

Older Americans Act Legal Assistance: An Overview of Different Models Employed in States

By Ellie Crosby Lanier and Shoshanna Ehrlich

Introduction

The Older Americans Act (OAA) requires that states specify a minimum proportion of OAA funds received by Area Agencies (AAAs) to provide legal assistance for people over age 60.¹ Legal Assistance under the Older Americans Act (OAA) is delivered under a wide ranging number of schemes. Understanding how the statewide senior legal hotlines fit into these arrangements is even more complicated. Your legal hotline may be part of an OAA Title IIIB legal provider. Even if it is not, your program is certainly working closely with Title IIIB providers to handle those cases that cannot be handled via phone, web, or assisted self-help measures. If your legal hotline is associated with a Title IIIB provider, you are undoubtedly well aware of how the hotline integrates with that program, Legal Services Corporation (LSC) funded programs, and other legal providers in your state.

If your hotline is not part of a Title IIIB program, you might not have a full understanding of how the OAA funding for legal services works in your state. Furthermore, different states use such different paradigms that key personnel in your state, including the Legal Services Developer, might not be aware of Title IIIB legal delivery models elsewhere. In order to be able to make the most informed and innovative decisions for updating your state's legal services system for the elderly, it is crucial to know how other states handle their obligations under the OAA.

If you were asked to *define* legal assistance funded under the Older Americans Act you would probably turn to the language of the Act itself for guidance. And there you would learn that the Act defines legal assistance as “legal advice and representation provided by an attorney to individuals with economic and social needs; and includes to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and counseling or representation by a non-lawyer where permitted by law.”²

On the other hand, if you were asked to *describe* legal assistance under the Older Americans Act in this country you might describe something that looks closer to a patchwork quilt than a comprehensive system of civil legal representation for those who are socially or economically needy. The reason for these differences lies in the fact that different jurisdictions have responded to the Act's definition in vastly different ways, and therefore the legal services available to needy seniors vary wildly from state to state and within states, often from place to place. This article attempts to provide an overview of the variety of ways that legal assistance is provided under the auspices of the Older Americans Act and, to a lesser extent, to discuss resources devoted and benefits and disadvantages of the different models employed.

One of the hallmarks of the OAA is the ability of regional Planning and Service Areas (Area Agencies on Aging) (PSAs or AAAs) to tailor available services based on local conditions, needs and resources. This flexibility is helpful because it enables local agencies to assess community needs and resources and to offer appropriate services to address those most pressing concerns.³ A disadvantage of the system is that seniors calling with legal problems can receive very different levels of assistance depending on where they live. In some cases living on one side of a county line can mean the difference between the ability to obtain full-representation by an entity with vast elder law experience and no available OAA-funded legal help. States with senior legal hotlines have an advantage because at least some legal assistance is provided for their citizens, even in those places where area agencies do not fund a legal program. The legal hotline can also streamline intake to all legal resources in the state such as LSC programs, Volunteer Law Projects, Bar referral projects or other types of legal assistance in the state. The hotline also provides a lifeline for homebound and rural seniors to access legal services.

Some states are designated as single planning and service areas so the State Unit on Aging makes these contract decisions. A review of Title IIB-funded legal programs nation-wide indicates that the continuum has many stops between no service and full service, and these reflect the variety of models for legal assistance utilized currently under the OAA.

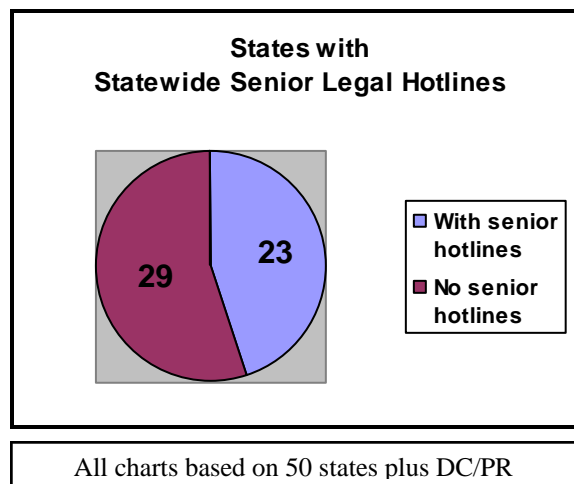
The Need for Objective Assessment of Unmet Need and Available Resources

