

6.3 Legal Assistance

6.3.1 Legal Assistance Development

A. Program Description and Purpose

The Older Americans Act of 1965(OAA), as amended, designates legal assistance as a priority service funded under Title III-B [42 U.S.C. 3026(a)(2)]. The 1992 amendment created a Title VII concerning Allotments for Vulnerable Elder Rights programs for the prevention of elder abuse, neglect, and exploitation; state elder rights and legal assistance development programs; and outreach, counseling, and assistance programs. As such, the funding of legal assistance by each Area Agency on Aging (AAA) is mandatory. Legal assistance services are accessible and available throughout each of the 11 planning and service areas (PSAs) in Kansas.

B. Definitions

Community Education: Presentations given to older individuals or their caregivers by legal service staff on a specific legal topic.

Older Individual: An individual who is 60 years of age or older.

Outreach: Interventions initiated by an agency or organization to identify or target potential customers or their caregivers to encourage their use of legal assistance services and benefits.

C. Program Purpose

1. Legal assistance services provide access to the system of justice by offering advice and representation by a legal provider who acts as an advocate for the socially and/or economically needy older individual to ensure the following:
 - Access to essential services and/or financial resources;
 - Assistance in understanding their rights and exercising choices; and
 - Protection of the older individual's right to be autonomous and to retain his or her dignity.
2. Programs are to foster a high quality, cost effective service that is integrated into the aging services network and accessible throughout each PSA, and to develop and maximize the use of other resources.

6.3.1 (cont.)

D. Target Population

1. The AAAs and legal assistance service providers shall, in consultation with the Kansas Department for Aging and Disability Services' (KDADS) Legal Service Developer, jointly develop plans to target legal assistance services to older individuals with the greatest social need and/or greatest economic need, as defined in Section 1.1.
2. AAAs and legal assistance providers shall identify those older individuals who are most vulnerable and in need of legal assistance. Priority for legal assistance services shall be given to those older individuals who meet any of the following:
 - Resident of an adult care home;
 - Terminally ill;
 - At risk of admission to, or denied placement in, an adult care home;
 - Difficulty accessing health care;
 - Homeless;
 - Mentally ill or developmentally disabled;
 - Seeking public benefits for which they are eligible;
 - Living in a rural area;
 - Language barrier;
 - In need of or under guardianship;
 - At risk or victim of abuse, neglect or financial exploitation (including fraudulent and deceptive financial and consumer practices); and
 - Physically or socially isolated.
3. Consideration should be given at the local level as to the availability of other resources to meet the legal needs of targeted populations. This target listing is not exhaustive or in a mandatory priority order.

6.3.2 Priority Areas of Law

The legal services provider must be capable of providing legal assistance in the service categories listed below unless the provider can demonstrate to the AAA that the service category is already being provided in their area to older Kansans with the greatest social need and/or greatest economic need. The AAA shall ensure that priority is given to those categories marked with an asterisk.

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6.3.2 (cont.)

A. Protective Services

1. Financial Power of Attorney *
2. Advance Directives (Living Wills, Durable Power of Attorney (DPOA) for Health Care) *
3. Guardianship/Conservatorship *
4. Abuse and Neglect *
5. Financial Exploitation *

B. Income

1. Social Security Disability
2. Social Security Retirement
3. Railroad Retirement
4. Unemployment Compensation
5. Private Pension
6. Tax Refunds
7. Workers' Compensation
8. Veterans' Benefits
9. Division of Assets *

C. Public Benefits

1. Supplemental Security Income
2. Supplemental Nutrition Assistance Program (SNAP, f/k/a Food Stamps)
3. Nutrition Programs
4. Temporary Assistance to Families (TAF)
5. Energy Assistance
6. General Assistance

D. Health Care

1. Private Medical Insurance/COBRA
2. Medicare *
3. Medicaid/Medikan *
4. Long Term Care Insurance
5. Collections
6. Long Term Care
7. Home and Community Based Services for Frail Elderly (HCBS/FE)

E. Housing/Real Estate

1. Federal Subsidized Housing *

6.3.2.E (cont.)

