

**LEGAL ASSISTANCE**  
**VIRGINIA DEPARTMENT FOR THE AGING**  
**SERVICE STANDARD<sup>1</sup>**  
(Effective 1/1/09)

**I. SERVICE PROVIDED**

Legal Assistance funded by Title III-B of the Older Americans Act (OAA)

**II. DEFINITIONS**

**“Legal Assistance”** as defined in the Older Americans Act --

*(A) means legal advice and representation provided by an attorney to older individuals (60 years of age and older) with economic or social needs; and*

*(B) includes--*

- (i) to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and*
- (ii) counseling or representation by a nonlawyer where permitted by law.*

Public Law 109-365, §102(33) enacted 10/17/06<sup>2</sup>

In Virginia, “Legal Assistance” also may include –

Outreach to those in greatest social or economic need targeted under the Older Americans Act, education, group presentations and training designed to protect the legal rights of older adults using materials developed under the direct supervision of an attorney.

Terms used in the OAA definition of Legal Assistance have the following meanings:

- **“Attorney”** means: A lawyer licensed and authorized by the Virginia State Bar to practice law in the Commonwealth of Virginia.
- **“Nonlawyer”** means: A person who is not a licensed attorney, but who is specifically permitted by federal or state law to provide limited counseling or representation (for example representation in Social Security administrative hearings and certain other public benefit hearings).
- **“Economic Need”**: The OAA does not define this term, but it does define

<sup>1</sup> If you have questions about anything contained in this Standard, please contact the Legal Services Developer at the Virginia Department for the Aging

<sup>2</sup> All sections of the Older Americans Act as Amended in 2006 {Public Law (P.L.) 109-365} referenced in this Standard can be found on both the Administration on Aging and The Center for Social Gerontology web sites: [http://www.aoa.dhhs.gov/OAA2006/Main\\_Site/oa/oa\\_full.asp](http://www.aoa.dhhs.gov/OAA2006/Main_Site/oa/oa_full.asp) and <http://www.tcsq.org/law/2006OAACompleteComp.pdf>

“Greatest Economic Need” as “... *the need resulting from an income level at or below the poverty line.*” (P.L. 109-365, §102(23),(43))

- \* “**Social Need**”: The OAA does not define “social need,” but it does define “Greatest Social Need” as “... *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*
    - (ii) *threatens the capacity of the individual to live independently.*
- P.L. 109-365, §102(24)

“**Unduplicated Client**”: The US Administration on Aging requires states to report the numbers of “unduplicated” persons served with OAA funds. For legal assistance, this means the number of different individuals who received legal assistance from the legal provider during a federal fiscal year. For the “unduplicated count,” a client is counted only once for the year regardless of how many times the client returned that year for assistance on either the same or different legal issues. Thus the number of “cases” handled by a legal provider is often greater than the number of “unduplicated clients.”

### **III. ELIGIBLE POPULATION**

As defined in the OAA, Legal Assistance is for *persons aged 60+ “in social or economic need.”* The Act further specifies that services be particularly targeted to older individuals: with greatest economic need; with greatest social need; at risk for institutional placement; with limited English proficiency; low-income minority older individuals; and, those residing in rural areas. (See for example, P.L. 109-365, §306(a)(4)). In Virginia, residents of long-term care facilities are also a very important group to be targeted for legal assistance.

However, while the Act requires that these groups be particularly targeted for service, mechanisms to achieve targeting may not include the use of a means test. Allowable and effective mechanisms to achieve targeting without means testing include strategic outreach to specific target groups of older persons and/or persons who work with them, and focusing on particular types of legal issues that reflect the most critical and basic needs of the target populations, for example public benefits, housing, and long term care.

### **IV. SERVICE DELIVERY ELEMENTS**

#### **A. TYPES OF LEGAL ASSISTANCE PROVIDERS**

Legal assistance must be provided by an attorney or by a paralegal/law student

under the direct supervision of a licensed attorney. The Act calls for Area Agencies on Aging (AAAs) to select as their legal assistance provider the entity that is best able to provide the targeted legal services described in the Act. Examples of things to consider in selecting the “best entity,” include such things as the capacity of the provider to:

- ◆ Protect the autonomy, dignity and independence of vulnerable older persons;
- ◆ Focus outreach and service on those in the greatest social and economic need – often those least able to advocate on their own behalf;
- ◆ Foster cost-effective, high quality legal services, having maximum impact on those in greatest social and economic need and their most critical legal needs;
- ◆ Assist vulnerable older persons in preventing legal problems through education and outreach; and
- ◆ Be accessible throughout the Planning and Service Area (PSA), particularly to the target populations specified in the OAA.