A complicating factor is that unmet legal need has been somewhat more difficult to measure in the past than other types of services, such as home delivered meals, transportation, or home care. Seniors queried for untargeted surveys may not recognize an unmet legal need, and measuring the value of preventive services such as legal education to avoid being a victim of fraud can be problematic. Without reliable information about actual need, a AAA may be reluctant to provide funds for the program, especially when faced with limited resources and waiting lists for other services

AoA's Model Approaches grants, as well as efforts of entities such as the ABA's Access to Justice Support Project, AARP, and the Center for Social Gerontology can help states identify, design and undertake reliable efforts to quantify the unmet need for legal help among vulnerable and underserved populations.⁴ Systems assessments also play an important role because they help decision-makers identify available entities and priorities to assure that, to the extent possible, funds expand rather than duplicate available services. Because hotlines typically refer clients who have legal needs greater than can be met by telephone assistance, hotlines are familiar with availability and priorities of legal providers throughout their service area and are therefore in an excellent position to assist with system assessments. With objective information in hand, State Units and Area Agencies on Aging can make informed decisions about the best entities to provide legal assistance service and how to structure its delivery to most effectively address their community and state needs.⁵

Statewide Senior Legal Hotlines

Understanding how the senior legal hotlines fit into the puzzle of legal service delivery for seniors requires a bit of historical perspective. There are presently 27 states that have a statewide senior legal hotline plus ones in the District of Columbia and Puerto Rico). Some of these were established by AARP back in the late '80s and early 90's. The rest were established with AoA Title IV (rather than Title III) funds from the early 90's through the present. All were established with start up grants and have had to continue operations with other types of funding. Only one state (WV) dedicates its Title III funding solely to operating a statewide senior legal hotline. WV decided to use its small amount of Title IIIB funds, about \$80,000 for the entire state, to operate the senior legal hotline. The WV planners believed more seniors would receive the full spectrum of legal services via the centralized system of advice and referral that if each of the AAAs was awarded a fraction of the funds.



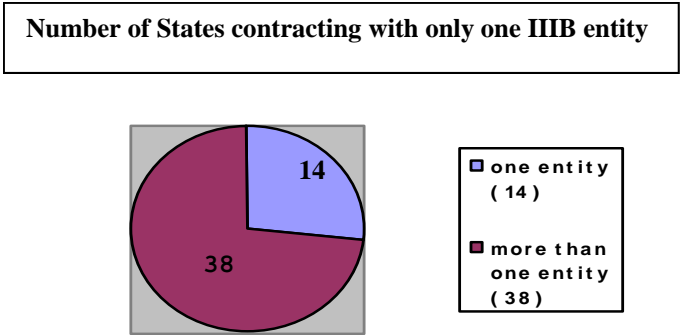
Almost all of the senior hotlines are housed in either a statewide Title IIIB provider program, a local Title IIIB provider program, and/or an LSC funded program. A few are 'standalone' hotlines that are not attached to a full-service program (MI, KY). When a statewide senior legal hotline is in place, it can serve to integrate, coordinate, and streamline access and delivery of legal services to seniors. These hotlines provide telephone advice to senior callers statewide, as well as referral or intake to full service legal assistance, clinics, and *pro bono* projects. Most of the senior hotlines provide brief services to a greater or lesser degree. With the exception of WV, they generally do not operate with Title IIIB funds. However, where the contracted Title IIIB program uses the legal hotline as its intake, advice, and referral component, the program may not designate which funds were used to provide services at the hotline level.

Title IIIB-funded Legal Assistance Projects: Overview of Different Models

Most states use more than one legal services provider as the Title IIIB contracted entity. However, twelve states, the District of Columbia and Puerto Rico, contract with a single entity.⁶ The states who contract with multiple entities often use a combination of LSC-funded programs as well as other non-profit legal services. Many AAAs contract with private attorneys.

Those states using the single entity model tend to be states that either consist of a single planning and service area administered by the state unit acting as AAA for the state (for example, ND, DE, WY, AK), or states with a well-established provider with offices throughout the state. This provider is most often the LSC-funded program (ID, OK, ND) but in some cases may be a non-LSC program (NH) or a program which serves only seniors (ME, DC). A few states have in-house programs using paralegals or benefits specialists in the local areas, instead of contracting with an outside legal services provider (for example TX, WI, or MT).

