



Legal Assistance to Older New Yorkers

Standards of Operation and Scope of Services

Based on standards set by the New York City Department for the Aging and the New York State Office for the Aging.

Updated September 2023

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SECTION 1. INTRODUCTION

A. Legal Authority and Funding¹

The Federal Older Americans Act (OAA) designates legal assistance as a priority service funded under Title III-B.² The New York State Office for the Aging (SOFA) is responsible for the overall administration of the program, while direct legal services to older individuals are funded at the local level through Area Agencies on Aging (AAAs) and provided by their Legal Assistance Providers (Providers).

Since legal assistance is a priority service mandated by the OAA, each of the 59 AAAs in New York must operate a Legal Assistance Program. Legal services offered through the program shall be accessible and available to those individuals aged 60 and over and identified as living in greatest economic and social need throughout an AAA's planning and service area.

B. Program Purpose³

Legal assistance, as defined by the OAA:

- (A) means legal advice and representation provided by an attorney to older individuals with economic or social need; 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 non-lawyer where permitted by law.⁴

Thus, the Legal Assistance to Older New Yorkers Program is an advocacy program providing older individuals with legal advice and representation, including but not limited to representation in court and administrative proceedings. An older individual is an individual who is 60 years of age or older.⁵

The regulations promulgated pursuant to the OAA by the U.S. Department of Health and Human Services require all Title III services to be provided without the use of any means testing.⁶ The term "means test" is defined as "the use of an older person's income or resource to deny that person's receipt of services."⁷

With regard to legal assistance providers, the regulations state:

- (d) 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.
- (e) A legal assistance provider may ask about the person's financial circumstances as a part of the

¹ Source: New York State Office for the Aging Program Instruction, *Statewide Standards for the Delivery of Legal Assistance to Older New Yorkers*, 94-PI-52, issued December 29, 1994 (hereinafter 94-PI-52).

² 42 U.S.C. § 3026(a)(2); OAA § 306(a)(2)

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⁴ 42 U.S.C § 3002(33); OAA § 102(33).

⁵ *Id.*, § 3002(38); OAA § 102(38).

⁶ 45 CFR § 1321.17(f)(3).

⁷ *Id.*, § 1321.3.

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.⁸

Balancing the statutory preference for serving those in economic and social need against the regulatory prohibition on means testing is accomplished by serving certain target populations within the AAA's service area and establishing case priorities to meet the needs of those populations.⁹

⁸ *Id.*, § 1321.71(d),(e).

⁹ For a more detailed discussion, *see, generally, Comprehensive Guide to Delivery of Legal Assistance to Older Persons*, Chapter V, Targeting, Priority Setting, and Means Testing, The Center for Social Gerontology (1988).

SECTION 2. STANDARDS FOR THE LEGAL ASSISTANCE PROGRAM

Standard 1: Required Qualifications of the Legal Assistance Provider¹⁰

The Legal Assistance Provider must be:

- a Legal Services Corporation grantee;
- a not-for-profit corporation organized for the delivery of legal assistance;
- a private law firm licensed to practice law in New York State;
- a private attorney licensed to practice law in New York State; or
- a social agency that has an identifiable legal component independent from the agency. (A unit within the agency directly supervised by an attorney would most likely meet this requirement)

The Legal Assistance Provider may engage the services of a paralegal to provide Title III-B legal assistance. A paralegal providing legal assistance must be under the direct supervision of an attorney.

A Legal Assistance Provider may not be either a full-time or part-time County Attorney. Elderly clients seeking representation against a county and its agencies must be assured that the Legal Assistance Provider will be able to represent their interests without conflict.

Standard 2: Target Population¹¹

To meet the statutory and regulatory requirements, while recognizing that resources under the OAA are limited, the Provider must target legal assistance to particularly needy populations throughout NYC Aging's planning service area. Particularly needy persons, as specified in the OAA, include those in greatest economic or social need, low-income minorities, and rural elders.

