minimal expectations explicit. Standards can also clarify AAA responsibilities with respect to providers.

For all three levels, the opportunity to communicate with each other about concerns and expectations, and creating Standards that embody consensus, will lead to more effective implementation.

Beyond the importance of a collaborative process generally, there are two more specific reasons for using a collaborative process:

1. It can lead to a shared understanding of the value of legal services as an aging service.
2. It helps assure that the reason for specific Standards is understood and that Standards will be accepted and followed.

Importance of the process to develop a shared understanding of the value of legal services as an essential and integral part of aging services

Non-legal stakeholders can have a limited understanding of the value and impact legal services has on the lives and well being of older persons in greatest need. This limited understanding can make it difficult to recognize the way legal services affects other non-legal aging services. During the conversations that occur while discussing various aspects of Standards (in particular targeting and priority setting), legal providers often describe the situations of their clients and ways they have been able to assist them, (for example, advocating for their most basic life needs such as income, shelter, access to health care). Without experience with these examples, stakeholders may only associate legal services with document preparation such as simple wills. The

² 42 USC §3027(a)(11)(E).

conversation and exchanges that happen as part of the collaborative process have often led to significantly greater understanding of the value of legal services as an aging service. The conversations also lead to an awareness of the extent to which non-legal aging services are dependent on legal services. For example, if an older person loses their Social Security Supplemental Income (SSI), and as a result, loses their home due to eviction, that person also loses the ability to receive the home and community based services they need to remain independent. Thus, an extremely important benefit of a collaborative process is increased understanding and support for the value of legal services as an essential aging service.

Importance of process to help assure that Standards will be accepted and followed

By including all stakeholders in the delivery system in the Standards development process, the stakeholders can reach agreement regarding specific aspects of legal assistance and the *essential elements* involved in providing high-quality, high-impact legal assistance focused on the most critical legal needs of a state's older adults with the greatest social or economic needs. States can use Standards to define such things as the target populations, the legal needs that must be given priority in light of limited resources, and the roles and responsibilities of key actors and agencies involved in the legal delivery system. If everyone is involved in creation of the Standards and agrees on their importance and on their content, it is more likely that the Standards will be used to ensure that older adults with the greatest need receive legal services that positively impact their lives.

Outline of a Process for Developing Standards

Undergoing a step-by-step process, while time and resource-intensive, will help create a document that all stakeholders endorse, utilize, and refer to often to guide their work. A sample process, based on best practice models, is detailed below.

Step 1: Initial planning

The LAD should engage in early discussion with state and area agency staff and IIIB legal providers on both the purposes and potential benefits of Standards for all involved.

Step 2: Consider the need for an outside facilitator

A neutral facilitator can be valuable in leading the process in order to ensure all voices are heard and that all ideas are accurately captured. A facilitator is also valuable in helping resolve conflict between differing viewpoints. If the group working on developing the state's Standards chooses to use a facilitator, the facilitator should be both skilled in facilitating and knowledgeable about the requirements for legal services under the OAA. Two facilitators—one with OAA knowledge and one with facilitation skills—may be the ideal solution. A non-legal facilitator may require education regarding ethical responsibilities for attorneys, such as issues related client confidentiality.

Step 3: Select/recruit a Work Group

Following initial planning, the next step is to put together a Work Group. The composition and size of the work group will depend on the following and should not exceed 25 members for maximum effectiveness.

- The number of AAAs and providers in the State.
- The variety of IIIB delivery models (LSC offices, private attorneys, law school clinics, etc.)
- The level of communication/coordination that currently exists within the state—among AAAs, among providers, and between/among the SUA, AAAs and providers.

The leader should convene the group by inviting a balanced group of people with various viewpoints and concerns, rather than asking for volunteers. If there is resistance to developing Standards, it's helpful to have an open dialogue at the beginning of the process so that everyone in the group is in agreement on the need for

Standards. Participation in a work group may involve a serious commitment of time and effort and prospective members should be aware of that.