In states where a well-established statewide legal services program with offices throughout the state exists, using that program as the sole contractor may provide a variety of benefits, including simplifying planning and coordination, streamlining access and intake, implementing changes, gathering data, and assuring that seniors in all counties have access to comparable legal assistance.



LSC Funded Legal Services

In most states, AAAs (or the state where there is a single PSA) contract with a local, regional or statewide Legal Services Corporation-funded program. Benefits to this arrangement include:

- a partially overlapping target client population (LSC is charged with serving low income, IIB legal programs are to target socially and economically needy);⁷
- vast substantive legal knowledge in LSC offices of those problems most likely to be faced by low income older persons such as housing, public benefits, and consumer law;
- access to the full-range of legal services from telephone advice, pro se assistance, and clinics to full-representation;
- strong relationships with the private bar and vital pro bono programs in most areas;
- a local presence and activities in most communities;
- creative uses of technology to increase efficiency and improve access;
- a central role in most state coordinated Access to Justice efforts so older persons needs can be considered as part of justice system; and strong working relationships among LSC offices and other providers who serve low income or vulnerable clients, including those who work with non-English speaking and other rapidly growing populations;
- Finally, since the selected entity is the Legal Services Corporation grantee, it is easy to satisfy the Older Americans Act requirement that IIB legal assistance be coordinated with LSC funded programs locally.⁸

While the benefits outlined above are vast, problems can occur when IIIB funds go to Legal Services offices. Some Area Agencies feel that while LSC offices are responsive to the needs of the low income population generally, they are less responsive to the needs of moderate income and socially isolated seniors. Older persons may be reluctant to use a service meant for the poor (even though they might qualify as low income). Furthermore, LSC offices must screen for eligibility, yet under the OAA, IIIB legal programs are not allowed to base services on a means test.⁹ Differences in the data collection needs of Area Agencies and the Legal Services Corporation can cause problems for programs. Of course, the Legal Services Developer has an important role to play in working through these challenges, and most states have found creative ways to overcome these and other challenges raised by this model.

LSC Office Elder Law Project

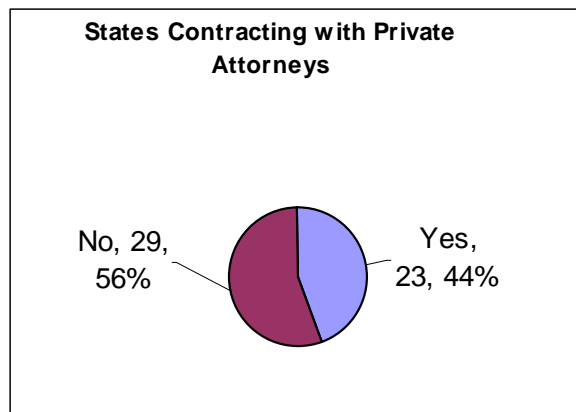
This model provides a way to avoid many of the problems of co-location while maintaining its benefits, by establishing a discrete elder law office within a Legal Services office. The elder law unit can then establish separate intake and reporting procedures and can make referrals to the traditional legal services office, when appropriate. Outreach and promotional materials can be geared to the OAA target population, and staff can develop expertise in areas of most concern to seniors while retaining access to the wealth of poverty law resources, training and expertise found in the legal services office. There are many well-established examples of this model found throughout the country.

Non-LSC Funded Legal Services (Legal Aid) for the Elderly Projects

A few Area Agencies contract with non-profit entities solely devoted to providing legal services to OAA eligible clients. These are usually funded by Title IIIB, IOLTA, state funding, or a variety of other funding streams. Examples include Legal Counsel for the Elderly in Washington, D.C., the Philadelphia SeniorLAW Center, and Maine Legal Counsel for the Elderly. This model avoids some of the issues discussed in relation to legal services programs, supports a high level of expertise in dealing with seniors and elder law issues. A drawback may be a smaller pool of funding to support the program and inability to maximize resources from the Legal Services Corporation.