The OAA defines "greatest economic need" as "the need resulting from an income at or below the poverty line."¹²

Greatest social need is defined by the OAA as:

...the need caused by noneconomic factors, which include-

- (A) physical and mental disabilities;
- (B) language barriers
- (C) and 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;
 - (ii) or which threatens the capacity of the individual to live independently.¹³

Targeted populations should include, but not be limited to, older New Yorkers who:

- are residents of nursing homes;
- are residents of adult homes;

¹⁰ 94-PI-52

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¹² 42 U.S.C. § 3002(29); OAA § 102(29).

¹³ *Id.*, § 3002(30); OAA § 102(30).

- have assisted living needs or are in an assisted living arrangement;
- have chronic health problems;
- have particular problems of access to health care;
- are homeless, or threatened with homelessness;
- live on a subsistence income, or are threatened with the loss of subsistence income;
- have language barriers;
- are proposed for or under guardianship;
- are victims of abuse, neglect or exploitation (including fraudulent and deceptive financial and consumer practices); and/or
- are physically isolated.

The above listing of targeted populations is not intended to be exhaustive, mandatory, or in priority order but represents a range of possibilities that should be utilized by Legal Assistance Providers when targeting services and establishing case priorities.

Standard 3: Case Priorities¹⁴

NYC Aging has established case priorities that will best meet the needs of the targeted groups, as specified by the Older Americans Act Reauthorization of 1992¹⁵:

- **Income and Benefits:** Social Security, Social Supplemental Income, Pooled income trusts, HEAP, SCRIE, Supplemental Nutrition Assistance Program, railroad retirement, workers' compensation, veteran's benefits, unemployment compensation, pensions.
- **Health care/Long-term care:** Advanced LTC planning, Medicaid, Medicare, nursing and adult home issues (institutionalized older adults), COBRA, and other insurance issues.
- **Consumer:** Collections, contracts and warranties, non-health insurance issues, taxes, predatory lending, loan and installment purchases.
- **Housing and utilities:** Tenant issues, foreclosure, home repair fraud, utility shut-offs, energy issues, home ownership/real property, reverse mortgages, home equity conversion, homelessness.
- **Guardianship/abuse/neglect:** Defense of guardianship, representative payee, abuse cases, financial exploitation.
- **Other:** e.g., Americans with Disabilities Act.

Standard 4: Other Issues¹⁶

In addition to the Priority Issues specified in the list above, there are other issues that are of importance and concern to Older New Yorkers. These issues fall into the categories of age discrimination and preserving personal autonomy. Older New Yorkers sometimes face discrimination in gaining housing, employment, services, and credit. The Legal Assistance Provider may be contacted to assist the older individual in such cases. Age discrimination cases are often fee generating, however, and may not, ordinarily, be undertaken by the Provider.¹⁷ Nonetheless, the

¹⁴ 94-PI-52

¹⁵ *Id.*, § 3027(a)(15); OAA § 307(a)(15).

¹⁶ 94-PI-52

¹⁷ See, 45 CFR § 1321.71(g).

Provider should direct such individuals to the New York State Division of Human Rights or the New York City Commission on Human Rights and offer assistance in contacting those agencies.

Matters involving the preservation of personal autonomy include the preparation of powers of attorney, health care proxies, do not resuscitate orders and even wills. These are matters that are of as much importance to those of limited means as they are to those of comfortable means. The Provider may explore the possibility of utilizing *pro bono* and reduced fee panels as a means of meeting the demand for assistance in this area while preserving limited financial resources to address the priority issues specified above.

Standard 5: Communications and Consultation¹⁸

Good communication between NYC Aging and the Provider is essential to the success of the Legal Assistance Program. Therefore, in order to comply with the purposes of the program and meet the needs of the target populations, NYC Aging and the Provider shall engage in a dialogue on how to best:

- formally establish case priorities that reflect local needs of the target population, taking into consideration those issues specified in these standards;
- foster cost-effective, high-quality services having maximum impact on these priority issues;
- assure the accessibility of the Legal Assistance Program throughout the planning and service area served by NYC Aging;
- cooperate with SOFA, other AAAs and Legal Assistance Providers in serving the legal needs of Older New Yorkers; and
- develop and maximize the use of other resources to expand the provision of legal assistance to the elderly.

SOFA, upon request, will provide technical assistance to NYC Aging and the Providers in meeting the requirements of this section.