Step 4: Convene Work Group, set goals and outline content

The first convening should take place in person if possible and should allow plenty of time to reach consensus on key elements. We recommend two days. This meeting should cover:

- An overview of what Work Group participation will involve.
- An overview presentation of the requirements for legal assistance under the OAA—Titles III and VII—and regulations.
- Group discussion/identification of goals—both the overall *goal/mission of the state’s legal assistance delivery system* and measurable *goals for each standard*.
 - » **Note:** These goals provide important direction as the Work Group attempts to devise specific Standards. For example, the OAA states that—with one exception—the role of IIIB legal providers in guardianship cases is to represent “individuals who are wards (or are allegedly incapacitated)” (42 USC §3030d(a)(6)(B)(i)). That is, the appropriate role for IIIB providers is to terminate unnecessary guardianship that has been imposed and to defend older persons against a petition for guardianship. This provision should not be overlooked during the goal setting process. Thus, if the Work Group agrees that a goal is “to protect autonomy,” then Standards should be explicit that the IIIB provider should protect older persons against guardianship with its consequent loss of autonomy.
- Once goals are identified, the group should identify specific issues that will need to be addressed in Standards and organize them into a Content Outline. The Content Outline below has been used in many states as many of the same issues come up repeatedly.

Step 5: Small team drafts initial Standards

Working from the Content Outline, the Work Group should reach general consensus about what the Standards should say concerning each of the issue areas. Following this discussion, we recommend that the LAD convene a small team of Work Group members to create the initial draft of the Standards.

Step 6: Work toward final draft

Share an initial draft with Work Group for reactions/suggestions, and revise it based on input. If there is disagreement or conflicting suggestions, the LAD should work to reach consensus by connecting individual Work Group members or the entire Work Group. Next, circulate a second draft to a wider segment of the law and aging network for additional comments/feedback. This draft should be accompanied by an explanation of the process used to develop the Standards so all are aware that they are the product of a collaborative effort, which included state staff/developer, area agency staff and provider personnel. Once all feedback is received, a final draft can be created, focusing on the issues that are most important, and most in keeping with the intentions of the Work Group. The final version should be circulated to the entire law and aging network, again with a full explanation of the process used to develop them and how the Standards will be used to enhance the statewide Delivery System.

Step 7: Formally adopt final Standards

Depending on state law, states may issue Standards as policy of the State Unit on Aging. However, if such policy requires a formal rulemaking process, states may prefer to issue the Standards as “Best Practices,” rather than formal Standards, so that any necessary changes can be made as the Standards are put in practice.

Step 8: Provide training on implementation of Standards

To the extent possible, training on implementation of Standards should include all key stakeholders, particularly state agency personnel involved in overseeing legal assistance activities, as well as area agency and legal provider personnel. Members of the Work Group should be involved in training to provide a first-hand account of the process used and the rationale for the approaches taken.

Content of the Standards

As noted in Step 4 above, once the Work Group has identified goals, it should then identify specific issues that need to be addressed in the Standards and organize them into a Standards Content Outline.

Typical Standards Content Outline

- I. Legal Authority
- II. Program Purpose
- III. Standards for Targeting Scarce Resources—Target Populations
- IV. Standards for Establishing Priority Issue Areas
- V. Techniques for Reaching Targeted Groups and Addressing Priority Issues
- VI. Roles and Responsibilities of Legal Assistance Providers
 - A. Staffing requirements
 - B. General provider requirements
 - C. Coordination requirements
 - D. Ethical Standards for providers
- VII. Roles and Responsibilities of Area Agencies on Aging
 - A. General Area Agency Requirements—e.g., provide leadership for legal providers on all aging issues, including planning, advocacy, coordination of services, etc.
 - B. Specific Area Agency Requirements—e.g., confer with legal providers on development of annual AAA Elder Rights Plan; select legal provider best able to meet requirements of federal and state law and the Standards; etc.
 - C. Coordination, Training and Support Responsibilities
- VIII. Roles and Responsibilities of State Office on Aging
 - A. General Requirements—e.g., develop annual Elder Rights Plan, and meet other requirements of Title VII
 - B. State Training Responsibilities—e.g., assure that training is available to providers in areas of law relevant to the priority areas
 - C. Other Responsibilities—e.g., work with area agencies to develop model Request for Proposals for provision of legal assistance
- IX. Standards to Guide Handling Cases Involving Abuse, Neglect, and Exploitation