Private Attorney Model

Some Area Agencies have selected private elder law firms to deliver IIIB legal assistance. Twenty-three (23) of the fifty states/DC/PR use Title IIIB funds for private attorneys in one or more areas.¹⁰



The private attorney model can range from multiple Area Agencies contracting with a multi-office firm (AL), to a single area contracting with a firm, solo practitioner, or multiple lawyers or firms. Benefits to using a private firm include, but are not limited to, local visibility and perceived stature in the Bar, the ability to contract for hours, rather than funding an entire program, and the potential for contracting with a lawyer who specializes in elder law areas.

Potential shortcomings of this model include its cost per unit of service, risk of provider focus on cases such as wills and powers of attorney that may not be areas of concern for the most needy or vulnerable, and the possibility that fee generating cases might be handled by the firm rather than referred outside of the project creating a potential conflict of interest. Again, the Legal Services Developer can work with Area Agencies to assure that appropriate safeguards are in place to address these concerns.

Attorney/Paralegal on Staff at AAA- Direct Provision

Area Agencies in some states have elected to hire a lawyer or run the program with staff at the Area Agency. Benefits of this model to Area Agencies include increased oversight and understanding of the legal program, ability to integrate it into other network efforts, and facilitated referral and follow up, among other things. This model is used in some way in 16 of the 52 states/territories and there are a couple of states that use the direct service model exclusively.¹¹ Direct provision of legal assistance by AAA staff would appear to require an extra showing by the AAA in order to comply with the direct service prohibition in the Act.¹² This model also raises questions about potential conflicts of interest. For example, can a client challenge a decision made at the Area Agency level to reduce or deny services through an in-house attorney? Are there adequate safeguards in place to protect information that is legally confidential under either the Older Americans Act or state bar rules of professional responsibility for lawyers? Is it a conflict for an Area Agency to select its own program as the “best entity” to provide legal assistance?

Volunteer Referral Panels

Some Area Agencies use volunteer panels to either supplement or provide the bulk of legal assistance services in a region. Cost is an obvious selling point for this model, though the model requires coordination to work, so funds are necessary for someone to monitor the posture and resolution of cases and to make sure that worthy cases are placed in a timely manner. Relying on volunteers alone to provide legal assistance can be problematic, however, if no one is willing or able to take a client's case. Monitoring may also pose problems, since a volunteer attorney might chafe at the oversight or follow-up needed to assure quality. Fortunately, this model is most often used in conjunction with more comprehensive plans. A variation of the AAA referral panel model is the volunteer referral model operated by a county or regional bar association. As with other private bar models, it may be difficult to find attorneys with expertise in the areas of most concern to the target population, such as consumer cases, elder abuse, or nursing home discharges.

Paralegal Model

This model takes a number of forms, from a paralegal on staff at an area agency, to programs that use paralegals to deliver legal assistance and outreach, backed and supervised by attorneys at another agency. Cost efficiency is a benefit of this model, since more expensive lawyer time is saved for review and supervision of work done by the paralegal. Adequate supervision is essential to assure that the paralegal does not engage in the unauthorized practice of law without a license. Also, this model works best where it is paired with or housed in a program or office that can provide a full range of legal services, including representation in court.

Benefits Specialist Model

A variation of the paralegal model is the "benefits specialist," an entity that may be housed within an Area Agency, part of another, non-legal office, or in some circumstances, housed within an LSC-funded entity. These specialists focus on assisting clients to obtain benefits ranging from food stamps to SSI. Two states (WI and TX) use this model exclusively with their Title IIIB funds. Benefits specialist programs can be combined with Health Insurance Counseling projects or stand on their own. An advantage of the model is that in many cases, it costs less to fund a benefits specialist than it does to fund a lawyer and trained and supervised benefits specialists can handle administrative hearings for clients. In addition, if the specialist is not performing legal work, there is no need for close, direct supervision by a member of the bar. Also, undeniably, access to benefits helps improve the lives of those who are most needy. On the other hand, older persons who need legal advice or representation on non-benefits matters have limited access under this model, since OAA funds are directed solely to assisting with benefits, though it is presumed that areas using this model work hard to develop pro bono or resources to fill that need.