Standard 6: Data Collection and Reporting

The Provider must utilize the NYC Aging client tracking system to record all required data elements and to document service units. At minimum, the Provider must collect all data elements in accordance with the Administration for Community Living's (ACL) requirements for the State Performance Report (SPR)¹⁹, including:

- Age distribution;
- Gender distribution;
- Geographic distribution (rural/non - rural): Defined using Rural Urban Commuting Area (RUCA) codes (zip code file available);
- Household status;
- Poverty status;
- Ethnicity;

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¹⁹ See Administration for Community Living Legal Assistance Guidebook at: <https://oaaps.acl.gov/api/upload/download?title=III&downloadType=LegalGuidebook>.

- Race (Individuals with multiple racial identities are recorded for each); and
- Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADs) not applicable to legal assistance.
- Minority status.

Standard 7: Client File

The Provider must maintain a client file. Client file includes documentation of engagement by the client of the attorney; copies of all correspondence to the client, from the client and on behalf of the client; notes, summaries of telephone communications with and/or on behalf of the client; copies of documents filed on behalf of the client (e.g., request for a fair hearing, petition to the court with jurisdiction over the matter for which the client has engaged the attorney, etc.); any documents prepared by the attorney for the client; and any documents given to the attorney by the client for review.

Standard 8: Program Records Maintained by the Provider

The Provider is required by Title 9 of the Official Compilation of Codes, Rules and Regulations of New York State (NYCRR) to maintain records that are to be made available to NYC Aging for review. For example, 9 NYCRR §6654.8 directs each service provider to develop and implement procedures to obtain the views of program participants about the services they receive and to maintain copies of such records for at least six program years. The Provider is required to comply with this regulation and to make such records available to NYC Aging for inspection without disclosing the identity of the client. Another example is that the Providers are required by state regulation to adopt procedures and forms to document that the legislative and administrative activities in which they engage fall within activities permitted by 9 NYCRR §6654.12(f).²⁰ Any costs claimed by the Providers associated with the contract must be supported by records of the covered activities for which reimbursement is sought.

NYC Aging may review the adequacy of qualified staff which the Provider has assigned to provide services under the contract, staff training activities, location where services are provided, aggregate information about the clients served and the kinds of issues (i.e., categories such as public benefits, financial or credit problems, surrogate decision making including guardianship defense, or housing including eviction and foreclosure) and documentation of ability to serve people with limited English proficiency or older adults with significant disabilities. In addition, NYC Aging may require that the Provider record and report the following information for the period specified in the contract: the number of clients received via referral; the number of clients for whom intake has been completed; the number of older adults referred to other attorneys willing to provide *pro bono* services or services on a reduced fee basis or to the legal services corporation and the reason for the referral; the number of matters resolved; the number of matters pending; a breakdown of the number of clients needing legal advice and the number needing representation either in an administrative or judicial proceeding; the average number of days between intake and resolution; and units of services claimed under the contract. This is not an exhaustive list of the types of information and documentation that NYC Aging may use to administer its contracts with legal assistance providers that would not conflict with the attorney's duty of confidentiality.

²⁰ See 9 NYCRR §6654.12(k)

Standard 9: NYC Aging General Standards of Operation

All legal services providers must adhere to applicable requirements in the NYC Aging General Standards of Operation, which can be found on the Contractor Tools page of the NYC Aging website.

Currently, the Standards can be found at this link: <https://www.nyc.gov/assets/dfta/downloads/pdf/community/General-Program-Standards-v02-01-2023.pdf>.

SECTION 3. RESPONSIBILITIES OF THE LEGAL ASSISTANCE PROVIDER

The primary responsibility of the Legal Assistance Provider is to provide older New Yorkers who are in the greatest economic and social need with legal advice and representation, including representation in court. The Provider may represent individual elderly clients or groups of elderly clients. An example of group representation would be representation of a group of elderly tenants seeking relief from lease violations by their landlord. While other legal assistance activities, such as community legal education, are acceptable under these standards, the primary focus of the program is the direct legal representation of clients.

NYC Aging and the Legal Assistance Provider shall provide leadership relative to all aging issues within the planning and service area. This leadership shall include, but not be limited to, planning, advocacy, coordination of services, interagency linkages, and information sharing in order to assure that the Legal Assistance Program is an integral part of the services offered by NYC Aging.