*See the OAA, P.L. 109-365, §307(a)(11) for required contract provisions or contact the State Legal Services Developer at VDA for technical assistance (see Footnote 1).*

AAAs can accomplish this through one, or a combination, of the following methods:

1. CONTRACT WITH A LEGAL AID FUNDED BY LEGAL SERVICES CORPORATION (LSC).  
This means that the AAA contracts with an existing licensed local legal aid program that is funded by the LSC and operates in accordance with Federal law.
2. CONTRACT WITH A LEGAL AID NOT FUNDED BY LSC.  
This means that the AAA contracts with an existing licensed local aid program that is not funded by the LSC. In this case, the OAA requires the Legal Aid not funded by LSC to coordinate services with any existing LSC-funded program in the area (usually a different local legal aid program) in order to maximize the use of limited OAA Title III-B funds.
3. STAFF ATTORNEY HOUSED IN AAA:  
This means an attorney employed by the AAA who provides legal assistance directly to older clients in social or economic need. In this case, the OAA requires coordination of services with an existing LSC-funded program (usually a local legal aid program) in order to maximize the use of limited OAA Title III-B funds. It is important that, under this model, the attorney not serve as in-house counsel to the AAA. Further, under the OAA, the AAA would need a waiver from VDA in order for the AAA staff attorney to provide direct service to clients.
4. CONTRACT WITH A PRIVATE ATTORNEY.  
This means that the AAA contracts with a private attorney to provide legal assistance to older clients in social or economic need. In this case, the

OAA requires coordination of services with an existing LSC-funded program (usually a local legal aid program) in order to maximize the use of limited OAA Title III funds.

5. CONTRACT WITH A LAW SCHOOL CLINICAL PROGRAM.

If an AAA is considering a law school, please contact the Legal Services Developer at VDA (see Footnote 1)

In all cases where practical, an attempt should be made to involve the private bar in legal assistance activities, including groups within the private bar willing to furnish legal assistance to older adults on a pro bono or reduced fee basis.

**B. PRIORITY SERVICES:**

The Older Americans Act uses the term “priority services” in two ways.

First, it designates legal assistance services as one of three priority services (access, in-home, and legal) that in the absence of a waiver from VDA, must be funded by every AAA. At a minimum, each AAA must fund each of the priority services at a base level established by VDA. The current base level for Virginia is 1% of Title III-B allocated funds. However, AAAs are permitted and encouraged to increase the base level as appropriate.

(P.L. 109—365 §306(a)(2), §307(a)(2)(C))

Second, the Act addresses the types of legal issues that are to receive priority in delivering services. It requires that in funding legal assistance services, area agencies “... *give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.*”

(P.L. 109—365 §307(a)(11) (E))

**C. OUTREACH TO TARGET GROUPS, EDUCATION, TRAINING & PRESENTATIONS:**

Recognizing that OAA III-B resources are inadequate to meet the legal needs of all older persons, legal assistance services must be particularly targeted to older persons in greatest economic and social need. The OAA specifies a number of target groups, with emphasis on low-income older persons, low-income minority older persons, older persons with limited English proficiency, and those residing in rural areas. Often, the target populations don’t recognize their problems as being legal in nature and don’t know where or how to access affordable legal services. Further, they are often the least able to advocate on their own behalf, while they are the most difficult to reach and serve. Targeted outreach and strategic education/presentations on critical legal issues affecting the most vulnerable older persons are essential to effective targeting. This type of outreach and education is best achieved through joint planning by the AAA and legal provider and coordinating efforts to conduct outreach and education. Qualified individuals will conduct outreach, education and training, and legal training materials will be developed under the direct supervision of an attorney.

#### **D. PROHIBITED SERVICES:**

Legal Assistance will not be provided for:

- Any criminal matter;
- Any civil action involving post criminal conviction relief;
- Any action concerning euthanasia or abortion;
- Any strike, boycott, picketing or demonstration; or
- Any illegal activity.

See 42 United States Code §2996e; 42 United States Code §2996f and 42 United States Code (USC) §14404.

Further, the OAA Regulations (Title 45 Code of Federal Regulations (CFR), §1321.71(g)-(k)) include prohibitions specific to III-B legal assistance providers and the use of III-B legal assistance funds. These include:

- Providing legal assistance in fee-generating cases, with certain exceptions (45 CFR §1321.71(g));
- Engaging in specified prohibited political activities (45 CFR §1321.71(h));
- Engaging in lobbying activities as described in the Regulation (45 CFR §1321.71(i));
- Participating in any public demonstrations, boycotts, etc. as described in the Regulation (45 CFR §1321.71(j));
- Paying dues exceeding \$100 to any organization (other than a bar association) that engages in the above prohibited activities (45 CFR §1321.71(k)).

