

# Targeting Older Americans Act Services Without Means Testing: Meeting the Challenge

Technical Assistance Webinar

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About 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

- The Challenge
- **Targeting Required:** Although OAA services are open to all aged 60+, the Act contains numerous requirements to target limited OAA resources to those in greatest economic or social need.
- **While Means Testing Prohibited:** At the same time, the OAA clearly prohibits the use of means testing to determine who is eligible to receive legal services

# Session Overview

1. General OAA targeting provisions
2. Additional targeting requirements specific to legal services
3. Means testing prohibition
  - What can/cannot be asked about income and resources?
4. Guidelines for fulfilling targeting requirements while adhering to means testing prohibition.
  - How to say NO without means testing?

# General OAA Targeting Provisions

# General OAA Targeting Requirements

- Numerous, throughout the Act:
  - Generally must target all OAA programs/services to those in greatest economic or social need.



# General OAA Targeting Requirements

- Evolution:
  - Increased directives with each reauthorization— including more fully identifying specific groups to receive particular attention, e.g. low income minorities, rural and those with limited English.
- Apply to all levels of aging/legal network:
  - From AoA/ACL to local providers.

# Additional Targeting Requirements Specific to Legal Services

# Even Greater Targeting Requirements for Legal Services in OAA

## I. Part of the definition.

- Only service defined in OAA that includes a targeting provision as part of definition.
- Defined as:
  - ...legal advice and representation provided by an attorney to **older individuals with economic or social need...**
  - Not for all.

# Even Greater Targeting Requirements for Legal Services in OAA (cont.)

- II. Legal Issues are specified to receive priority given limited resources.
  - Providers must give priority to legal issues that reflect most critical life problems of target groups.
  - OAA lists as priorities: Legal assistance related to --
    - income, health care, long term care ,
    - nutrition, housing, utilities,
    - protective services,
    - defense of (against) guardianship,
    - abuse, neglect and age discrimination

# Tips for Balancing Targeting Against Means Testing

- **Understand targeting and its purposes**
- **Underlying purpose**: To ensure limited resources get to the most needy: those least able to advocate on own behalf.

# Tips for Balancing Targeting Against Means Testing (continued)

- **Targeting Means:**

- Not operating on first-come/first-served basis
- Consciously identifying specific groups to be targeted
- Recognizing that some of those most in need–
  - Can't/won't come to office or call
  - Don't recognize life problems as legal
  - Are the hardest to reach
- Strategically and consistently reaching out

# Means Testing Prohibition

# Prohibition Against Means Testing

- **What is means testing?** The use of an older person's income or resources to deny or limit that person's receipt of services.
- **Where is the prohibition?**
- Initially in **OAA regulations**–
  - For **OAA services generally** at 45 C.F.R. §1321.67, and
  - For **Legal Services specifically**: “a legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this Part” (45 C.F.R. §1321.71(d).)
- *Note: Can be particular challenge to providers that also receive LSC funds as they are required to means test for LSC services.*



# Is the Means Testing Prohibition in the Act Itself?

**YES. Since 2000 – in provisions on cost sharing.**

- 2000 Amendments brought, **cost sharing which is a form of means testing** for certain services, e.g. HCBC.
- Also brought **voluntary contributions for certain essential services such as legal assistance for which cost-sharing is prohibited**

**Since 2000, Act specifies that:**

- AAAs and service **providers shall not means test** for any service for which contributions are accepted. 45 U.S.C. §3030c-2(b)(3) and
- Voluntary contributions are only allowed **provided there is no coercion or means test used.** (42 USC §3030c-2(b)(3))

# Dilemma: Can a Legal Provider Ask About Income?

**YES!**

**A legal assistance provider may ask about the person's financial circumstances as part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible. (45 C.F.R. §1321,71(e)).**

# The Important Distinction:

## Prohibited

- Asking up front about the person's financial situation and using that information in any way to determine the person's eligibility to receive an OAA service.

## Allowed

- Asking in the course of providing service as a part of providing the service OR to ascertain if the person might be eligible for benefits that they are not receiving (including other legal services).

# Approaches to Successful Targeting of Legal Services without Means Testing

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1. **Clearly identify specific groups of elders** who are the most needy, most vulnerable and least able to advocate on their own behalf.

*Use the OAA targeting language as a STARTING PLACE*

- Look at clients actually receiving services; then compare to list of target groups and other needy groups specific to the service area. Is there a gap?
- Work in collaboration to close the gap. AAAs have valuable demographic information on target groups.

# Approaches to Successful Targeting (cont.)

## 2. Establish Legal Issue/Case Priorities

*Again, Use OAA priorities as a STARTING PLACE*

- Think about identified target groups and identify specific types of life problems that are most critical to target groups in meeting basic needs (income, shelter, nutrition, health care).
- Legal providers can translate life problems into types of legal issues that they will/will not handle in order to maximize impact of limited resources.

# Approaches to Successful Targeting (cont.)

## **3. Ensure cultural competence and effective communication**

- AoA/ACL's Toolkit for Serving Diverse Communities
- Capacity to communicate with hearing impaired, language barriers, or mental disabilities.

# Approaches to Successful Targeting (cont.)

## 4. Strategic Outreach

- OUTREACH IS THE KEY to implementing targeting and priority setting goals.
- AAAs and legal providers should develop strategic plans for informing targeted groups of their legal programs and available services.
- NOTE: The older adults in targeted groups can be the hardest to reach.



# More on Outreach

- Most older adults may not request services without some special outreach and education. They-
  - May not recognize life problems as legal problems
  - Cannot or will not come to a legal services office
  - Are often least able to advocate on their own behalf

# Approaches to Successful Targeting (cont.)

## 5. **Coordinate with social and other non-legal service providers.**

- Social services providers may be more likely to come into contact with targeted populations.
- Ensure these providers are trained on indicators of legal problems (Issue Spotting) and on making appropriate legal referrals.
- Some examples: LTCOP, volunteers & staff who deliver meals and provide in-home services, APS, and organizations that serve immigrants or victims of domestic violence.

# Approaches to Successful Targeting (cont.)

- 6. Ensure services are accessible and user-friendly**
- Office and intake sites should be located with targeted client communities, near public transportation.
  - Coordinate legal and AAA transportation services to ensure easy access.
  - Programs should be well-coordinated with the statewide Senior Legal Helpline for convenient access to legal information and brief advice.

# Concluding Thoughts on Targeting

- One of the hallmarks of the OAA is its promotion of flexibility and cooperation in State and local planning.
- Means-testing prohibitions and targeting provisions are not meant to bind programs but to give them opportunity to develop and conduct high-quality, high-impact legal programs.

# Additional Resources

- NCLER: <http://ncler.acl.gov>
- Resources on:
  - Legal Assistance Developer 101
  - Developing State Standards of Delivery
  - Capacity Assessment
- 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).