Therefore, it is expected that the Legal Assistance Provider will utilize the full range of legal advocacy tools in representing the interests of program clients. Specifically, the Legal Assistance Provider should pursue judicial, administrative, and legislative remedies as appropriate, within the limits of applicable Federal and State Law.

Standard 10: General Provider Requirements²¹

Each Legal Assistance Provider shall:

- maintain client confidentiality and otherwise abide by the Lawyer's Code of Professional Responsibility as adopted by the New York State Bar Association;
- work closely with NYC Aging;
- adhere to the standards set forth in this document and any amendments thereto;
- work with NYC Aging to develop a method for surveying client satisfaction and ensure that the views of older persons are solicited and considered as to the operation of the program. Such methods shall respect the client's right to confidentiality;
- assist SOFA and NYC Aging in developing and amending reporting instruments as necessary;
- work with NYC Aging to assess and develop local program plans for reaching the target populations and addressing case priorities;
- provide effective, high quality administrative and judicial representation in the priority issue areas for eligible individuals, unless it can be demonstrated that another provider within the Provider Service Area, i.e., catchment area, is delivering the service in accordance with these Standards;
- use Title III-B funds or other funds as contracted for from the Area Agency on Aging to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and shall not use Title III-B funds to supplant funds from other federal or non-federal sources;
- not condition the provision of Title III-B funded legal assistance to any person 60 years of age or older on their level of income or resources. The Provider may only question the client about financial circumstances as a part of the process of providing legal advice, counsel and representation, and for the purpose of

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identifying additional resources to which the client may be entitled, and to assist in targeting clients with greatest social and economic need;

- give clients an opportunity to voluntarily contribute to the cost of the services they receive and ensure privacy with respect to the client. The method of informing the client of the opportunity to voluntarily contribute shall not discourage the utilization of services by the client²²;
- not subcontract any interest or obligation arising under a Title III-B contract without the written approval of NYC Aging;
- have the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language²³;
- provide complete, accurate programmatic and fiscal reports to NYC Aging in a timely manner and provide additional information as may be requested by NYC Aging and the State Legal Assistance Developer,²⁴ while maintaining client confidentiality; and
- establish goals for the future of the Legal Assistance Program in consultation with NYC Aging and the Legal Assistance Developer.

Standard 11: Assisted Referrals²⁵

There will be times when an older adult asks a Legal Assistance Provider for help with a matter for which adequate and accessible legal resources exist in the community. In such cases, the Provider may make a referral to an attorney in private practice.

The Legal Assistance Provider shall establish a legal referral mechanism. Referrals should be on a *pro bono* or reduced fee basis.

If a client has a matter normally handled by the Legal Services Corporation (LSC), and the LSC is not the Legal Assistance Provider for the catchment area, then the Legal Assistance Provider, with the elderly client's permission, may make a referral to the LSC grantee. The client should be told, so long as it is true, that the LSC office handles more of that type of case and has a better expertise. The Provider should know whether this is in fact true because a cooperative relationship with the local LSC office should already have been established.

In those instances where the NYC Aging Legal Assistance Provider is an LSC grantee, that Provider must attempt, to the extent possible, to serve the elderly client with funds and personnel provided by LSC. The LSC/Legal Assistance Provider will be required to demonstrate a fair proportion of assistance to eligible elderly clients as a condition of receiving OAA funds from NYC Aging. This is keeping with the objective of the OAA Legal Assistance Program supplementing legal assistance already available in NYC Aging's service area.

The Legal Assistance Provider must, if appropriate, make the first contact with the attorney or LSC office receiving the referral. The Provider must have procedures to follow up after the referral to assure that the client is served in a timely and adequate manner. This does not mean that the client always must be totally satisfied; the Provider is responsible only for assuring that what can be done for the client is being done. If not, the Provider must determine whether it is

²² OAA § 315(b)(4), 45 CFR § 1321.67, 9 NYCRR §§ 6654.5 and 6654.6

²³ See NYC Aging General Program Standards of Operation, Standard 9. Compliance 9.1.