#### **V. ASSESSMENT:**

The Virginia Service Quick Form (July 2008)<sup>3</sup> is used for legal assistance services. Federal poverty should be determined and documented on this form.

#### **A. ADMINISTRATIVE/REPORTING ELEMENTS**

##### **1. UNITS OF SERVICE DEFINED:**

*As used here, “unit of service” is for reporting purposes only, not for billing purposes. Under the Administration on Aging NAPIS reporting system, a unit of service for legal assistance is one hour. What this means is that each hour of providing legal assistance (including such things as case preparation, legal research, drafting documents, preparing materials for outreach/community education, conducting the outreach/education, etc.) is equal to the corresponding number of “units.”*

##### **2. PROGRAM REPORTS:**

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<sup>3</sup> The Virginia Service Quick Form was revised in July 2008 to make clear that name, address and telephone numbers are not permitted for Legal Assistance and Elder Abuse Services. In order to protect client confidentiality and the attorney-client relationship, a unique number (or numbers and letters) should be used to track services and outcomes.

Information to be reported is captured at three different points: (a) at client intake; (b) at case closing; and (c) when special outreach/community legal education activities are conducted.

(a) At Client Intake: At the time of client intake, a client- specific assessment should be performed to capture information relevant to targeting and needed for reporting. This includes:

- Client demographics/characteristics such as age, gender, ethnicity, race; and
- The type of legal issue on which the client is seeking assistance.

(b) At Case Closing: Information to be captured at the time of case closing includes:

- The type of legal issue on which service was provided to the client;
- The outcome of the service for the client; and
- The total number of hours (“units”) spent by the provider on the client’s case.

(c) When Special Outreach/Community Legal Education Activities are Conducted: Information to be captured will include:

- Dates and locations of outreach and educational activities;
- Type of outreach conducted or topic of educational presentation;
- Specific groups targeted by the outreach or types of persons attending the educational activity;
- Estimated number of people reached through the outreach or educational activity;
- Estimated number of hours spent in preparation, travel, and conduct of the outreach or educational activity.

### 3. INFORMATION REPORTED TO VDA & DUE DATES

The information that must be reported by AAAs to the Virginia Department for the Aging (VDA) includes:

- Number of “Unduplicated” Clients/Persons Served. *See the definition of “unduplicated” under roman numeral II above.*
- Number of Hours/“Units of Service” provided. *See definition of “unit of service” under V.A. 1. above.*

Due Dates: Aging Monthly Report (AMR) must be submitted monthly to VDA by the 12<sup>th</sup> day of the following month. Client level data must be transmitted to VDA by the last day of the following month.

Optional Group Units cannot be entered into AIM/NWD tools but may be reported on the AMR Optional Unit Report. These include:

- Group Participants – Number of people attending a presentation, meeting or program provided to more than one person.
- Group Presentations – Number of education/training group presentations on legal assistance topics.

## **B. QUALITY ASSURANCE & CAPACITY**

### 1. LEGAL ASSISTANCE PROVIDER/STAFF QUALIFICATIONS:

AAAs are to select as their legal providers, the entity that best meets certain capacity criteria that are important to quality assurance. Examples of important elements of quality assurance include:

- All attorneys are licensed to practice law in the Commonwealth of Virginia and adhere to the Virginia Rules of Professional Conduct and all professional regulatory requirements to practice law in the Commonwealth;
- Program staff (including attorneys and paralegals) have experience in serving older adults, and knowledge and understanding of legal issues most critical to those in greatest social and economic need;
- Programs have mechanisms in place to protect against conflict of interest and to assure client confidentiality.

### 2. CRIMINAL BACKGROUND CHECKS:

VDA strongly recommends that the agency and its contractors protect their vulnerable older clients by conducting criminal background checks for staff providing any service where they visit or enter a client's home.

### 3. STAFF TRAINING:

At a minimum, legal provider staff must meet continuing legal education requirements to practice law in the Commonwealth. In addition, they should have sufficient training to remain current on the most critical legal issues affecting older persons in greatest economic or social need.

### 4. PROGRAM EVALUATION (BEST PRACTICE RECOMMENDATION):

The agency should conduct regular and systematic analysis of the persons served and the impact of the service. Service providers should be monitored annually. Evaluation may include client satisfaction surveys.

### 5. RECORDS:

The AAA or service provider must maintain specific program documentation that includes:

- A unique identifier for each client served (e.g. case number)
- Virginia Service Quick Form or electronic data equivalent
- Service provided and case outcome if applicable

#### **Acknowledgment**

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