Law School Clinics

Law school clinics utilize students, faculty and institutional resources to provide legal assistance in an area. Institutional resources such as space, phones, faculty expertise and an extensive law library are among the benefits of this model. It also has the added benefit of training future bar members to be knowledgeable about and sensitive to the

needs of low income and vulnerable seniors. Barriers associated with the model include service availability- students are only available to work during certain parts of the year, and the office may not be open during exam or vacation times or will need to cut back on services provided then; limits on types of cases handled- clinics often choose to focus on cases that can be handled in one semester so that a student can see the case through, or clinics may choose to focus on areas that law students can handle with limited supervision such as legal advice or negotiation, and though this is not always true, students may not be able to travel to outlying counties because insurance and travel costs can be a barrier. Finally, a law school clinic exists primarily to provide the students with a positive learning experience. This goal may sometimes conflict with the needs of the client population and prevent more serious needs from being addressed through the program.

No programs

Surprisingly, even though it is a priority service under the Older Americans Act, in many areas of the country there is no available Title IIIB funded legal assistance. Areas that do not fund legal assistance may have a variety of reasons. They may feel that the local need for the service is not sufficient,¹³ the available funds are insufficient to support a program, or there are no good candidates to host the program in their region. It is not clear whether areas that have no programs have received waivers, though the Older Americans Act clearly anticipates this process.¹⁴

Best Entity

With respect to plans for legal assistance, the Older Americans Act requires that the grantee selected “is the entity best able to provide the particular services;” However, given the range of funding available, which in 2005-2006 varied from 0% - 10.58% of total state IIIB expenditures ¹⁵, and the number and type of potential providers, the “best entity” can and does look different in different places. This is yet another area where the role of Legal Services Developer is critical to assure state and area agencies offer consistent, high-quality legal assistance services that most closely meet the requirements and vision of the Older Americans Act. ¹⁶

Conclusion

This article grew out of an effort to identify and post an updated national list of Title IIIB legal assistance providers. A review of funded entities indicated that there remain wide disparities not only in the funds available for the service, but also in both the structure and services provided by funded entities. For an updated listing of Title IIIB providers in each state, or to find the provider who serves a particular area, go to www.legalhotlines.org.

Endnotes:

OAA Section 307 (a) (2) (c) (2006); *See also*, OAA Section 306 (a) (2) (c) (2006), which requires states to assure an adequate proportion will be allotted for legal assistance.

2. OAA Section 102 (a) (33) (A) (b) (2006).

3. OAA Section 307 (a) (11) (D) (2006).

4. For comprehensive information on the topic of Legal Needs Studies, see resource material from the Access to Justice Support Project at www.nlada.org/Civil/Civil_SPAN/SPAN_Library/document_list?topics=000055&list_title=State+Legal+Needs+Studies%3A+Reports, and additional material at www.abanet.org/legalservices/sclaid/atjresourcecenter/resourcematerials.html
See also see TCSG Best Practice Notes (March 2005, Volume 14, Nos. 1 and 2).

5. OAA Section 307 (a) (11) (b) (2006).

6. www.aoa.gov/prof/agingnet/NAPIS/SPR/2006SPR/tables/Table9b.pdf.

7. OAA Section 102 (a) (33); *see also* OAA Section 307(a)(11)(b), OAA Section 306 (4) (A) (i), (ii) (2006) and Legal Services Corporation Act Section 1007 (a) (2) (B) (2007).

8. OAA Section 307 (a) (11) (b) (2006).

9. OAA Section 315 (a) (2) (B) and OAA Section 315 (b) (3) (2006).

10. www.aoa.gov/prof/agingnet/NAPIS/SPR/2006SPR/tables/Table9b.pdf.

11. www.aoa.gov/prof/agingnet/NAPIS/SPR/2006SPR/tables/Table9b.pdf.

12. OAA Section 307 (a) (8) (A) (2006).

13. The author was presented with this argument while serving as Legal Services Developer in Georgia.

14. OAA Section 306 (a) (2) (C), *see also* OAA Section 307 (a) (2) (C).

15. *See* www.aoa.gov/prof/agingnet/NAPIS/SPR/2006SPR/tables/Table6b.pdf for information on 2006 expenditures and percentages. *See also*, OAA Section 306 (a)(2) (2006).

16. OAA Section 307 (a) (11) (B). For information on how Legal Services Developers view the “best entity” requirement and the elements that they believe should be considered in making this determination, *see* Thomas, Natalie and Ingham, Richard, “State Legal Assistance Development Program Study: Finding a Place in the Elder Rights Puzzle”, October 2003, pages 78-79.