²⁴ 94-PI-52

²⁵ 94-PI-52

appropriate to take back the client and try to resolve the problem either through another, more effective referral, or through the OAA Legal Assistance Program.

Standard 12: Coordination with the Long-Term Care Ombudsman Program ²⁶

The State Long-Term Care Ombudsman Program is an advocacy program representing residents of long-term care facilities. Coordinating services between the Legal Assistance Program and the Ombudsman Program is deemed essential for the effective representation of a particularly vulnerable target population.

While other means may be utilized, the best means of assuring the coordination of services is through the adoption of a memorandum of understanding. Such memorandum should be reviewed and renewed not less than once every four years. The Provider must submit a copy of the memorandum of understanding to NYC Aging for its records upon execution and/or renewal.

A memorandum of understanding adopted pursuant to this section should address, but not be limited to, issues of conflicts of interest, case acceptance procedures, and referral procedures. The memorandum should specify that clients of the Long-Term Care Ombudsman Program are entitled to advice and representation where otherwise eligible and appropriate under Legal Assistance Program priorities. In addition to the Lawyer's Code of Professional Responsibility, Legal Assistance Providers must maintain confidentiality in accordance with OAA and regulations, including, but not limited to, the sections on the Legal Assistance and Long-Term Care Ombudsman Programs.

²⁶ 94-PI-52

SECTION 4. JOINT RESPONSIBILITIES OF NYC AGING AND THE LEGAL ASSISTANCE PROVIDER

NYC Aging and the Legal Assistance Provider have a joint obligation to ensure that older New Yorkers within NYC Aging's planning and service area receive quality legal representation, while also maximizing limited financial resources. There are several ways in which this obligation may be met. In addition to the establishment of case priorities and assisted referrals discussed above, Standards 12 and 13 are intended to make the Legal Assistance program more effective, both in terms of maximizing the limited funding available, and ensuring quality service is provided to clients.

Standard 13: Coordination with the Legal Services Corporation²⁷

The Legal Services Corporation (LSC) is a federally funded, non-profit corporation that receives funding on the basis of the number of poverty-level individuals in each county. The OAA requires Title III Legal Assistance Programs to coordinate its services with existing LSC projects.²⁸

LSC grantees are mandated to serve the legal needs of all poverty level individuals in the county for which it receives a grant. These offices do not receive sufficient funds to represent every client who qualifies under the "poverty level" criteria. Nonetheless, each LSC grantee should represent a fair proportion of elderly since they receive funds based on the presence of these elderly individuals.

NYC Aging and the Legal Assistance Provider shall find out the extent to which the local LSC grantee is representing elderly clients and, if necessary, advocate for increased representation of the elderly at or below the poverty level. A close relationship shall be maintained among the NYC Aging, the Title III-B Legal Assistance Provider, and the LSC grantee.

Where the local LSC grantee is also the Title III-B Legal Assistance Provider, documentation of good faith efforts to represent the elderly with LSC funds is required as a condition of contract continuance. LSC grantees receiving Title III-B funds must keep statistics on the age of the clients represented so that these statistics will be available for review by NYC Aging.

Standard 14: Community Legal Education²⁹

The resources available under the OAA are extremely limited. Therefore, the primary focus of the Legal Assistance Program is the direct legal representation of clients. Nonetheless, the Legal Assistance Provider, in consultation with NYC Aging, shall decide as a matter of policy if it can also serve the needs of the elderly by engaging in community legal education.

The Provider should recognize that community legal education can generate increased demand for services. Ideally, community legal education should be integrated into the Provider's service delivery scheme so as to complement the direct representation of the elderly in priority areas. Examples of such integration are:

²⁷ 94-PI-52

²⁸ 42 U.S.C. § 3027(a)(15)(B); OAA § 307(a)(15)(B).

²⁹ 94-PI-52

- Teaching the elderly to take steps themselves to resolve matters.
- Advising the elderly of a result achieved through direct representation, so that such result reaches those to whom it applies.
- Advising the elderly that a specific problem, which traditionally may not be recognized as having a legal remedy, is amenable to a legal solution.
- Familiarizing the elderly with the Legal Assistance Program and informing them of the availability of services.