

LEGAL ASSISTANCE PROGRAM Definition and Responsibilities	DAIL – LS – 15.1
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Legal Assistance Program

Definition

Legal Assistance means legal advice or representation by an attorney non-lawyer under the supervision of an attorney that provides counseling or other appropriate assistance to older individuals with economic or social needs.

Legal Assistance Program Responsibilities

Legal assistance shall:

- (1) Assistance shall be provided in accordance with the approved Area Agency on Aging and Independent Living plan, which shall ensure an adequate proportion, is planned and expended to fund access, in-home and legal assistance.
- (2) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;
- (3) Not be denied because of a person's failure to disclose information about income or resources; and
- (4) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations and numbers of participants.
- (5) Assistance shall be accessible to participants by telephone, home visit, center location or person-to-person contact.

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Eligibility

Definition

Participant is an individual 60 years of age or over who is receiving services funded by Title III of the Older Americans Act (OAA). The term “client”, “resident” or “patient” shall mean the same as “participant.”

Target Population

The Older Americans Act (42 USC 3023) mandates that legal assistance shall target services to the following:

- (1) Caregivers of elderly citizens who suffer from dementia or related dysfunctions
- (2) The needs of low-income minority individuals
- (3) The population of low-income minority individuals
- (4) Elderly citizens who are:
 - (a) Elderly and in greatest social, economic need
 - (b) live in rural areas
 - (c) are minority in greatest social, economic need
 - (d) suffer from a disability
 - (e) have Limited-English proficiency
 - (f) suffer from dementia or related dysfunctions
- (5) Eligibility of each participant shall be established and personnel who approve services shall be designated

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Responsibilities of the Legal Assistance Provider

The Legal Assistance Provider shall:

- (1) Specify how it intends to target services for the needs of low-income minority individuals.
- (2) Attempt to provide services to the population of low-income minority individuals at least the same proportion as the population bears to the older population as a whole.
- (3) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of the law relevant to the elderly.
- (4) Contact institutionalized elderly, inform and educate these individuals about the legal assistance services available.
- (5) Specify how it intends to coordinate its efforts with the efforts of the Long Term Care Ombudsman's office.
- (6) Meet at least annually with the local Ombudsman Program.
- (7) Submit a written quarterly activities report to the Area Agency on Aging and Independent Living.

(See also Chapter 22, Title III, Section 22.4, Item 22.4.1, Responsibilities of the Legal Assistance Provider)

Legal Assistance Provider

A Legal Assistance provider is responsible to:

- (1) Demonstrate competent knowledge in specific areas of the law affecting older persons in economic or social need, for example, public benefits, institutionalization, and alternates to institutionalization.
- (2) Have the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program.
- (3) Provide legal assistance in the principal language spoken by clients as required by the law.
- (4) Provide effective administration and judicial representation in all areas of the law that affect older persons.
- (5) Refrain from requiring an older person to disclose information about income or resources as a condition for providing legal assistance.
- (6) May ask about the person's financial circumstances as part of a process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for which the person may qualify.

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Staffing:

Staff training shall be as follows:

- (1) New staff shall receive an orientation;
- (2) New staff shall be trained prior to assuming responsibilities or shall receive on-the-job training from qualified agency staff;
- (3) Existing staff shall receive training on job related topics at a minimum of once per year.
- (4) Volunteers and paid staff with the same written job description and responsibilities shall meet comparable requirements for training and skills.
- (5) Must have the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program
- (6) Must provide legal assistance in the principal language spoken by clients as required by the law

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Confidentiality Requirements for Legal Assistance Provider

Information about a client that is received by a Legal Assistance provider is protected by the "attorney-client privilege" (Sections 306(d) of the OAA as amended). The provider shall follow standard protocol for securing information and client files.

To allow compliance with the above while gathering information needed for evaluation, planning and needs assessment, the following procedures shall apply:

Procedure:

- (1) The provider is to document the legal activities and services provided to its clients and report aggregate data as requested by the Area Agencies on Aging, and the Department for Aging and Independent Living.
- (2) The provider is to report on a standardized form provided by the Department for Aging and Independent Living.

(See also Chapter 22, Title III, Section 22.4, Item 22.4.2, Confidentiality Requirements for Legal Assistance Provider)

LEGAL ASSISTANCE PROGRAM Standard Service Definitions, Reporting Requirements, and Procedures Legal Assistance, Legal Assistance Clients, Legal Assistance Staff, Legal Assistance Records	DAIL – LS – 15.5
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Legal Assistance

Legal Assistance shall be the provision of counseling or assistance on legal matters, legal advocacy, legal education, or advice in civil matters and/or representation before some administrative or judicial body.

Legal assistance services shall provide legal advice in civil matters and/or representation before an administrative board or court.

One unit of service consists of one-half hour of legal assistance expended on behalf of clients.

Legal Assistance Clients

Legal assistance shall be available for institutionalized older persons, and for any elderly person otherwise entitled to legal assistance. Assistance shall not be denied because of a person's failure to disclose information about income or resources.

Legal Assistance Staff

Legal assistance providers may utilize paralegals and law students but only when supervised by an attorney.

Legal Assistance Records

Legal assistance providers shall maintain records, which include individual client services and group activities, covering topics, presenters, location and number of participants.

(See also Chapter 22, Title III, Section 22.8, Item 22.8.16, Legal Assistance, Legal Assistance, Clients/Staff/Records)

LEGAL ASSISTANCE PROGRAM Legal Assistance Provider Limitations	DAIL – LS – 15.6
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Legal Assistance Provider Limitations

Definition

“Fee generating case” means any case or matter, which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

A Legal Assistance provider:

- (1) May engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities as outlined above.
- (2) Shall not use funds received under the OAA to provide legal assistance for a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action.
 - (a) Recovery of damages is not the principal object of the client;
 - (b) A court appoints a provider or an employee of a provider pursuant to a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction; or
 - (c) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.
- (3) Must establish procedures for the referral of fee generating cases
- (4) Shall seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.
- (5) May accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter, if a case or matter accepted in accordance with this section resulted in recovery of damages, other than statutory benefits.

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Legal Assistance Provider Prohibited Activities

A provider, employee of the provider, or staff attorney shall:

- (1) Contribute or make available OAA funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;
- (2) Intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;
- (3) No attorney shall engage in any political activity;
- (4) Participate in any activities intended to influence any decision or activity by any nonjudicial Federal, State, or local individual or body.
- (5) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;
- (6) Encourage, direct, or coerce others to engage in such activities; or at any time engage in or encourage others to engage in any illegal activity or political activity.
- (7) Use OAA funds to pay dues exceeding \$100 per recipient per annum to any organization (other than the bar association).

Nothing in this section is intended to prohibit an employee from the following:

- (1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;
- (2) Informing the client about a new or proposed statute, executive order, or administrative regulation;
- (3) Responding to an individual client's request for advice, only with respect to the client's own communications to officials unless otherwise prohibited by OAA
- (4) Making direct contact with an area agency on aging
- (5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;
- (6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or
- (7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging;

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providing that no such action will be taken without first obtaining the written approval of the responsible area agency.