2. Home Ownership *
3. Landlord/Tenant *
4. Property Tax
5. Mortgage/Contract
6. Other Property Ownership

F. Consumer/Financial

1. Life Care Contracts
2. Utilities
3. Financial/Tax Counseling *
4. Collections (non-health)
5. Consumer Complaints *
6. Insurance (non-health)
7. Bankruptcy *
8. Funerals

G. Individual Rights

1. Americans with Disabilities Act (ADA)/Disability Rights *
2. Discrimination, including age *
3. Immigration/Naturalization
4. Resident's/Patient's Rights *
5. Crime Victims
6. Grandparent Rights

H. Miscellaneous

1. Divorce/Separation
2. Custody/Adoption
3. Will/Estate Planning
4. Probate of Estate
5. Employment
6. Traffic

6.3.3 Area Agency on Aging Responsibilities

Each Area Agency on Aging (AAA) shall meet the following requirements:

- A. Assure access to legal assistance throughout the PSA by contracting with one or more Legal Services providers that meet requirements specified in 45 CFR 1321.71 and requirements in Section 6.3.4.

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- B. Provide OAA Title III-B funding at a level equal to or above the minimum established by KDADS through the adequate proportions policy.
- C. Work with the Legal Services provider(s), to expand access to legal assistance for the targeted population and to address priority needs. (See Sections 6.3.1 and 6.3.2)
- D. Work with the AAA's Legal Services provider(s) to provide community education on priority areas of law (see Section 6.3.2) to reach and serve targeted groups.
- E. Develop and implement grievance procedures for clients, applicants, and past clients who file complaints or grievances with the AAA about the legal assistance program. (See Section 1.3)
- F. Review and approve each Legal Services provider's policy and protocol for referral of fee generating cases and conflicts of interest as required in Section 6.3.4.
- G. Monitor and conduct an annual assessment of each Legal Services provider under contract with the AAA.
- H. Provide the Legal Services provider(s) with a current copy of AAA and KDADS policies and procedures that apply to providers in general and to legal assistance specifically, and supply relevant changes in these policies and procedures in a timely manner.
- I. Protect client confidentiality in accordance with the Kansas Rules of Professional Conduct, federal rules and regulations, and Kansas statutes and administrative regulations.
- J. Respect the professional relationship of any client with any attorney or non-attorney advocate employed by, or volunteering for, the Legal Services provider by not interfering with, or intervening on behalf of, the client or the provider.
- K. Include Legal Services provider requirements identified in Section 6.3.4 and any amendments thereto, in provider contracts.
- L. Work with Legal Services providers to develop a method for surveying client satisfaction and needs, and to assure that the views of older individuals are solicited and considered as to the operation of the legal assistance program.
- M. Develop legal assistance service goals as a part of the Area Plan.
- N. Promote private bar involvement, including the establishment or expansion of legal assistance services provided pro bono or on a reduced fee basis, particularly for wills and advance directives.

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- O. Submit the following information for OAA Title III-B service providers to KDADS's Legal Service Developer:
 - 1. a current listing of attorneys responsible for services to older individuals;
 - 2. the name of the supervising attorney, if any; and
 - 3. the primary supervising attorney for paralegal/non-lawyer advocates.

- P. Submit KDADS Form SS-028, Legal Service Reporting Form, to KDADS by the 20th of the month following the end of each semi-annual reporting period.

6.3.4 Legal Service Provider Requirements

A. Provider Staffing Requirements

- 1. All attorneys providing legal assistance services funded by OAA Title III-B must be authorized to practice law in the State of Kansas.
- 2. All attorneys must demonstrate experience or capacity to provide quality legal services in the majority of priority areas of law as identified in Section 6.3.2.
- 3. All providers must have at least two years legal experience unless directly supervised by an attorney who has a minimum of two years of law practice.
- 4. Paralegals must have direct and regular supervision by a qualified attorney and be provided skills training and training in the priority areas of law.
- 5. All attorneys must attend a minimum of three (3) hours of Continuing Legal Education on elder law topics annually.
- 6. All Legal Services providers must offer sufficient training to all staff members providing legal assistance services funded by OAA Title III-B and maintain documentation of each employee's training sessions for a period of five (5) years after the last day on which legal assistance services were provided by the employee.
- 7. All Legal Services providers must maintain insurance coverage for malpractice.