Some sections of the Standards are critically important and merit further discussion:

- Sections III., IV., and V.: Standards for Targeting Scarce Resources; Standards for Establishing Priority Issue Areas; and Techniques for Reaching Targeted Groups and Addressing Priority Issues; and
- Section IX. Standards to Guide Handling Cases Involving Abuse, Neglect, and Exploitation

Standards for Targeting, Priority Setting and Outreach

Targeting limited services to those older adults with the greatest economic or social needs is a key requirement of the Older Americans Act. However, some legal services providers base their services on a first-come, first-served basis, which can make it difficult to target those with the greatest need. Further, the OAA requirement contains a strong prohibition against means testing. The Work Group should consider creating specific language in the Standards that guide outreach and intake practices to better reach the target population and address its members' needs. As part of this process, the Work Group should consider how to:

1. Identify specific groups of older adults with the highest needs, including those who are hardest to reach and may not recognize that their problems have a legal component.
2. Identify the most critical life problems confronting target populations and translate those into priority legal issues that IIIB programs will handle, with a focus on those issues most critical to help older adults meet their basic needs, such as income, shelter, nutrition, and health care.
3. Ensure that legal services are delivered with cultural competence to target populations.
4. Develop strategic outreach/publicity/community education to reach members of the target population in a language they can understand and in a format that works for them.

Target populations specified in the OAA include low-income members of minority groups, those with no or limited English speaking skills, those who are isolated for reasons of race, ethnicity and/or geography and/or have low literacy skills, as well as those with the highest social needs.

A basic guide for priority setting is provided in the eleven (11) broad case priorities set forth in the OAA: income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.³ Under these broad priority areas, Standards should delineate specific needs of target groups in the state/local service area. Likely priority issues will include such areas as Food Stamps (now SNAP), Social Security, Supplemental Security Income (SSI), landlord/tenant, public housing, Medicare, and Medicaid.

Once target groups and priority issue areas are established, the Standards for outreach should be designed to ensure that legal assistance will reach the targeted groups. The Standards should emphasize reaching the most vulnerable, isolated individuals who may not even be connected with local senior centers or meal sites. Some sample strategies for focused outreach that Work Group members may identify include:

- Partnering with social service providers who work with various target groups, such as a local community center serving Spanish speakers.
- Planning outreach at times and locations where target groups are likely to congregate. For example, conducting outreach and intake at churches whose congregations are comprised of low-income minority individuals or at low-income housing developments.

3 42 USC (§307(a)(11)(E)).

Standards to Guide Handling Cases Involving Abuse, Neglect, and Exploitation

Such Standards have become increasingly important given the recent push by ACL/AoA for IIIB legal providers—particularly in Model Approaches states—to place greater priority on cases involving elder abuse, neglect, and financial exploitation. Given the complexity of these cases, the Work Group should consider how to include appropriate planning and training for the complex issues involved with serving older adults who are victims of abuse, neglect, or exploitation. Such cases are often most appropriate to handle with a range of community partners, and the process to develop Standards can be a vehicle to strengthen joint community resources to address elder abuse.

Conclusion

The development of statewide Standards can strengthen the delivery of high-quality legal assistance for older adults with the greatest social and economic needs. By engaging in a collaborative process to create such Standards, the State Unit on Aging, Legal Assistance Developer, area agencies, and legal providers can work together to develop practicable Standards that will truly enhance the quality, accessibility, and impact of legal assistance for older adults who need it the most. At the same time, Standards development can increase understanding of the value of legal services as an essential and integral part of aging network services.

Additional Resources

A more complete *Guide to the Development of Statewide Standards for the Delivery of Legal Assistance to Older Individuals* has been developed by The Center for Social Gerontology and can be found [here](#). TCSG is in the process of updating this Guide, though the current, dated version provides some helpful Supplemental Materials, including sample letters of invitation and sample agendas.

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 on Community Living, Department of Health and Human Services, Washington, D.C. 20201.