B. Legal Services Provider Requirements

Each Legal Services Provider shall meet the following requirements:

- 1. Provide effective, high quality administrative and judicial representation for eligible individuals in the mandated priority categories set forth in Section 6.3.2,

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except where the Legal Services provider can demonstrate to the AAA that another provider is delivering the service in accordance with Section 6.3.2.

2. Use OAA Title III-B funds and other funds contracted for from the AAA to increase the level of legal assistance available to eligible individuals. OAA Title III-B funds shall not supplant funds from other federal or non-federal sources.
3. Provide legal assistance to any individual 60 years of age or older, regardless of their level of income or resources, if the client is receiving legal assistance funded by
4. Title III-B. 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 identifying additional resources to which the client may be entitled.
5. Give clients a free and voluntary opportunity to contribute to the cost of the services they receive and ensure privacy with respect to all solicitations, contributions, or donations. The method of announcing the opportunity to contribute shall not discourage the utilization of the service by the contributor or any other potentially eligible individual in the community.
6. Use all voluntary contributions received from OAA Title III-B clients to expand legal assistance services to elderly individuals.
7. Subcontract or delegate an interest or obligation arising under a Title III-B contract *only with* prior written consent from the AAA.
8. Have knowledge of, and access to, the OAA and the CFRs governing legal assistance, including 45 CFR 1321.71 and 45 CFR 1600 et seq.
9. Maintain client confidentiality, including reports, in accordance with the Kansas Rules of Professional Conduct, the attorney-client privilege, and the Older Americans Act.
10. Deliver services to the targeted client population, including clients who are institutionalized, homebound, isolated, or those in community based care programs, as needed. (See Section 6.3.1.D)
11. Provide support to other organizations' advocacy efforts made on behalf of elderly Kansans as allowed by law.

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12. Provide outreach services as an integral part of the contracted legal assistance outreach efforts, which shall identify clients eligible for assistance and apprise them of the availability of this service. The provider shall ensure that legal assistance services are made known to the minority community, including outreach and information disseminated to non- and limited English speaking older individuals and to constituent agencies acting on their behalf.
13. Work with the AAAs to provide community education on priority areas of law (see Section 6.3.2) to reach and serve targeted groups.
14. Develop a coordination of services agreement with the local Legal Services Corporation grantee if the provider is not a Legal Services Corporation funded program. The agreement shall detail the type of cooperation and coordination each program shall expect of the other while providing legal services for older individuals throughout the PSA. This agreement shall be updated periodically, as needed.
15. Coordinate with area providers of case management and long-term care ombudsman services by developing, formally or informally, a memorandum of understanding that includes, but is not limited to, conflict of interest, case acceptance, and referral procedures.
16. Develop and follow a program policy and protocol for referral of fee generating cases and conflicts of interest and submit to the AAA for approval.
17. Encourage involvement of the private bar in legal assistance activities, including groups within the private bar furnishing services to older individuals on a pro bono or reduced fee basis, and coordinate these efforts with those undertaken by the AAA.
18. Obtain and maintain a signed representation/service agreement in the file of each client for whom OAA Title III-B legal representation is provided and keep for a minimum of five (5) years after termination of client representation.
19. Have a written policy and protocol that requires staff to provide information to clients, during initial contact, outlining clients' rights of appeal and describing the AAA grievance procedures.
20. Provide legal assistance for elderly individuals with visual impairments, hearing impairments, and language barriers, as needed, including written materials in alternative formats.

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21. Communicate with the AAA regarding overall operation and development of the AAA's legal programs insofar as the potential to impact older individuals.
22. Submit semi-annual reports, (KDADS Form SS-028, Legal Services Reporting Form) to the AAA as required by contract.
23. Respond to reasonable requests from the AAA and/or KDADS's Legal Service Developer, in a timely manner, for information or reports on local trends or legal issues affecting older individuals.